

(1960) 02 AHC CK 0007

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No. 1949 of 1957

Laiq Singh

APPELLANT

Vs

Additional Commissioner and Others

RESPONDENT

Date of Decision : 08-02-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1960) 30 AWR 321

Hon'ble Judges : V.D. Bhargava, J

Bench : Single Bench

Advocate : G.N. Verma, for the Appellant; D. Sanyal, for the Respondent

Final Decision : Allowed

Judgement

V.D. Bhargava, J.—This is a petition under Article 226 of the Constitution filed by Laiq Singh.

2. According to the petition there was on Murli Singh who was tenant of a certain piece of land in village Raipur Manipur, pargana Akkrabad, district Aligarh. By means of an application dated 20-6-50 he obtained Bhumidbari sanad u/s 6 of the UP Agricultural Tenants (Acquisition of Privileges) Act and in the sanad he got the name of Govind Singh, father of opposite parties Nos. 3-7 also included as a co bhumidhar. Later on, the rights of Murli Singh were purchased by the Petitioner by means of a salt deed dated 6-8-55. The Petitioner filed an application u/s 12 of the said Act against Govind Singh in the court of the Judicial Officer, Aligarh praying that a declaration be granted in his name u/s 6 and the name of Govind Singh be cancelled, as Govind Singh was never a cotenant or a sub-tenant of the holding in dispute.

3. On 21-7-56 this application u/s 12 was dismissed and an appeal was filed before the Commissioner as provided u/s 13 of the Act. The Additional Commissioner dismissed the appeal by his order dated 3-5-57 on the ground that no appeal lay, because the order passed u/s 12 was not a modification or

cancellation of the sanad, but a confirmation of it.

4. It was contended by learned Counsel for the Petitioner that the view of the Additional Commissioner is erroneous, because Section 13 is not confined to appeals against orders only of "modification" or "cancellation" u/s 12 but it applies to all orders passed u/s 12. Section 13 reads as follows:

An appeal against an order passed by the Assistant Collector under Sub-section (6) of Section 6 or Section 12 shall lie to the Commissioner and the order passed in appeal by the Commissioner shall be final.

5. It is not a particular kind of order against which appeal lies and what the Legislature intends is that if orders are passed u/s 6 or 12 appeal shall be. If here any order is passed u/s 12, it is appealed, whether it is dismissal of the application of modification or cancellation of the sanad or actual modification and cancellation. Under the circumstances, I think that the view of the Additional Commissioner was erroneous and he failed to exercise jurisdiction.

6. Opposite parties Nos. 1 and 2 were the Additional Commissioner, Agra Division and the Judicial Officer, Aligarh, while opposite parties Nos. 3 to 7 were the heirs of Govind Singh who died in the meanwhile. So far as opposite parties 1 and 2 are concerned, they are not represented. It is only opposite parties 3 to 7 who have raised objection. It is not possible for me to go into the merits. It is the decision of the Additional Commissioner which would be final. If the Additional Commissioner - had dismissed the appeal on merits, probably there would have been nothing to say. But here he has failed to exercise jurisdiction and refused to entertain the appeal on the erroneous ground that no appeal lay against an order rejecting the application u/s 12.

7. Accordingly, the writ petition is allowed and the order of the Additional Commissioner dated 3-5-57 is quashed. The appeal shall be restored to its original number and the Commissioner or the Additional Commissioner shall decide it in accordance with law.

8. The Petitioner is entitled to his costs.