(2005) 12 UK CK 0010

In the Uttarakhand High Court

Case No : Writ Petition No. 487 (M/S) of 2004

Nirmala Mohim Bhatt and Others — APPELLANT

Vs

Additional Chief Revenue Commissioner and Others — RESPONDENT

Date of Decision : 23-12-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Land Revenue Act, 1901 — Section 33, 33, 34, 35, 39
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 229B

Citation : (2006) 2 UC 934

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : P.C. Maulekhi, for the Appellant; Learned Standing Counsel and Sharad Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Tandon, J.—Heard the learned Counsel for the parties at length.

2. By the present writ petition the Petitioners have prayed for a writ of certiorari quashing the orders dated 21-2-2003 and 31-12-2003 passed by the Respondent No. 1 and order dated 6-10-2001 passed by the Respondent No. 3.

3. Briefly stated according to the Petitioners they are the recorded co-tenure holders of 54.1 Bigha land situated at village Haripur (Colonel Ward) at Haldwani, District Nainital being Khasra No. 7. The grand father of the Petitioners late Jwala Dutt Bhatt was cultivating the land in question before 1966 F, since then he was in continuous possession over the land in question. The name of the father of the Petitioners was recorded in the revenue record as co-tenure holder along with Sri Narayna Singh Bora father of the Respondent No. 5. In the year 1976-77 Sri Prakash Chandra Bora son of Sri Narayan Singh Bora Respondent No. 5, who is also recorded as co-sharer of the land in the revenue record, filed a revenue suit No. 22/56 of 1976-77 u/s 229-B of the U.P.Z.A. and L.R. Act, against State of

U.P. and the father of Respondents No. 1 to 4 in the Court of Assistant Collector, Bhaber, Haldwani with the prayer that he be declared sole tenant in possession of the land in suit. On 25-5-1978 Sri Prakash Chandra Bora moved an application for withdrawal of the said suit No. 22/56 76-77 Prakash Chandra Bora v. State of U.P. and Ors. which was allowed by the Court of Assistant Collector. However he moved an application on 13-7-1978 for setting aside the order dated 25-5-1978 which was rejected on 18-11-1980. Against that order Sri Prakash Chandra Bora filed an appeal No. 207/42 of 1980-81 before the Commissioner Kumaon Division, Nainital, which was also dismissed vide order dated 12-5-1983. On 18-11-2001 Respondent No. 4 Sri Ajay Kumar Shah moved an application before Respondent No. 3 Assistant Collector, Haldwani u/s 33/39 of U.P. Land Revenue Act for correction of revenue record and prayed that the name of the Respondent No. 4 be recorded in column No. 2 of the Khatauni as Class I-A Bhumidhar. The Petitioners have filed objections against the said application. Respondent No. 3, Assistant Collector, Haldwani vide order dated 6-10-2001 allowed the said application and declared Sri Ajay Lal Shah as sole tenant of the land in question on the ground that the land in question was purchased by him by way of registered sale deed from Respondent No. 5 on 22-12-1979.

4. Against the order dated 6-10-2001, the Petitioners have filed a revision No. 4/34 of 2001-2002 Mahim Bhatt v. Ajai Kumar Shah and Ors. which was allowed by the Additional Commissioner on 27-8-2002 and set aside the order dated 6-10-2001.

5. The Respondent No. 4 preferred a revision before the Additional Chief Revenue Commissioner challenging the order dated 27-8-2002, which was allowed by the Respondent No. 1 vide impugned order dated 31-12-2003. Feeling aggrieved the present writ petition has been filed by the Petitioners.

6. Respondent No. 4 filed the counter affidavit and denied the allegations made in the petition. He has submitted that initially the property in dispute was purchased on 6-2-1950 by Mr. Narayan Singh Bora from its erstwhile owner Mr. Leeladhar Pandey for a consideration of Rs. 17,000/-. Adjacent to the plot purchased by Mr. Narayan Singh Bora there was plot of Mr. Jwala Dutt Bhatt. Proceedings for demarcation was initiated in between the two parties and in consequence of the said proceedings the land of Mr. Narayan Singh Bora and Jwala Dutt Bhatt was separated but by mistake the two persons were jointly recorded in the revenue records. The property purchased by Respondent No. 4 from a recorded Bhumidhar by the sale deed dated 22-12-1979 was a valid registered document and the same will always hold good until and unless it is set aside on being challenged by a competent court.

7. Supplementary counter affidavit has also been filed by the Respondent No. 4. He filed copies of revision petition filed by the Petitioners and copies of revenue receipts.

8. The learned Counsel for the Respondents have submitted that proceedings

under U.P. Land Revenue Act, do not decide the right or title of the parties. The proceedings are just fiscal in nature. The High Court has no scope to interfere under Article 226 of the Constitution of India. Alternation remedy is available to the Petitioners under 229-B of the U.P.Z.A. and L.R. Act, for declaration of their rights.

9. The learned Counsel for the Respondents placed reliance on the order passed by Allahabad High Court in Ram Bharose Lal v. State of U.P. and Ors. R.D. 1990 72 where it has been observed as under:

By now it is well settled that where the dispute is in mutation proceedings which do not adjudicate upon rights or title of the parties, this Court need not interfere under Article 226 of the Constitution. In such matters person aggrieved shall have rider to seek remedy in the appropriate court.

10. Allahabad High Court in the case Ishu Vs. State of U.P. and Others, has further held that writ petition under Article 226 of the Constitution is not maintainable against the order passed by the Revenue Authorities under Sections 33, 34, 35 and 39 of U.P. Land Revenue Act. It has been observed as under:

The quintessence of the decisions cited above and the provisions of Section 40-A bolls down for the view that orders emanating from proceedings having complexion of summary proceedings and arising out of Sections 33, 34, 39, 40, 41 and 54 of the Act shall not bar any suit in a competent court for the adjudication of a right of a person.

11. The Apex Court in the case Smt. Sawarni v. Smt. Inder Kaur and Ors. 1997 (1) All. C.J. 126 has held that mutation does not extinguish or create title nor has presumptive value on the title. It entities the person to pay land revenue only. The observations of the Apex Courts are quoted below:

Further the lower appellate court has not come to any positive finding that Inder Kaur was a daughter of Gurbax Singh. He has been swayed away by the so-called mutation in the revenue record in favour of Inder Kaur. Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the persons in whose favour mutation is ordered to pay the land revenue in question.

12. Similar view has been taken in the case Bindeshwari v. Board of Revenue and Ors. 2002 (93) R.D. 134.

13. The main relief sought by the Petitioners is to set aside the orders passed by the competent authorities under U.P. Land Revenue Act, allowing the application of the Respondents No. 4 and declaring him as Bhumidhar in the revenue records. As a matter of fact, the mutation proceedings may be u/s 34 of U.P. Land Revenue Act, or under some other similar Act, but the legal effect in both the events remains the same. The mutation proceeding do not adjudicate the rights and title of the parties.

14. In view of the facts and circumstances of the present case this Court need not interfere under Article 226 of the Constitution of India. In this matter the person aggrieved shall have rider to seek remedy in the appropriate Court u/s 229-B of the U.P.Z.A. and LR. Act.

15. Accordingly, the writ petition is dismissed. No order as to costs.