(2010) 09 UK CK 0209

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1591 of 2010

Ravindra Singh and Others APPELLANT

Vs

State of Uttarakhand and Others RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144
Criminal Procedure Code, 1973 (CrPC) — Section 145
Uttar Pradesh Land Revenue Act, 1901 — Section 219, 33, 39
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B

Citation : (2011) 2 UD 291

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Judgement

B.S. Verma, J.

(Stay Application No. 7716 of 2010)

1. Heard learned Counsel for the parties and perused the record.

2. By means of this writ petition, the petitioners have sought a writ in the nature of certiorari quashing the impugned order dated 5-8-2010 passed by the Sub Divisional Magistrate, Kashipur (Annexure No. 3), whereby the Sub Divisional Magistrate had directed the Tehsildar, Bazpur to enter the name of Sri Padam Ravindrajeet Singh in the revenue record.

3. According to the petitioners, the petitioners are the legal heirs of Jagat Singh and Bhagat Singh. Jagat Singh and Bhagat Singh had filed two separate suits for declaration of their rights u/s 229-B of the U.P.Z.A. and L.R. Act. Both the suits were decreed by judgment and decree dated 26-9-1989 passed by the Assistant Collector, 1st Class, Kashipur. Against the said judgment and decree, Padam Ravindrajit Singh preferred appeals before the Commissioner, Kumaun Division, Nainital. The appeals were dismissed vide judgment and decree dated 6-10-1990. Thereafter, Second Appeals were preferred before the Additional

Chief Revenue Commissioner, Uttaranchal, Dehradun, which too were dismissed on 25-2-2005.

4. Apart from the above, the respondent initiated a proceeding u/s 33/39 of the Land Revenue Act for correction of entries and thereafter, a proceeding u/s 145 Cr.P.C. was also initiated before the Executive Magistrate. The parties contested the matter upto the Apex Court. The Apex Court vide order dated 16-12-1987 disposed of the Criminal Appeal Nos. 666 to 669 arising out of SLP (Crl) Nos. 1464-67 of 1987 with the following observations:

The writ petition before the High Court is dismissed and any proceeding between the parties will not be proceeded with until determination of tenancy by the revenue court. The criminal revision before the Sessions Judge is dismissed.

The appeals are accordingly disposed of.

5. After the judgment of the Apex Court, the suits for declaration of rights were filed by the predecessors of the petitioners herein.

6. The grievance of the petitioners is that the Apex Court by order dated 16-12-1987 had dismissed the writ petition being W.P.M.S. No. 7056 of 1979 Suba Singh and Ors. v. Board of Revenue U.P. and Ors. but the Sub-Divisional Magistrate (Pargana Magistrate) Kashipur has passed the impugned order dated 5-8-2010, purporting to be in consequence of the order dated 27-7-1979 passed by the Board of Revenue, whereas the Board of Revenue in a revisional proceeding u/s 219 of the U.P. land Revenue Act arising out of the order dated 14-1-1970 of the Additional Commissioner, Rohilkhand, Kumaun Division, Bareilly, had set aside the order passed by the Collector dated 2-3-1968 u/s 33/39 of the Land Revenue Act. The order u/s 33/39 is summary in nature.

7. Firstly, a bare perusal of the order impugned, it reveals that the Sub Divisional Magistrate concerned had no jurisdiction to pass an order on revenue side. The power lies with the Sub Divisional Officer/Up Zila Adhikari, while the Pargana Magistrate (Sub Divisional Magistrate) can exercise executive powers. Prima facie the order passed by the Magistrate on revenue side appears to be without jurisdiction.

8. Secondly, the Sub Divisional Officer/Up Zila Adhikari may pass such orders on the application moved by the parties u/s 144 of the CPC for restitution of orders, if the orders are reversed in appeal by the appellate courts.

9. Thirdly, the Pargana Magistrate made a reference of the order passed by the Board of Revenue on 27-7-1979 and the writ petitions which were filed before the Allahabad High Court challenging the order of the Board of Revenue. The writ petition was subsequently transferred to this Court and had been dismissed as infructuous. The Pargana Magistrate concerned did not apply his mind. Since the regular suits were decreed by judgment and decree dated 26-9-1989. Now on the basis of a summary proceeding, no entry could be made in the revenue records and that too without hearing the plaintiffs whose names are recorded on

the basis of the decree passed in regular suits.

10. In the facts and circumstances of the case, it would be in the fitness of things as well as in the interest of justice to direct the Pargana Magistrate, who is exercising the powers of Sub Divisional Officer/Assistant Collector 1st Class to pass fresh orders after hearing the petitioners and all other parties including Padam Ravindrajit Singh in the matter.

11. Accordingly, the Pargana Magistrate, who is exercising the powers of Sub Divisional Officer/Assistant Collector 1st Class Kashipur, is directed to pass fresh orders in the matter after hearing the petitioners and all other parties including Padam Ravindrajit Singh without being influenced by the order passed by this Court. Till then, the impugned order dated 5-8-2010 (Annexure-3 to the writ petition) shall be kept in abeyance.

12. With the above direction, the writ petition is disposed of.

