(2019) 07 UK CK 0227

In the Uttarakhand High Court

Case No : Special Appeal No. 729 Of 2019

Sitapur Eye Hospital Trust — APPELLANT

Vs

State Of Uttarakhand And Others — RESPONDENT

Date of Decision : 26-07-2019

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 41, 41(1), 41(2)
Code Of Criminal Procedure, 1973 — Section 154
Constitution Of India, 1950 — Article 226

Citation : (2019) 07 UK CK 0227

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Lalit Sharma, B.S. Parihar

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. This appeal is preferred against the order passed by the learned Single Judge in Writ Petition (M/S) No. 1786 of 2019 dated 27.06.2019. The appellant herein filed the said writ petition seeking a writ of mandamus commanding the respondents to ensure that the on-going demarcation exercise, in respect of the appellant-writ petitioner's land situated in Sri Nagar, Uttarakhand, is taken to its logical conclusion after ensuring deputation of sufficient security personnel at the site; and a writ of mandamus commanding the respondents to ensure that no undue interference is caused in the activity of the eye care facility at Sri Nagar, Pauri Garhwal, Uttarakhand.

2. The appellant-writ petitioner claims to be a Trust running a charitable hospital, and to be the owner of the land of an extent of 43 Nalis and 8 mutthis at Srinagar, District Pauri Garhwal. The said hospital is said to be non-functional, but to be in the process of re-starting. Since there was a dispute with the local villagers, an application was filed by the appellant-writ petitioner under Section 41 of the Land Revenue Act, 1901 pursuant to which demarcation orders were

passed. However, when the actual exercise of demarcation was being undertaken on the 09th and 10th of March, 2019, certain villagers are said to have intervened, resulting in the Revenue Inspector expressing his inability to demarcate the land, and stating that, unless police protection was extended, the exercise of demarcation could not be undertaken. Aggrieved thereby, the appellant-writ petitioner invoked the jurisdiction of this Court.

3. In the order under appeal, the learned Single Judge observed that this Court could not examine such a matter straightaway in a writ petition; if the petitioner had any grievance, his remedy was to approach the higher revenue authorities; if any person was trying to cause any hindrance to the appellant-writ petitioner, he was always at liberty to initiate criminal proceedings; and the writ petition was not an appropriate remedy at that stage. Holding that no interference was called for, the learned Single Judge dismissed the writ petition. Aggrieved thereby, the present appeal.

4. Mr. Lalit Sharma, learned counsel for the appellant-writ petitioner, would submit that the exercise, undertaken by the Revenue Inspector, of demarcation is in terms of Section 41 of the U.P. Land Revenue Act; the exercise, which has commenced on the appellant-writ petitioner's complying with the statutory requirements, must be permitted to be completed unhindered; since the entire exercise of demarcation, undertaken by the authorities at the appellant-writ petitioner's request and on fulfillment of the statutory formalities, is sought to be interdicted by certain villagers, a mandamus should be issued to the Police Authorities to provide necessary police protection to ensure early completion of the exercise of demarcation. We must express our inability to agree.

5. Section 41 of the Land Revenue Act relates to settlement of boundary disputes and, under Sub-Section (1), all disputes regarding boundaries shall be decided, as far as possible, on the basis of existing survey maps, but if this was not possible, the boundaries shall be fixed on the basis of actual possession. Section 41(2) stipulates that 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 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: (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.

6. The exercise, undertaken by the Revenue Inspector, was in terms of Section 41(1) of the Land Revenue Act. His failure to complete the exercise, under Section 41(1) of the Land Revenue Act because of interference of other villagers, is possibly because they claim that they are in possession of the subject land, in which event the remedy available to the appellant-writ petitioner is under Section 41(2) of the Land Revenue Act to seek the decision of the Collector. If, on the

other hand, the appellant-writ petitioner is of the view that the land belongs to them, and some anti-social elements are seeking to interfere with their possession, they can always lodge a complaint under Section 154 Cr.P.C, and set the criminal law in motion.

7. Viewed from any angle such disputed questions, as to whether the appellant-writ petitioner is the owner of the land; whether interference therewith is only by anti-social elements or by persons who dispute the appellant-writ petitioner's right over the subject land, are all matters which this Court would not, ordinarily, examine in proceedings under Article 226 of the Constitution of India.

8. Leaving it open to the appellant-writ petitioner to avail such other remedies as are available to them in law, we see no reason to interfere with the order under appeal. The Special Appeal fails and is, accordingly, dismissed. No costs.

