(2007) 07 AHC CK 0176

In the Allahabad High Court

Pratap Narain Kureel APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 25-07-2007

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 218
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 333A

Citation : (2008) 2 AWC 1634

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—The challenge in this petition is to the order dated 4.9.1999 (Annexure-5 to the writ petition) and also to the order dated 27.8.2004 passed by Board of Revenue and the order dated 3.12.1998 passed by Addl. Commissioner, (Administration) Lucknow Division, Lucknow.

2. Heard Sri O.P. Srivastava, learned Counsel for the petitioner, Sri H.N. Tiwari, learned Counsel who being called upon has agreed to assist the Court on behalf of Lucknow Nagar Nigam and Sri V.N. Sirswar, learned standing counsel, at prolix length.

3. (Learned Counsel for the petitioner urged that in view of the U.P. Land Laws (Amendment) Act of 1997 (U.P. Act No. 20 of 1997) Section 218 of the U.P. Land Revenue Act was omitted/amended and proceedings pending before the Commissioner ought to have been decided u/s 219 of the Amended Act. He further urged that the matter was referred to the Board of Revenue u/s 218 of U.P. Land Revenue Act, 1901 only and the proceedings has been protracting before the Board of Revenue.

4. It is further urged that the intention bf the Legislature appears to be that the Court proceedings which have already been referred to, ought to have been decided in accordance with amended Act as the matter was one covered by the

Amended Act and also considering that revision was pending before the Commissioner. He further urged that it was the Commissioner who was competent to decide the revision without referring the matter to the Board of Revenue. He further urged that the order of reference to the Board of Revenue be quashed and the Commissioner may be directed to decide the revision in accordance with law.

5. Per contra. Sri H.N. Tiwari. learned Counsel appearing for the opposite parties urged that any matter pending before the Commissioner on the date of amended Section 218 of 1997 called for being referred to in accordance with the unamended Act attended with further submissions by both learned Counsel appearing on behalf of the opposite parties that the reference was rightly made under the unamended Act in accordance with the unamended Section 218 of U.P. Land Revenue Act and the Board of Revenue may be directed to decide the same.

6. Learned Counsel for the petitioner relied upon the Constitution Bench judgment of the Apex Court in Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others, He made a precise reference to paragraphs 34 and 37 of the above judgment the crux of which is that the intention of the Legislature is that the pending proceedings shall be decided under the new provision and urged that the revision pending before the Additional Commissioner ought to have been decided by him.

7. Regard being had to controversy involved in this petition, it would be useful to refer to Sections, 5, 6 and 10 of the U.P. Act No. 20 of 1997 is quoted below:

5. Omission of Section 218.-- Section 218 of the Principal Act shall be omitted.

6. Substitution of Section 219.-- For Section 219 of the Principal Act, the following section shall be substituted, namely:

219. Revision.-- (1) The Board or the Commissioner or the Additional Commissioner or the Collector or the Record Officer, or the Settlement Officer, may call for the record of any case decided or proceeding held by any revenue court subordinate to him in which no appeal lies or where an appeal lies but has not been preferred, for the purpose of satisfying himself as to the legally or propriety of the order passed or proceeding held and if such subordinate revenue court, appears to have--

(a) exercised a jurisdiction not vested in it by law, or

(b) failed to exercise a Jurisdiction so vested, or

(c) acted in the exercise of jurisdiction so vested, or

the Board or the Commissioner or the Additional Commissioner or the Collector or the Record Officer, or the Settlement Officer, as the case may be, may pass such order in the case as he thinks fit.

(2) If an application under this section has been moved by any person either to

the Board, or to the Commissioner, or to the Additional Commissioner, or to the Collector or to the Record Officer or to the Settlement Officer, no further application by the same person shall be entertained by any other of them.

10. Translatory provisions.-- Notwithstanding anything contained in this Act all cases referred to the Board u/s 218 of the U.P. Land Revenue Act, 1901, or u/s 333A of Uttar Pradesh Zamindarl Abolition and Land Reforms Act, 1950 as they stood immediately before the commencement of this Act and pending before the Board on the date of such commencement shall continue to be heard and decided by the Board as if this Act has not been enacted.

8. Admittedly, the U.P. Land Laws (Amendment) Act, 1997 came into being on 18.8.2007 the same having been published in the Gazette dated 18.8.1997 on which date, it brooks no dispute revision was pending. Further according to Section 218 of the unamended Act which is quoted below, the Commissioner had no power to allow the revision and except to refer the matter to the Board of Revenue if he is of the opinion that the proceeding or order passed by the subordinate officer should be varied, cancelled or reversed and the final order has to be passed by the Board of Revenue. Section 218 being germane to the controversy Is abstracted below for ready reference.

218. Reference to the Board.--The Commissioner, the Additional Commissioner, the Collector, the Record Officer or the Settlement Officer may call for and examine the record of any case decided or proceedings held by any officer subordinate to him for the purpose of satisfying himself as to the legality or propriety of the order passed and as to the regularity of proceedings, and, if he is of opinion that the proceeding taken or order passed by such subordinate officer should be varied, cancelled or reversed, he shall refer the case with his opinion thereon for the orders of the Board and the Board shall thereupon pass such orders as it thinks fit.

9. From the careful consideration of Section 10 of the amending Act, it is clear that the intention of the Legislature was that all matters already referred to the Board and pending before the Board should have been decided in accordance with the old Section 218. There is nothing in the amending Act that the preceedings pending on the date of enforcement of U.P. Act No. 20 of 1997 shall be decided in accordance with the Section 218 as it was on the date of institution of the revision.

10. In view of the discussion made above, this Court is of the view that after the amendment incorporated in U.P. Land Laws (Amendment) Act of 1997 by U.P. Act No. 20 of 1997, which came into force on 18.8.1997, the power to decide the revisions vested in the Additional Commissioners and the matter ought not to have been referred to the Board of Revenue in case he was of the opinion that proceeding taken or order passed by subordinate officer should be varied, cancelled or reversed.

11. In this view of the matter, the Court is of irresistible view that the Additional

Commissioner acted without jurisdiction in referring the matter to the Board of Revenue. My view receives reinforcement from the Constitution Bench judgment (Paras 34 and 37) in Kolhapur Cane Sugar Works Ltd. and Anr. relied upon by Sri O.P. Srivastava, learned Counsel for the petitioner the crux of which is that in a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it cannot continue and shall be decided under the new provision.

12. Accordingly, writ petition succeeds and is allowed. The impugned order dated 4.9.1999, the order dated 27.8.2004, passed by the Board of Revenue and the order of reference dated 3.12.1998, passed by Additional Commissioner (Administration), Lucknow Division, Lucknow, are quashed.

13. The Additional Commissioner arrayed as opposite party No. 2 in the present petition is directed to decide the revision in accordance with the provisions contained in Section 219 which came into being by the U, P. Amendment Act No. 20 of 1997, preferably within a period not exceeding three months from the date of production of a certified copy of this order. It needs hardly be said that the authority shall adjudicate upon the controversy without being influenced by any orders passed by the Board of Revenue. The parties may appear before the Additional Commissioner within a month from today.

