
(2006) 02 AHC CK 0088

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 26639 of 2001

Mohan Singh

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 06-02-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 3 AWC 2524

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : N.S. Chahar, G.S. Mishra and R.B. Trivedi, for the Appellant; M.A. Zaidi and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned counsel for the parties and perused the record.

2. This petition has been filed for quashing the impugned orders dated 14.6.2001 and 12.6.1997 contained in Annexure Nos. 5 and I respectively to the writ petition passed by respondent Nos. 1 and 3 respectively.

3. The facts of the case, in brief are that the petitioner had moved an application before the competent authority, inter alia, stating that the allotment of pasture-land in favour of the respondents was illegal. A report was submitted by the Tehsildar, Kirawali before the Additional District Magistrate (City), Agra on 3.5.1997. After objection was filed by the respondents, the Additional District Magistrate (City) vide impugned order dated 12.6.1997 passed an order against the petitioner. Aggrieved, the petitioner filed appeal before the Commissioner, Agra Division, Agra, who vide order dated 17.2.2000 allowed the revision in favour of the petitioner and against the respondents. The respondents thereafter filed a 1 revision before the Board of Revenue against the order dated 17.2.2000 which was allowed vide impugned order dated 14.6.2001 against the petitioner. Aggrieved, he has filed this writ petition challenging the validity and correctness

of the order and judgment dated 14.6.2001 passed by the Board of Revenue.

4. The case was taken up in the revised list on 18.2.2005 and was dismissed in default by the following order:-

The case has been taken up in the revised list. None appears to press this petition.

Heard Standing Counsel and perused the record. There does not appear, prima facie, any illegality or infirmity in the impugned order. The writ petition is accordingly dismissed. Interim order, if any, stands vacated.

5. A restoration application along with a delay condonation application supported by an affidavit has been filed by the petitioner for recall of the order dated 18.2.2000 dismissing the writ petition in default. In the affidavit it has been averred that the learned counsel for the petitioner came to know about the order of dismissal of the writ petition in default when he was informed by the petitioner Mohan Singh on telephone on 2.12.2005 about the dismissal of the writ petition. After enquiry when it was confirmed that the petition stands dismissed in default, the restoration application has been moved in the case. It is prayed that in the circumstances the delay in filing the restoration application may be condoned and the writ petition be restored to its original number and status as the counsel for the petitioner could not appear in the court due to the fact that he had not marked the cause list.

6. Heard the learned counsel for the petitioner and the respondents. Cause shown is sufficient to recall the order dated 18.2.2005. The writ petition is restored to its original number and status. However, the interim order is not restored as since the dismissal of the writ petition about a year has passed. In the circumstances the writ petition is being heard on merits.

7. The learned counsel for the petitioner has urged that the order of the Additional District Magistrate dated 12.6.1997 was without jurisdiction. He has further submitted that this point was not taken in the revision. As this argument pertains to the question of jurisdiction, this Court cannot interfere and remands the matter for decision afresh on this ground. He further submits that the land of the Gaon Sabha has been allotted to the respondents "illegally which cannot be sustained in the eye of law.

8. No other point has been argued by the learned counsel for the petitioner.

9. Admittedly, it was never pleaded and argued before the courts below in appeal as well as revision that the order of the Additional District Magistrate (City) was without jurisdiction. In the writ petition also it has not been pleaded that the impugned order dated 12.6.1997 passed by the Additional District Magistrate is without jurisdiction.

10. It is a settled law, that "the ground which has not been taken before the courts below cannot be taken for the first time in writ petition unless it goes to

the very root of jurisdiction. The petitioner has not taken any such plea before the courts below or even in any ground in the writ petition, hence the same cannot be sustained. The petitioner also has no locus-standi to raise the ground of jurisdiction for the first time in writ jurisdiction at the time of arguments as he had been litigating before the courts below and before this court only on the ground of public interest. Admittedly the land has been allotted by the Gaon Sabha to the respondents. The petitioner is not a member of the Gram Panchayat and is also not a person aggrieved under Article 226 of the Constitution. The writ is not filed as Public Interest Litigation. In the circumstances it was for the members of the Gram Panchayat to have approached the Court if there was illegal allotment and challenged the same.

11. For the reasons stated above, the contention of the learned counsel for the petitioner has no force.

12. The writ petition is accordingly dismissed. No orders as to costs.