
(2002) 02 AHC CK 0087
In the Allahabad High Court
Case No : C.M.W.P. No. 28307 of 1992

Ramesh Pal Singh and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 04-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Land Revenue Act, 1901 — Section 33, 35, 40, 40A, 41

Citation : (2002) 2 AWC 948 : (2002) 93 RD 228

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : N.C. Rajvanshi, for the Appellant;

Final Decision : Dismissed

Judgement

R.H. Zaidi, J.—Heard learned counsel for the parties and also perused the record.

2. By means of this petition filed under Article 226 of the Constitution of India, petitioners pray for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 28.11.1991 passed by the respondent No. 1, Board of Revenue, U.P., Lucknow and the judgment and order dated 21.1.1985 passed by the respondent No. 2, the Sub-Divisional Magistrate, Bulandshahr, in the proceedings u/s 41 of the U.P. Land Revenue Act. (for short "the Act").

3. The relevant facts of the case giving rise to the present petition, as unfolded by the material on the record, are that it was on 18.12.1979 that respondent No. 3. Vireshwar Kumar Pandey filed an application u/s 41 of the Act before respondent No. 2 complaining that the petitioners have demolished northern boundary of his plot No. 1997. (hereinafter referred to as "the plot in dispute"), measuring two bighas two biswas and included substantial area of the said plot in their plot Nos. 1995 and 1994 in village Pahasu. district. Bulandshahr. It was, therefore, prayed that the boundaries of the aforesaid three plots be fixed and respondent No. 3 be given possession over the plot in dispute. On receipt of the

said application, the respondent No. 2 called the report from the Kanungo. The Kanungo on the strength of the order passed by the respondent No. 2. after making measurements in accordance with the law, submitted his report to the effect that an area measuring two biswas five biswansis of the plot in dispute was included, after demolishing its northern boundary, in plot Nos. 1995 and 1994 by the petitioners. Against the aforesaid report, the petitioners filed their objections. The respondent No. 2 after hearing the parties rejected the objections filed by the petitioners and accepted the report of the Kanungo by his order dated 21.1.1985. Aggrieved by the order passed by respondent No. 2, the petitioners filed an appeal before the Commissioner. Meerut Division, Meerut. The Commissioner allowed the appeal and set aside the order dated 21.1.1985 passed by respondent No. 2. The respondent No. 3. thereafter, filed a revision before the respondent No. 1, which was allowed by judgment and order dated 28.11.1991. Hence, the present petition.

4. Learned counsel appearing for the respondent No. 3 raised a preliminary objection to the maintainability of the present petition on the ground of availability of the alternative remedy. In short, it was urged that the orders passed by the authorities below in the proceedings u/s 41 of the Act are summary in nature. They do not decide the title of the parties with respect to the land in dispute and have got no binding effect in a regular suit either upon the courts or upon the parties concerned. The party aggrieved can avail of alternative remedy and file a suit for appropriate relief after the orders are passed u/s 41 of the Act by the authorities concerned. The present petition was, therefore, liable to be dismissed on the ground of availability of statutory alternative remedy.

5. On the other hand, learned counsel for the petitioners submitted that the present petition was filed by the petitioners against the orders passed by the authorities, which, according to him, were illegal and without jurisdiction. The writ petition was maintainable and was liable to be allowed.

6. I have considered the submissions made by the learned counsel for the parties.

7. Section 41 of the Act provides as under :

"41. Settlement of boundary disputes.--(1) All disputes regarding boundaries shall be decided as far as possible on the basis of existing survey maps ; but if this is not possible, the boundaries shall be fixed on the basis of actual possession.

(2) If, in the course of an inquiry into a dispute under this section, the Collector is unable to satisfy himself as to which party is in possession, or if it is shown that possession has been obtained by wrongful dispossession of the lawful occupants of the property within a period of three months previous to the commencement of the inquiry, the Collector :

(a) in the first case shall ascertain by summary inquiry who is the person best entitled to the property, and shall put such person in possession ; and

(b) in the second case. shall put the person so dispossessed in possession ; and shall then fix the boundary accordingly."

8. A reading of the aforesaid section reveals that the boundary disputes are decided on the basis of survey maps and if it is not possible, on the basis of actual possession. It further provides that if the Collector is unable to satisfy himself as to which party is in possession, or if it is shown that the possession has been obtained by wrongful dispossession of the lawful occupants of the property within a period of three months previous to the commencement of the inquiry, the Collector in the first case shall ascertain by summary inquiry who is the person best entitled to the property and shall put such person in possession and in the second case, shall put the person so dispossessed in possession and shall then fix the boundary accordingly. The aforesaid section clearly provides that the proceedings under said section are summary in nature.

9. Section 40A of the Act also reads as under :

"40A. Savings as to title suits.--No order passed u/s 33, Section 35. Section 39. Section 40, Section 41 or Section 54 shall bar any suit in a competent court for relief on the basis of a right in a holding."

10. The aforesaid section clearly provides that any order passed by the revenue courts under Sections 33, 35. 39, 40, 41 or 54 shall be subject to the decision of a competent court on the regular side where the suit is filed on the basis of a right in a holding.

11. The orders passed in the said proceedings are subject to the decision in a regular suit as it is also apparent from Section 44 of the Act, which provides as under :

"44. Presumption as to entries in the annual register.--All entries in the annual register shall, until contrary is proved, be presumed to be true."

12. The presumption under the aforesaid section after the amendment in the year 1951 has been made rebuttable. Before the amendment, the condition was totally different. The original section provided as under :

"44. Presumption as to entries and decision binding on Revenue Courts.--All entries in the annual register made under Sub-section (3) of Section 33 shall be presumed to be true until the contrary is proved, and, subject to the provisions of Sub-section (3) of Section 40. all decisions under Sections 40. 41 and 42 shall be binding on all Revenue Courts in respect of the subject-matter of the dispute, but no such entry or decision shall affect the right of any person to claim and establish in the civil court any interest in law which requires to be recorded in the registers prescribed by Clauses (a) to (d) of Section 32."

13. Thus, the orders passed in the proceedings u/s 41 of the Act. as stated

above, have got no binding effect. They do not operate as resjudicata as they used to be before the amendment of Section 44. Same view was taken by this Court in the case of Smt. Ganga. Devi v. Board of Revenue. U.P. at Allahabad and Ors., 3974 RD 62, wherein it was held as under :

"Proceedings u/s 41 of L.R. Act are only summary proceedings and they are meant only to facilitate the work of the revenue courts. They are not conditions precedent for the maintainability of a suit u/s 209."

14. Aforesaid decision was also referred to and relied upon by the Board of Revenue in the case of Roop Narain v. Basdeo 1996 (2) CRC 54 , wherein it was held as under :

"A proceeding relating to demarcation of boundary is purely summary in nature. It does not lay any bar on a person to sue for ejectment of a trespasser encroaching upon the land of his holding. The law is that in such cases, boundaries are first demarcated and then the suit proceeds."

15. In respect of the mutation proceedings also, this Court and the Board of Revenue have been consistently taking the view that those proceedings are also summary and against the orders passed in the said proceedings, no petition u/s 226 of the Constitution of India is maintainable. A reference in this regard may be made to the decision of this Court in the case of Mohar Tewari v. Board of Revenue, U.P., Lucknow and others 1990 RD (H) 20 and in the case of Chhedi Lal v. Board of Revenue 1982 RJ 201 .

16. In view of the aforesaid discussions, the preliminary objection raised by respondent No. 3 has got force, the same is, therefore, upheld. The present petition fails and is hereby dismissed as not maintainable on the ground of availability of statutory alternative remedy.