(2018) 04 UK CK 0082

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 984 of 2018

TRINATH VISHWAS APPELLANT

Vs

MOHAN VISHWAS AND OTHERS RESPONDENT

Date of Decision : 24-04-2018

Acts Referred:

Land Revenue Act, — Section 34, 201
Constitution of India, — Article 226, 227

Citation : (2018) 04 UK CK 0082

Hon'ble Judges : MANOJ K. TIWARI, J

Bench : Single Bench

Advocate : T.A. Khan, A.K. Arya, Harshpal Sekhon, R.C. Arya

Final Decision : Disposed Off

Judgement

1. On the oral prayer of learned counsel for the petitioner, he is permitted to amend the memo of parties.

2. By means of present petition under Article 227 of Constitution, petitioner has challenged the order dated 24.02.2018 passed by Board of Revenue in

Revision No. 24 of 2014-15. Learned counsel for the petitioner has given up challenge to the order dated 07.08.2015 passed by ADM (Nazul) Udham

Singh Nagar.

3. Brief facts of the case are as follows:

4. Petitioner moved an application for mutation under Section 34 of Land Revenue Act before Tehsildar Gadarpur, on the basis of a family settlement

alleged to have been arrived at between him and Shri Narayan Vishwash (father of respondent no.1 & 2) alongwith one Shri Shambhu Charan

(respondent no.3). It is the case of the petitioner that through the family settlement, certain plots of agricultural land were exchanged between petitioner and respondent no.1, 2 & 3. Petitionerâ??s mutation application was allowed by learned Tehsildar Gadarpur vide order dated 27.01.2006.

5. On 16.06.2006, Shri Narayan Vishwash (father of respondent no. 1 & 2) filed an application seeking recall of the order dated 27.01.2006 on the

ground that petitioner and respondents do not belong to same family. It was further stated by Shri Narayan Vishwash that he never signed on any

family settlement, therefore the mutation application filed by the petitioner based on alleged family settlement, is liable to be rejected.

6. Shri Narayan Vishwash thereafter, moved another application on 10.07.2006 supported by affidavit, seeking withdrawal of the application dated

16.06.2006. Learned counsel for the petitioner submits that in the application dated 10.07.2006, Shri Narayan Vishwas stated that the order passed by

Tehsildar on 27.01.2006 is correct and acceptable to him. Consequently, the recall application moved by Shri Narayan Vishwash under Section 201 of

Land Revenue Act was rejected by Tehsildar Gadarpur vide order dated 19.08.2006.

7. Shri Narayan Vishwash (father of respondent no. 1 & 2)Â thereafter, filed another application on 18.05.2007 seeking recall of Tehsildarâ??s

order dated 27.01.2006 alleging that the order of mutation has been obtained by the petitioner by playing fraudÂ and further that no family settlement

was arrived at between the parties. It was further alleged in the said application that the petitioner and respondents do not belong to a family as

alleged in the mutation application. This application was rejected by Tehsildar Gadarpur vide order dated 28.05.2010. Shri Mohan Vishwash and

Mahadev Vishwash (legal representatives/sons of Shri Narayan Vishwash) filed an appeal against Tehsildarâ??s order dated 28.05.2010 before

Collecotor Udham Singh Nagar and the said appeal was registered as Revenue Appeal No. 52/49 of 2009-2010. Sons/legal representatives of Shri

Narayan Vishwash filed another appeal against the Tehsildarâ??s original order dated 27.01.2006 before Collector Udham Singh Nagar which was

registered as Revenue Appeal No. 52/61 of 2013-2014 (which was later re-numbered as 52/01 of 2014-2015). These two appeals filed by sons/legal

representatives of Shri Narayan Vishwash were allowed by ADM Nazul, Udham Singh Nagar by a common judgment and order dated 07.08.2015.

The order passed by Tehsildar Gadarpur on 27.01.2006 was set aside and a direction was issued to restore names of legal representatives of Shri

Narayan Vishwash and name of Shri Shambhu Charan in the revenue record.Â

8. Feeling aggrieved by the order dated 07.08.2015 passed by Additional District Magistrate (Nazul), petitioner filed two revisions before the Board of

Revenue. Learned Board of Revenue has partly allowedÂ the revision petitions filed by the petitioner and set aside the order passed by Tehsildar

Gadarpur on 28.05.2010 and 19.08.2006. It was further provided that the Restoration Application filed by Shri Narayan Vishwash on 18.05.2007 and

16.06.2006 will stand revived and the matter be remanded back to Tehsildar Gadarpur to decide the matter afresh after hearing all the parties, within

six months and the parties were directed to appear before the Tehsildar on 20.04.2018. It was further provided by Board of Revenue in its order dated

24.02.2008 that till decision in the matter by Tehsildar parties shall maintain status quo as regards the land in question.

9. Mr. T.A. Khan, learned Senior Advocate assisted by Mr. A.K. Arya, Advocate for the petitioner submits that Board of Revenue has allowed the

Restoration Applications submitted by Shri Narayan Vishwash on 18.05.2007 and 16.06.2006, which has caused serious prejudice to the petitioner.

Another ground on which learned Senior Counsel assails the order passed by Board of Revenue is that Board of Revenue has left the order passed by

Additional District Magistrate (Nazul) Udham Singh Nagar undisturbed.Â

10. Shri Harshpal Sekhon, learned counsel for respondent nos. 1 to 3, on the other hand, submits that what is meant by the order passed by Board of

Revenue is that the Restoration Applications filed by Shri Narayan Vishwash on 18.05.2007 and 16.06.2006, which were earlier rejected by the

Tehsildar, now stand revived and those applications have not been allowed, as contended on behalf of the petitioner. He further submits that the order

passed by ADM (Nazul) Udham Singh Nagar has been modified by the Board of Revenue, therefore, it was not necessary for the Board of Revenue

to set aside the said order.Â

11. After hearing rival contentions of the parties, this Court is of the opinion that no interference is called for in the order passed by Board of

Revenue. Since Shri Narayan Vishwash had filed application for recall of the order dated 27.01.2006 on various grounds including fraud, therefore,

interest of justice would be served if the matter is heard and decided afresh on the recall/restoration application. Interest of the petitioner has been taken care of by the learned Board of Revenue by providing that parties shall maintain status quo till decision in the matter by the Tehsildar.

12. It is further provided that till decision on the restoration/recall application by the Tehsildar, Gadarpur, status quo as regards entries in revenue

records, qua the parties, shall be maintained.Â

13. With the aforesaid observations, the writ petition stands disposed of.

