

(2019) 11 UK CK 0072

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 292 Of 2005

Mohd. Saleem Khan And Another

APPELLANT

Vs

Commissioner Garhwal Mandal & Others

RESPONDENT

Date of Decision : 07-11-2019

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 33, 35, 39, 40, 40A, 41, 54, 218
Uttar Pradesh Tenancy Act, 1939 — Section 59, 61
Constitution Of India, 1950 — Article 227

Citation : (2019) 11 UK CK 0072

Hon'ble Judges : Manoj K. Tiwari, J

Bench : Single Bench

Advocate : B.C. Pande, Tapan Singh, Vinod Nautiyal, M.S. Tyagi, Sunil Chandra, Pooja Chaunal

Final Decision : Dismissed

Judgement

Manoj K. Tiwari, J

1. By means of this petition under Article 227 of Constitution of India, petitioners have challenged the order dated 17.07.2002 passed by Additional Deputy Collector/Assistant Collector First Class, Roorkee in Original Suit No. 3/95/01/2001. Petitioners have also challenged the order dated 23.12.2004 passed by Commissioner, Garhwal Division, Camp Dehradun in Revision Petition No. 84/01-02.

2. Facts of the case, in brief, are as follows:

Respondent nos. 3 to 5 filed an application under Section 33/39 of U.P. Land Revenue Act before Assistant Collector Ist Class Roorkee for correction of entries. In the said application, respondent nos. 3 to 5 contended that they have been wrongly recorded in Category-20 and they prayed that their name may be recorded in Category-10 in place of petitioner in respect of land in question bearing Khasra nos. 254/2, 255/2 & 256/2, total admeasuring 1.185 hectares,

situate at Village Malakpur, Latifpur, Pargana & Tehsil Roorkee. The said application was allowed and the name of respondent nos. 3 to 5 was entered in Category-10 by deleting the name of the petitioner from Category-20 vide order dated 13.06.1995 passed by Additional Deputy Collector/Assistant Collector Roorkee. Petitioner challenged the said order by filing Revision Petition under Section 218 of U.P. Land Revenue Act. The said Revision Petition was allowed by Additional Commissioner (Administration), Merrut Division, Merrut vide judgment & order dated 18.01.1996 and the matter was recommended to the Board of Revenue for restoring the entry of the petitioner in Category-20, however, the Board of Revenue vide order dated 17.03.1999 refused to accept the recommendation made by Additional Commissioner (Administration), Merrut Division on the ground that suit filed by the petitioner for declaration under U.P. Tenancy Act is pending, therefore, till decision in the said suit, no relief can be granted to the petitioner in proceedings under Section 33/39 of U.P. Land Revenue Act. The order dated 17.03.1999 passed by Board of Revenue attained finality in the absence of any challenge by the petitioner.

3. The judgment dated 27.02.2015 rendered by Co-ordinate Bench of this Court in Writ Petition (M/S) No. 82 of 2010 is on record in Civil Misc. Application (I.A. No. 2470 of 2015). The said Writ Petition was filed by the petitioner and, after his death, his legal representatives (petitioners herein) were substituted in his place.

4. A bare perusal of the said judgment indicates that the declaratory suit filed by the petitioner under Section 59 read with Section 61 of U.P. Tenancy Act, seeking declaration of his rights, was dismissed by the trial Court. The First Appeal & Second Appeal filed by the petitioner too was dismissed. Petitioner, thereafter, challenged the judgment & orders passed by all the three Courts by filing petition under Article 227 of Constitution of India, which too was dismissed.

5. Learned Senior Advocate appearing for respondent nos. 3 to 5 submits that petitioner had thereafter filed S.L.P., which too was dismissed by Hon'ble Supreme Court. Learned Senior Advocate for the petitioners does not dispute this submission made on behalf of respondent nos. 3 to 5.

6. It is settled position in law that mutation proceedings are summary in nature and disputed questions of title cannot be resolved therein. Section 40-A of U.P. Land Revenue Act is extracted below:

"[40-A. Saving as to title suits.- No order passed under Section 33, Section 35, Section 39, Section 40, Section 41 or Section 54 shall bar any suit in a competent court for relief on the basis of a right in a holding.]

7. From the perusal of Section 40-A of U.P. Land Revenue Act, it is evident that the orders passed by the Revenue Court in summary proceedings under Section 33/39 of U.P. Land Revenue Act are subject to regular suit for declaration.

8. Since the petitioner has lost in regular declaratory suit filed under U.P.

Tenancy Act, therefore, there is no scope for interference with the impugned orders, which were passed in summary proceedings under Section 33/39 of U.P. Land Revenue Act.

9. In such view of the matter, the writ petition fails and is dismissed. However, this judgment will not preclude the petitioners from pursuing their remedy before the appropriate forum.