
(2011) 12 AHC CK 0107
In the Allahabad High Court
Case No : Misc. Single No. 1003 of 1994

Ram Chandra

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 05-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 29C
Uttar Pradesh Municipalities Act, 1916 — Section 8
Uttar Pradesh Town Improvement Act, 1919 — Section 42
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 131, 132, 19, 198(4), 333

Citation : (2012) 1 ADJ 446

Hon'ble Judges : Ritu Raj Awasthi, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Ritu Raj Awasthi, J.—Heard learned counsel for the petitioner as well as learned Standing Counsel.

2. The writ petition has been filed challenging the order dated 13.1.1994 passed in Review Application moved by the State, whereby the review was allowed setting aside the order dated 8.6.1993 and the order dated 15.5.1992 of the Additional Commissioner and remanded the matter back to the opposite party No. 3 for deciding afresh on merit.

3. The facts of the case in brief are that the petitioner was allotted patta with sirdari rights in the year 1969 on a land which was ear-marked as Khalihan. On the basis the patta the name of the petitioner was entered in the consolidation proceedings in the year 1980. Against the order of the consolidation officer the Gaon Sabha had filed an appeal before the Settlement Officer Consolidation in the year 1985. The said appeal was rejected by the Settlement Officer Consolidation in the year 1985. It was thereafter that in the year 1989 the

Pradhan of the village made a complaint against the allotment of lease to the petitioner and cancellation of the same. The application of Pradhan filed u/s 198(4) of the U.P.Z.A. Act was rejected by order dated 18.10.1989 of the Additional Collector, Barabanki. Against this order a revision was filed u/s 333 of the U.P.Z.A. & L.R. Act before the Commissioner. The learned Commissioner while considering the revision made a reference to the Board of Revenue by order dated 15.5.1992 with a request to issue direction for the trial court to decide the matter afresh, in case it is required. The said reference was rejected by order dated 8.6.1993 on the ground that the patta was allotted on 12.5.1969 and on that basis the order was passed by the Consolidation Officer on 22.2.1980, by which the name of son-in-law of Ram Prasad was entered in the consolidation records. The appeal preferred against the said order by the Gaon Sabha was also rejected. It appears that thereafter the State as well as Gaon Sabha filed the review petition, which was allowed by the impugned order.

4. Learned counsel for the petitioner vehemently submitted that the order impugned has been passed beyond the scope of review as it indicates that while reviewing the order the learned court below has re-considered the merits of the case. In support of his submission, he has relied on a decision of the Apex Court in the case of Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, wherein it has been held that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1, C.P.C. The relevant paragraphs of the said judgment are quoted below:

8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, C.P.C. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleswar Sharma " v. Aribam Pishak Sharma, speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p 390, para 3).

It is true as observed by this Court in Shivdeo Singh v. State of Punjab, there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power

which may enable an appellate court to correct all manner of errors committed by the subordinate court.

9. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale*, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.

5. Learned Standing Counsel on the other hand while defending the impugned order submitted that in fact the public utility land such as Khalihan could not have been given on patta. The patta, if any, made in favour of the original allottee was void ab initio. In support of his submission, he has relied on Section 132 sub-section (c)(vi) of the U.P. Z.A. & L.R. Act, 1950. The relevant provision is quoted below:

132. Land in which bhumidhari rights shall not accrue.--Notwithstanding anything contained in section 131, but without prejudice to the provisions of Section 19, [Bhumidhari] rights shall not accrue in--

(a) pasture lands or lands covered by water and used for the purpose of growing singhara or other produce or land in the bed of a river and used for casual or occasional cultivation;

(b) such tracts of shifting or unstable cultivation as the State Government may specify by notification in the Gazettee, and

(c) lands declared by the State Government by notification in the official Gazettee to be intended or set apart for taungya plantation or grove lands of a [Gaon Sabha] or a local authority or land acquired or held for a public purpose and in particular and without prejudice to the generality of this clause--

(i) lands set apart for military encamping grounds,

(ii) lands included within railway or canal boundaries,

- (iii) lands situate within the limits of any cantonment,
- (iv) lands included in sullage farms or trenching grounds belonging as such to a local authority,
- (v) lands acquired by a town improvement trust in accordance with a scheme sanctioned u/s 42 of the U.P. Town Improvement Act, 1919 or by a municipality for a purpose mentioned in clause (a) or clause (c) of Section 8 of the U.P. Municipalities Act, 1916 and
- (vi) lands set apart for public purposes under the U.P. Consolidation of Holdings Act, 1953.

6. It is further submitted that u/s 29-C of U.P. Consolidation of Holdings Act, 1953 the land contributed for public purposes under this Act shall, with effect from the date on which the tenure-holder became entitled to enter into possession of the chaks allotted to them, vests and be always deemed to have vested in the Gaon Sabha.

7. The contention of the learned Standing Counsel is that the land vested in the Gaon Sabha for the public purpose could not have been given on patta to any individual person. His contention is that this fact was not considered in the order dated 15.5.1992 while rejecting the reference, therefore, the matter was rightly remanded back to the competent authority to decide afresh on merit.

8. I have considered the submissions made by the parties' counsel and gone through the record.

9. There is no denial of the fact that the order impugned clearly indicates that the Board of Revenue while reviewing its order has made certain observations on the merits of the case. There is no dispute, so far about the legal proposition with regard to the scope and ambit of review is concerned, the law in this regard is well settled as held in the case of Meera Bhanja (Smt) v. Nirmala Kumari Choudhary (Supra).

10. However, this fact is also to be taken note of that the Additional Commissioner while passing the order dated 15.5.1992 had not considered the relevant provisions of Section 132(c)(vi) of the U.P.Z.A. & L.R. Act and Section 29-C of U.P. Consolidation of Holdings Act, 1953, which are very much necessary for proper adjudication of the claim of the petitioner. As such, although, I do not agree with the finding given in the impugned order, however, in the interest of justice I find it necessary that the matter requires to be re-considered by the competent court in accordance with law, in deciding the claim of the petitioner.

11. In this view of the matter, the writ petition is disposed of finally with the observation that the Collector, Barabanki, shall pass fresh order u/s 198(4) of the Z.A. Act after giving opportunity of hearing to the parties concerned, in accordance with law, expeditiously, say within a period of three months from the date a certified copy of this order is produced before the Collector concerned.

12. With the aforesaid observations, the writ petition is disposed of finally.