
(2013) 05 AHC CK 0442

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 29171 of 2013

Rahdey Shyam and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-05-2013

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 211, 219, 219(1), 34

Citation : (2013) 7 ADJ 71 : (2013) 120 RD 423

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : Babu Lal Ram and S.K. Chaudhary, for the Appellant; Mahendra Pratap, P.R. Maurya, Anurag Yadav and Sunil Kumar Maurya, for the Respondent

Final Decision : Disposed Of

Judgement

Ran Vijai Singh, J.—Heard Sri Babu Lal Ram alongwith S.K. Chaudhary, learned counsel for the petitioners, learned standing counsel for the State-respondents, Sri Mahendra Pratap and Sri P.R. Maurya alongwith Sri Anurag Yadav, and Sri Sunil Kumar Maurya, learned counsel for respondent No. 4. With the consent of the learned counsel for the parties the writ petition is being decided on its own merits without exchange of affidavits.

2. Through this writ petition the petitioners have prayed issuing a writ of certiorari quashing the order dated 25.3.2013 passed by the Tehsildar (Judicial), Sadar, Jaunpur, respondent No. 3 in Case No. 248 (Hari Cold Storage and General Mills Private Limited v. Radhey Shyam and others) and the order dated 10.5.2013 passed by Additional District Magistrate (Finance and Revenue), Jaunpur, respondent No. 2. vide order dated 25.3.2013 the application of respondent No. 4 filed u/s 34 of the U.P. Land Revenue Act, 1901 (for short the Act) has been allowed. However, by the subsequent order the revision filed by the petitioner has been dismissed with the direction to the petitioner to file an appeal against the order impugned in the revision.

3. It is contended by the learned counsel for the petitioners that the revisional Court has erred in relegating the petitioners to avail remedy of appeal against the order impugned dated 25.3.2013 passed by the Tehsildar, respondent No. 3 instead of deciding the revision himself. On the other hand, learned counsel for the respondent No. 4 contended that the issue involved in the revision can only be decided by the appellate Court as the jurisdiction of the revisional Court is very limited and the appellate Court can investigate the fact also. Therefore, no infirmity can be attached with the impugned order and the revisional Court has rightly directed the petitioners to file an appeal against the order impugned.

4. I have heard the learned counsel for the parties and perused the record. It is not in dispute that the application of respondent No. 4 filed u/s 34 of the Act was allowed by the Tehsildar, respondent No. 3. It is also not in dispute that in the aforesaid proceeding the petitioner was a party and the order dated 25.3.2013 was passed after hearing both the parties.

5. Under the Act there are two sections, i.e. Section 210/ 211, which confers right to the tenure holder to file an appeal against various orders under the Act and Section 219 which confers the remedy of revision. For appreciating the controversy it would be useful to go through the Section 219(1), the "Revision" which is reproduced herein under:

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 the legality 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 illegally or with material irregularity, 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, pass such order in the case as he thinks fit.

6. From the bare reading of sub-section (1) of Section 219 it would transpire that the remedy of revision can be availed against an order where order can be appealed but the remedy of appeal has not been availed or where against the order impugned no appeal lies.

7. Here it is not in dispute that the order impugned in the revision was appealable but in view of the language used in sub-section (1) of Section 219 of the Act the revision could be maintained against an order where appeal lies but has not been preferred and the same has been filed directly u/s 219 of the Act before the Additional District Magistrate (Finance and Revenue), Jaunpur.

8. The other side has taken objection that the revision cannot be filed directly without availing the remedy of appeal. Another argument was raised that appreciation of facts and perusal of evidence etc. cannot be done under the revisional jurisdiction and that comes in the domain of the appellate Court.

9. The Additional District Magistrate (Finance and Revenue) after going through the record and hearing the parties came to the conclusion that since in the case in hand the perusal of facts and evidence etc. would be required, therefore the remedy of appeal u/s 210 of the Act would be the appropriate remedy and he dismissed the revision with the direction to the petitioner to file appeal.

10. The revision was filed u/s 219 of the Act. Sub-section 1 of Section 219 of the Act confers a remedy of revision to a tenure holder before the Board of Revenue or the Commissioner or the Additional Commissioner or the Collector or the Record Officer, or the Settlement Officer and the Court concerned, on such approach or otherwise, may call for the record of any case decided or proceeding held by any revenue Courts subordinate to him in which no appeal lies or where an appeal lies but has not been preferred, for the purpose of satisfying himself the legality or propriety of the order passed or proceeding held and if such subordinate revenue Court appears to have exercised a jurisdiction not vested in it by law, or failed to exercise a jurisdiction so vested, or acted in the exercise of jurisdiction illegally or with material irregularity, as the case may be, may pass such order in the case as he thinks fit.

11. From the bare reading of Section 219 of the Act it transpires that while conferring the power of revision against an order where an appeal lies but has not been filed the intention of the legislature is very much clear. The revisional Court has been conferred power to exercise the power of the appellate Court as well as the revisional Court both particularly in the circumstances where remedy of appeal is provided but has not been availed and the revision has been filed directly. Otherwise also the power is not restricted as from the entire reading of the Section 219 of the Act it would be clear that a very wide power has been conferred upon the revisional Court over its subordinate Courts and this power can be exercised even suo motu without there being any approach of any of the parties.

12. Learned counsel for the respondents, after placing reliance upon the decisions of this Court in Smt. Lakhmati and another v. The Board of Revenue U.P. at Allahabad and another, (1984 R.R. 333 (E)), Smt. Kalindri Devi v. Board of Revenue, (1987 RD 109) and Ram Pratap Tiwari and another v. Board of Revenue and others, [2007 (103) RD 569] wherein it has been held that mutation proceeding is fiscal in nature and it does not decide the right and title of the parties and only for the purpose of payment of land revenue names are recorded on the basis of the possession etc., submitted that the writ petition would not be maintainable against an order passed in mutation proceeding.

13. The legal position on the facts involved in those writ petitions cannot be

disputed on which basis of the decision has been rendered but the facts of this case are distinguishable for the reason that here the revisional Court by directing the petitioner to approach the appellate Court against the order passed in mutation proceeding has failed to exercise the jurisdiction vested in it. The revisional Court has been conferred power u/s 219 of the Act to ensure that its subordinate Courts may not fail in exercising the jurisdiction vested in them by law and exercise the jurisdiction not vested in them or commit any material irregularity or illegality while exercising such jurisdiction. While examining the judgment of the subordinate Courts if the revisional Court has been given power to alter the orders in the eventuality of failure of exercise of jurisdiction, wrong exercise of jurisdiction or committing material irregularity or illegality while deciding the cases why not it be applicable to the revisional Courts too. The language used u/s 219 of the Act is unambiguous and clear. Sub-section (1) of Section 219 of the Act provides that a revision would lie before the Board of Revenue or the Commissioner or the Additional Commissioner or the Collector or the Record Officer, or the Settlement Officer against an order passed by the revenue Courts or proceeding held by the revenue Courts where no appeal lies or where appeal lies but has not been preferred, since in this section very wide power has been conferred upon the revisional Court and the revisional Court has failed to exercise its jurisdiction by directing the petitioner to avail the remedy of appeal, therefore, this order cannot be sustained in the eye of law.

14. The view taken by me finds support from the decision of the Apex Court in the AIR 1977 1718 (SC) , where while examining such issue following observation has been made:

4. The State contended before the High Court that a Writ of Certiorari should be issued to quash the judgment which was illegal and in clear violation of law. The High Court said that the State could file a suit for declaration that the decree is null and void.

5. One of the principles on which Certiorari is issued is where the Court acts illegally and there is error on the face of record. If the Court usurps the jurisdiction, the record is corrected by Certiorari. This cases is a glaring instance of such violation of law. The High Court was in error in not issuing Writ of Certiorari.

15. In view of the law laid down by the Apex Court no room is left for doubt that in case the revisional Court has failed to exercise its jurisdiction vested in it, such order passed, even in mutation proceedings cannot be sustained in the eye of law and writ petition would be maintainable against such order.

16. The matter may be examined from another angle also. The insistence of the Apex Court has always been that in case material is available before the Court concerned the case should be decided by the said Court on merit without remanding the matter. Although here this is not a case of remand but impliedly this case would fall in the same category. Therefore also the same principle

would be applicable and the Revisional Court has erred in directing the petitioner to file an appeal u/s 210 of the Act. Reference may be given in *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, ; *Ashwinkumar K. Patel Vs. Upendra J. Patel and Others*, ; *P. Purushottam Reddy and Another Vs. Pratap Steels Ltd.*, ; learned Single Judge of this Court on the same principle in *Raj Narain and others v. Deputy Director of Consolidation*, 2009 (106) RD 98, has held that if the entire material was available before the Deputy Director of Consolidation, instead of remanding the matter, he should himself have considered the matter on merit and decided the same. The order of remand was held to be unsustainable.

17. Although it is settled that mutation proceeding is fiscal in nature and the orders passed therein do not decide the right and tide of the parties, therefore, the orders passed therein being summary in nature, writ petition would not be maintainable but here in this case since there is jurisdictional error, therefore, the writ petition would lie against such orders where the revisional Court has failed to exercise the jurisdiction vested in it. It may also be noticed that although the orders deciding the mutation case do not decide the right and title of the parties. The judgments rendered therein are not binding upon the Courts deciding the title of the matter but it may be kept in mind that the person whose name is recorded in the revenue record can transfer the land through registered sale-deed, gift deed etc. In case the sale-deed is executed only because of recording of name without there being any valid title, the remedy, for the aggrieved person, would be to file a suit but for cancellation of sale-deed, not for declaration of right which would consume a very long time and in the meantime even the nature of the land may be changed. Further the possession would be enjoyed by the persons in whose favour an order of mutation has been passed or the transferee without there being any valid title and the person having valid title will become a loser for the years together and in some cases if the land has gone in the hands of mafia or musclemen, the rightful owner may not be able to get the fruit of litigation during his life time. These contingencies and situations of the cases, although, may not have legal weight but the factual matrix and the reality of the same cannot be brushed aside while entertaining writ petitions against the orders passed in mutation cases. So far as this case is concerned, as I have held that the revisional Court has failed to exercise the jurisdiction vested in it, therefore, the impugned order dated 10.5.2013 cannot be sustained in the eye of law. The writ petition succeeds and is allowed. The order dated 10.5.2013 passed by the Additional District Magistrate (Finance and Revenue), Jaunpur in Revision No. 31 of 2012-13 [*Radhey Shyam and others v. Hari Cold Storage Pvt. Ltd., Jaunpur*] is hereby quashed. The revisional Court is directed to decide the revision after hearing both the sides expeditiously in accordance with law without granting any unnecessary adjournment to the learned counsel for the parties.