(2010) 12 UK CK 0142

In the Uttarakhand High Court

Case No : Writ Petition No. 1238 of 2007 (M/S)

Udai Singh APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 14-12-2010

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 201, 219, 33, 40A

Citation : (2010) 12 UK CK 0142

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Verma, J.—By means of this writ petition, the Petitioner has sought writ in the nature of certiorari quashing the order dated 26.07.1982,passed by Board of Revenue, Lucknow, in revision No. 35, which was filed u/s 219 of Land Revenue Act, against the order dated 30.01.1976, passed by Commissioner, Garhwal Division, confirming the order dated 25.01.1976, passed by Assistant Collector, Lansdown in a case for correction of papers.

2. Briefly stated the facts, giving rise to this writ petition are that one Jot Singh was the original recorded tenure holder of the land in dispute. He died leaving behind him his two sons-Raghubir Singh (Respondent No. 3) and Udai Singh (Petitioner), who are step brothers. After the death of Jot Singh, names of both the sons came to be recorded as tenure holder through Supervisor Kanungo. Thereafter Raghuvir Singh (Respondent No. 3), moved an application stating that his name alone should be recorded over Khata No. 6, measuring area 140 nalis 14 muthis, on the basis of a gift deed executed in his favour by his deceased father. The S.D.O., vide his order dated 13.12.1971, allowed the prayer and thereafter on 03.12.1973, Udai Singh (Petitioner) moved an application stating that he and Raghubir Singh were both the sons of Jot Singh and are equally entitled for being entered as recorded tenure holder in place of their deceased father. The Assistant Collector, vide his order dated 25.01.1975, ordered for

entry of names of both the parties while setting aside the order dated 13.12.1971, passed by his predecessor. Feeling aggrieved by the order dated 25.01.1975, Raghubir Singh (Respondent No. 3) went up in revision to the Commissioner, who upheld the order of S.D.O. Further aggrieved by the order of the Commissioner, the Petitioner preferred a revision before Board of Revenue. Board of Revenue, vide order dated 26.07.1982, allowed the revision and set aside the order dated 25.01.1975 and order dated 30.01.1976, passed by Commissioner. Aggrieved by the order dated 26.07.1982, passed by Board of Revenue in revision No. 35, Petitioner has filed this writ petition.

3. I have heard learned Counsel for the parties and perused the order passed by S.D.O and Board of Revenue.

4. Board of Revenue, vide its order dated 26.07.1982, has elaborately dealt with the question as to whether the S.D.O had the authority to modify or set aside the earlier order of the same court by way of correction or any other proceeding and gave a categorical finding, which is reproduced as under:

Rightly or wrongly, an order has been passed by learned S.D.O. in December 1971, directing the name of Raghubir Singh to be entered in place of Jot Singh deceased. No appeal or revision was filed against this order nor recourse was taken to the procedure laid down u/s 201 of Land Revenue Act, for setting aside an ex-parte order. Nor evidently has a regular suit been filed to settle the question of right and title between the parties. Such would be the remedies normally open to an aggrieved party. Instead, the opposite party applied afresh for correction of papers and learned S.D.O. modified and set aside the earlier orders of the same court by the impugned order dated 25.01.1975. There is no escape from the conclusion that the impugned order has virtually reviewed the earlier order of the same court dated 13.12.71 and made substantive changes in it.

5. Board of Revenue placed reliance upon the judgment reported in 1972 RD 8 of Allahabad High Court and 1974 RD 140 (Full Bench), and came to the conclusion that under the provisions of Chapter X of the U.P. Land Revenue Act, there is no authority vested in the court of learned S.D.O. to review or alter its own order, therefore, S.D.O. had acted without jurisdiction in passing the impugned order dated 25.01.1975.

6. Having heard learned Counsel for the parties, I find no manifest error of law in the impugned order, passed by Board of Revenue since the S.D.O. has no power to review its own order and it is the Board of Revenue, who has been vested with such power.

7. The writ petition is devoid of merits and is liable to be dismissed. The same is dismissed. However, since the proceedings u/s 33 of Land Revenue Act, 1901, are summary in nature and as per provision of Section 40A of Land Revenue Act, regular suit for declaration is not barred in a competent court for relief on the basis of a right in a holding, therefore, the Petitioner would be at liberty to file

suit in competent court of jurisdiction for redressal of his grievance.