(2014) 02 AHC CK 0239

In the Allahabad High Court

Case No : Misc. Single Case No. 476 of 2014

Premanand Dwivedi and Others — APPELLANT

Vs

Board of Revenue and Others — RESPONDENT

Date of Decision : 25-02-2014

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 33, 39
Uttar Pradesh Land Revenue Act, 1901 — Section 33, 39
Uttar Pradesh Land Revenue Act, 1901 — Section 33, 39

Citation : (2014) 122 RD 746

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : Santosh Kumar Mehrotra and Ishwar Dutt Shukla, Advocate for the Appellant

Final Decision : Allowed

Judgement

Anjani Kumar Mishra, J.—Heard learned Counsel for the parties. I have also perused the original record summoned by me and the same has been returned to the Additional Chief Standing Counsel.

2. In proceedings u/s 33/39 of the U.P. Land Revenue Act, an order was passed by the Assistant Collector, First Class, Sadar, Kanpur Nagar on 30.5.2006 directing the name of the petitioner be expunged from plot No. 349 area 4-0-0 and the same be recorded in the name of the Gaon Sabha. This plot No. 349 is situate in Village Bingavan, Pargana and District Kanpur Nagar. Against the said order a revision being Revision No. 1439-LR 2005-06 was preferred by the petitioner. The said revision was allowed by the order dated 12.1.2009 whereby the order dated 30.5.2006 was set aside and the matter was remanded for a decision afresh after affording the parties opportunity of hearing and producing evidence.

3. In pursuance of the remand order, the opposite party No. 2 again passed the same order on 16.1.2013. While passing the said order it has been recorded

referring to the various judgment that no opportunity of hearing was required to be provided to the petitioner. It has further been observed that the order of remand passed by the Board of Revenue is not on record. On the strength of these two reasons the case of the petitioner has not been considered. This order was challenged by means of revision No. 936/LR/12-13 which revision has been dismissed vide order dated 19.12.2013 passed by the Board of Revenue.

4. The Board of Revenue has passed the order recording that the entry in favour of the petitioner comes within the category of forged entry and therefore, no opportunity of hearing was required to be provided to the petitioner.

5. Learned Counsel for the petitioner has submitted that the earlier order of remand passed by the Board of Revenue which has become final between the parties provided that the matter be decided afresh after affording the parties an opportunity of hearing as also affording opportunity of adducing the evidence. Both the orders impugned are in the teeth of this earlier order passed by the Board of Revenue which has become final between the parties.

6. Learned Addl. Chief Standing Counsel could not successfully rebut the submission above.

7. Under the circumstances, the impugned orders cannot be sustained and are hereby quashed. The matter is remanded back to the respondent No. 2 to pass a fresh order after affording opportunity of hearing as also an opportunity of adducing evidence to the petitioner. It has further necessary to observe that the respondent No. 2 shall be more cautious in future. The reasoning recorded in his order is on the face of it contemptuous. If as observed by him, the order remand was not available on record, there was no justification for him to have proceeded to hear the matter afresh and if he was proceeding to hear the matter, it does not lie in his mouth to say that the order of remand was not on record.

8. However, since I am remanding the matter for decision afresh I refrain from making any further observation as regards the conduct of the respondent No. 2. Accordingly and subject to the aforesaid observations, the writ petition is allowed. The orders dated 19.12.2013 and 16.1.2013 passed by the respondent Nos. 1 and 2 respectively are quashed. The matter is remanded to the opposite party No. 2 who shall proceed to hear and decide the matter as expeditiously as possible preferably witching a period of two months from the date of production of a certified copy of this order before him.

