(2024) 06 UK CK 0133

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 807 Of 2023

Maheshanand & Others APPELLANT

Vs

Yatendra Singh Negi & Others RESPONDENT

Date of Decision : 27-06-2024

Acts Referred:

Constitution Of India, 1950 — Article 39A, 227

Citation : (2024) 06 UK CK 0133

Hon'ble Judges : Vivek Bharti Sharma, J

Bench : Single Bench

Advocate : Tribhuwan Chandra Pandey, A. S. Rawat, Gaurav Paliwal

Final Decision : Allowed

Judgement

Vivek Bharti Sharma, J

1. This petition under Article 227 of the Constitution of India has been filed by the petitioners to set-aside the impugned order dated 10.02.2023 passed by Chairman, Board of Revenue, Uttarakhand, Dehradun/respondent no. 3 in Transfer Application No. RN 461/BoR/2022-23 (Annexure No. 6), whereby the Chairman, Board of Revenue, Uttarakhand, Dehradun has ex-parte allowed the transfer application of the respondent nos.1 and 2 and called the entire record of the Revision No. 01 of 2022-23 pending before the Board of Revenue, Uttarakhand, Circuit Court Nainital to the Board of Revenue, Uttarakhand , Dehradun for its adjudication.

2. Learned counsel for the petitioners would submit that petitioners filed the Revision No.60 of 2022 in the court of Kumaun Commissioner, Nainital along with delay condonation application and stay application; that, notices were issued to the respondent nos.1 and 2 in the said revision; that, the learned Commissioner, Kumaun Division, vide its order dated 06.07.2022, allowed the delay condonation application; that, being aggrieved, respondent nos.1 and 2 filed a revision being Revision No.01/2022 before the Board of Revenue, Uttarakhand, Circuit Court,

Nainital; that in the revision filed by the respondent nos.1 and 2, notices were issued to the petitioners whereupon the petitioners put their appearance through their counsel and the revision was proceeded for hearing.

3. He would further submit that meanwhile, on 10.02.2023, respondent nos.1 and 2 filed a transfer application before the Chairman, Board of Revenue, Uttarakhand, Dehradun with a prayer to transfer the Revision no.01/2022 from the Board of Revenue, Uttarakhand, Circuit Bench Nainital to Board of Revenue at Dehradun; that, the Chairman, Board of Revenue Uttarakhand, Dehradun, by the impugned order dated 10.02.2023, allowed the transfer application; that, pursuant to the impugned order, the entire record of Revision No.01 of 2022 filed by the respondent nos.1 and 2 has been transferred to the Board of Revenue, Dehradun.

4. Counsel for the petitioners would submit that the order dated 10.02.2023 passed by the Chairman, Board of Revenue Uttarakhand, thereby transferring the revision from Circuit Bench, Nainital to Board of Revenue, Dehradun is illegal and erroneous as the same has been passed without giving opportunity of hearing to the petitioners; that, the transfer application was allowed by the Chairman, Board of Revenue on the same day when it was presented i.e. on 10.02.2023 without issuing any notice to the petitioners; that, even no specific order was passed by the Chairman, Board of Revenue on the transfer application and only an endorsement of single word “allowed” was made on the transfer application.

5. He would further submit that the land in dispute is situated at Village Bandran Basnal, Tehsil Salt, District Almora and all the parties are permanent resident of Tehsil Salt District Almora which belongs to Kumaun Division and thus as per the structure of Board of Revenue Uttarakhand, only Circuit Court Nainital has exclusive jurisdiction to adjudicate the said revision filed by the respondent nos.1 and 2 and furthermore it would be much convenient for the parties to approach the Circuit Court Nainital for disposal of revision.

6. Learned senior counsel appearing for respondent nos.1 and 2 would submit that since the day the revision was filed by the respondent nos.1 and 2 before the Board of Revenue, Circuit Bench Nainital the advocates working in the Circuit Bench, Nainital, under the influence of opposite party, were expressing their inability to contest the case on behalf of the respondent nos.1 and 2; that, in such circumstances respondent nos.1 and 2 were left with no other option except to file transfer application.

7. He would further submit that if the court is of the view that the impugned order passed by the Chairman, Board of Revenue is not justified and the revision should be decided by Board of Revenue, Circuit Bench, Naintial then at least a direction be issued to Circuit Bench Nainital to decide the same at the earliest possible.

8. Of late, this Court in “Jagjeet Singh vs. Balvinder Singh and others Writ Petition (M/S) No.1250 of 2023 decided on 08.04.2024”, wherein a similar issue

of transferring the case from Board of Revenue, Circuit Bench Nainital to Dehradun by the Chairman, Board of Revenue had arisen, this Court had set aside the impugned transfer order and had made the following observations as under:-

“13. Last but not least, this Court is of the considered view that this type of situation has arisen only because of the reason that the Bench of Board of Revenue at Circuit Bench, Nainital is sitting only twice in a month despite huge pendency. The State of Uttarakhand has two divisions namely “Garhwal Division” and “Kumaon Division”. The seat of Circuit Bench of Board of Revenue in Kumaon Division is at Nainital. The pendency of Board of Revenue at Dehradun and Nainital are almost same (there may be other similar transferred cases of Kumaon Division pending at Dehradun Bench of the Board out of its total pendency at Dehradun).

It is the constitutional duty of State to secure equal opportunity for justice. Article 39A of the Constitution of India says:-

“39A. Equal justice and free legal aid.—The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

This Article says that State shall secure that opportunities for securing justice are not denied to any citizen by reason of any disability. Therefore, providing for sitting of a Circuit Bench only for twice in a month at Nainital is nothing but denial of opportunity to justice by reason of distance and travel. The respondent no. 3 is, therefore, directed to secure continuous sitting of at least one Bench of Board of Revenue at its Nainital Circuit Bench within six months.”

9. Perusal of the impugned order dated 10.02.2023 passed by Chairman, Board of Revenue would reflect that the same has been passed in a very cursory and mechanical manner and no reason, whatsoever, has been assigned for transferring the case. Before making any order on transfer of a petition, it is obligatory on the part of the court to hear the version of the opposite party but in the instant case no such effort was made, which is a gross violation of principles of natural justice. In considered view of this Court, transferring the revision to Dehradun is denial of opportunity to justice to the petitioners by reason of distance and travel.

10. For the reasons recorded above, writ petition is allowed. Impugned order dated 10.02.2023 passed by Chairman, Board of Revenue, Uttarakhand is hereby set aside. Board of Revenue sitting at Dehradun is directed to send the record of the Revision No. 01 of 2022-23 to the Board of Revenue, Circuit Bench, Nainital at the earliest. Board of Revenue, Circuit Bench, Nainital is directed to decide the revision within a period of six months from today.

11. Let a copy of this order be sent to the Chairman, Board of Revenue, Uttarakhand at Dehradun forthwith for compliance.

