
(2006) 04 UK CK 0045

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1371 of 2005

Ved Singh

APPELLANT

Vs

Commissioner Garhwai Mandal and Others

RESPONDENT

Date of Decision : 07-04-2006

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4(2)

Citation : (2006) 2 UC 1254

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Advocate : Lokpal Singh, for the Appellant; Alok Singh assisted by, Dharmendra Barthwal, for Respondent Nos. 2 to 5 and Atul Bansal, holding brief of Learned Standing Counsel for State, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Verma, J.—By means of this writ petition, the Petitioner seeks direction in the nature of certiorari quashing the impugned judgment and order dated 21-07-2005, passed by the Respondent No. 1 (Annexure No. 8 to the writ petition), whereby the revision filed by the Respondent Nos. 2 to 5 against the Petitioner was allowed and the orders dated 10-6-2004 and 11-10-2004 passed by Collector, Haridwar in Case No. 15 of 2003 and Case No. 2 of 2001 were set aside, the Collector was directed to dispose of the matter in the light of earlier order dated 28-7-2003 and as per law. After the remand order, the Collector decided the Case No. 2/2000-01 u/s 28 of the Land Revenue Act on 22-11-2005 and on the basis of Tahsildar report dated 27-01-2001, Sazara (map) has been amended. The Petitioner did not challenge this order of the Collector by filing a revision u/s 219 of the Land Revenue Act. The Petitioner sought for quashing the remand order passed by the learned Commissioner, Garhwal Division on the ground that the remand order is bad in law and subsequent proceedings are non est.

2. Relevant facts giving rise to this writ petition are that Respondent Nos. 2 to 5

Pradeep Kumar and others had filed a case u/s 28 of the Land Revenue Act for correction of map in the year 2000. The application for correction was allowed by the Collector, Haridwar vide his order dated 14-03-2001. Aggrieved by the said order, the Petitioner had preferred a Revision No. 19/2000-2001 Ved Singh v. Pradeep Kumar and Ors. which was allowed vide order dated 6-5-2002 by the Commissioner, Garhwal Division and the case was remanded to the Collector, Haridwar with a direction to decide the matter of correction of disputed Sazara afresh in accordance with law. After remand of the case, the Collector proceeded to decide the matter afresh in the light of the revisional court's order. After remand, the Collector, Haridwar has rejected the application of correction of map vide his order dated 5-12-2002. Aggrieved by the said order, the Respondent Nos. 2 to 5 preferred a Revision No. 11/2002-03 which was allowed vide order dated 28-7-2003 by the Respondent no. 1, Commissioner, Garhwal Mandal and again remanded the case for fresh decision in view of the observations made in revisional court's order. After remand order, the Collector again decided the case and held that the village is under consolidation and the Notification u/s 4(2) of the Consolidation of Holdings Act had been published, hence the proceedings of the case are abated till the order passed in Writ Petition No. 39153 of 2000 Bijendra Singh v. State vide order dated 10-6-2004. Aggrieved by the said order, the Respondent No. 2 to 5 filed a Revision No. 1 of 2004-2005 before the Respondent No. 1 on the ground that a Writ Petition No. 39153 of 2000 (new No. 774 of 2001) is pending for quashing the Notification of Section 4(2) of the Consolidation of Holdings Act regarding village concerned and the effect of the Notification by the Hon"ble High Court was stayed, therefore, the proceeding must continue. The order of the Hon"ble High Court is clear. The Respondent No. 1 vide impugned order dated 21-7-2005 has allowed the revision filed by the Respondent Nos. 2 to 5 and set aside the order dated 10-6-2004 and 11-10-2004.

3. I have heard Sri Lokpal Singh, learned Counsel for the Petitioner and Senior Advocate Sri Alok Singh assisted by Sri Dharmendra Barthwal, Advocate, for the contesting Respondents and perused the impugned order.

4. Learned Counsel for the Petitioner Sri Lokpal Singh has submitted that once the village has been notified u/s 4(2) of the Consolidation of Holdings Act, the Revenue Court seized its jurisdiction, therefore, the Impugned order is wholly illegal and without jurisdiction. It was further contended that the revision was not maintainable against the order dated 10-6-2004. Hence the Impugned order is not sustainable in the eye of law.

5. On the other hand, the learned Senior Advocate Sri Alok Singh appearing on behalf of the contesting Respondents has submitted that after the remand order, the application u/s 28 of the Land Revenue Act was decided by the Collector vide his order dated 21-11-2005. The order of the Collector has not been assailed by the Petitioner so far. It was argued by the learned Counsel for the Petitioner that the order impugned passed by the Collector was bad in law, hence subsequent

proceeding consequent thereto would be non est and has to be necessarily set aside. In support of his contention, the learned Counsel for the Petitioner has relied upon the Apex Court judgment in the case of Mangal Prasad Tamoli (Dead) by Lrs. Vs. Narvedshwar Mishra (Dead) by Lrs. and Others, wherein it has been held in paragraph No. 15 that "the suit for redemption brought by the Plaintiff was premature and rightly dismissed. It is the High Court, by its judgment dated 18-1-1966 in Second Appeal No. 3033 of 1958, which took an erroneous view that because of the Plaintiff's advocate having stated that he would not seek delivery of possession before the stipulated time (26-1-1968), the suit could be continued. It was on this wrong understanding of the legal position that the remand order dated 18-1-1966 came to be made by the High Court pursuant to which the appeal and further proceedings continued. If this remand order was bad in law, then all further proceedings consequent thereto would be not est and have to be necessarily set aside." But in the present case, the facts are entirely different because the effect of the Notification u/s 4(2) of the Consolidation of Holdings Act was stayed by this Court. The case law relied upon by the learned Counsel for the Petitioner is not applicable to the facts and circumstances of the case in hand. It is admitted to both the parties that the writ petition is still pending. In my view, when the Notification u/s 4(2) of the said Act is not effective in view of the interim order, the application u/s 28 of the Land Revenue Act for correction of map is maintainable and the remand order is not bad in law.

6. This fact is admitted to both the Petitioner and Respondent Nos. 2 to 5 that a Notification u/s 4(2) of the Act was issued and the effect of Notification was stayed by this Court in Writ Petition referred to above. The writ petition is still pending for decision. The only question has been decided by the Revisional Court when the effect of the Notification is stayed by the High Court, the proceeding u/s 28 of the Land Revenue Act would not abate and as such the case was remanded for a decision afresh.

7. The record shows that the application for correction of map was moved by the Respondent Nos. 2 to 5 on the ground that during the consolidation in the year 1962-63, one Chak road was left in Khasara No. 51 but instead of Chak road, Nali was shown in Sazara. As per order of the Consolidation authority, instead of Chak road, Nali was shown in the Shajra inadvertently. After the remand order, the Collector has already decided the application of Respondent Nos. 2 to 5 in their favour by his order dated 21-11-2005. That order was not challenged in this writ petition. The remedy is available to the Petitioner to assail the order of the Collector, Haridwar by way of Revision u/s 219 of the Land Revenue Act.

8. If the Petitioner files a Revision before the Revisional Court, the Revisional Court shall decide the revision on merit without being prejudiced by the observations made by this Court in the body of the judgment.

9. Having considered the material on record as well as the submissions made by the learned Counsel for the rival parties, as discussed above, I find that the order dated 21-7-2005 passed by the Respondent No. 1 (Annexure No. 8 to the writ

petition) does not suffer from any perversity and the court below has not committed a manifest error of law in passing the impugned order. The present writ petition has no force.

10. The writ petition is dismissed on merit. No order as to costs.