(2013) 10 AHC CK 0082

In the Allahabad High Court

Case No : Writ-B No. 56148 of 2013

Ram Nandan APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : (2013) 121 RD 786

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : Rajesh Maurya and Sheo Ram Singh, for the Appellant; R.C. Upadhyaya, for the Respondent

Final Decision : Allowed

Judgement

Amreshwar Pratap Sahi, J.—Heard Sri Sheo Ram Singh, learned Counsel for the petitioner, and learned Standing Counsel for the respondent Nos. 1 and 2. Notice for the Gaon Sabha has been accepted by Sri R.C. Upadhyay. This petition questions the correctness of orders passed by the Board of Revenue and the Sub-Divisional Officer relating to the disputed holding which has been vested in the State on account of the land having been acquired by the petitioner allegedly through a sale-deed from a Scheduled Caste person without obtaining permission as contemplated u/s 157A of the U.P. Zamindari Abolition & Land Reforms Act, 1950.

2. An order came to be passed on the complaint of the Village Pradhan against the petitioner on 9.7.2004 by the Sub-Divisional Officer. Aggrieved, the petitioner filed a revision before the Board of Revenue entailing therein that the date of the sale-deed has been wrongly mentioned and that even otherwise, the permission had been taken on 10.5.1983 from the competent authority. Learned Counsel submits that these aspects were categorically stated in ground No. 8 of the Grounds of Revision and it was also urged that the order passed by the Sub-Divisional Officer against the petitioner was in violation of principles of natural justice inasmuch as no notice or opportunity was ever given to the petitioner

prior to passing of the said order of 2004.

3. The revision was dismissed in default. The petitioner filed a restoration application contending that the revision had been admitted and a stay order had also been passed in his favour, as such, the order deserves to be recalled. The delay was also explained along with a delay condonation application.

4. The learned Member of the Board of Revenue, who has passed the impugned order dated 30.8.2013, has not only rejected the delay condonation Application but has also recorded finding on merits against the petitioner. Hence this writ petition.

5. Sri Sheo Ram Singh contends that the delay has been explained sufficiently showing a plausible reason for having filed the restoration application and even on merits the grounds taken by the petitioner were pressed into service. Sri Singh submits that neither the said cause as explained by the petitioner has been correctly appreciated nor the facts relating to the grant of permission has been adjudicated in spite of the fact that all such documents, on which reliance has been placed, had been filed before the Revisional Court.

6. Sri Singh, therefore, contends that on merits once the permission was in existence, there was no occasion for having vested the land in the State in terms of provisions of section 167 of the 1950 Act.

7. Having heard learned Counsel for the parties, it is not necessary to grant any time to the respondents to file any counter-affidavit as from a perusal of order of the Sub-Divisional Officer dated 9.7.2004, it is apparent that no notices were held to have been served on the petitioner prior to passing of the said order. The arguments of the Government Counsel were heard and an assumption was drawn that the sale-deed was dated 8.8.1982 and not as described by the petitioner. The findings recorded do not indicate consideration of the objections that were taken by the petitioner or could have been taken by the petitioner in respect of the date of the sale-deed and the date of the grant of permission which has been described as the order dated 10.5.1983.

8. Apart from this, the said grounds were clearly taken in the grounds of revision before the Board of Revenue. While passing the impugned order rejecting the restoration application, the Board of Revenue has not adverted to the these aspects at all. It is, therefore, evident that the petitioner even though had given a sufficient explanation for having filed the restoration application on some delay, the Board of Revenue did not care to appropriately deal with the said application nor has it commented upon the defence set up by the petitioner on merits of the case. The order of the Sub-Divisional Officer dated 9.7.2004 also suffers from the same infirmity and appears to be in violation of the principles of the natural justice. Consequently, the writ petition is allowed. The order of Sub-Divisional Officer dated 9.7.2004, the order of Board of Revenue dated 22.12.2010 and the order dated 30.8.2013 are hereby quashed. The matter is remitted back to the Sub-Divisional Officer-respondent No. 2 to pass appropriate orders after giving

an opportunity of hearing to the petitioner and the State in accordance with law in respect of the disputed holding.

