(2017) 02 AHC CK 0057

In the Allahabad High Court

Case No : Misc. Single No. 4657 of 2013

Vijay Bahadur APPELLANT

Vs

Board of Revenue RESPONDENT

Date of Decision : 08-02-2017

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2017) 135 RD 285

Hon'ble Judges : Rajan Roy, J.

Bench : Single Bench

Advocate : Ravi Nath Tilhari, Advocate, for the Petitioner in Misc. Single No. 4657 of 2013.; C.S.C, Mohd. Kashifoofi, Qazi Mustafizul Haque and S.C. Kashish, Advocates, for the Respondent in Misc. Single No. 4657 of 2013.; Karunakar Srivastava, Advocate, for the Petitioner in Misc. Single No. 29390 of 2016.; C.S.C. and Ravi Nath Telahari, Advocate, for the Respondent in Misc. Single No. 29390 of 2016.

Final Decision : Disposed Off

Judgement

(Writ Petition No. 4657(M/S) of 2013)

Rajan Roy, J.—Heard learned counsel for the parties.

2. This is a writ petition under Article 226 Constitution of India challenging the order of the Board of Revenue passed under Section 313(4) of the U.P. Zamindari Abolition and Land Reforms Act as also the order passed by it on the Review Application, rejecting the Second Appeal as also the review application of the petitioners. The orders of the Assistant Collector First Class, Gonda dated 11.02.1991 and the order of the Additional Commissioner, Faizabad Division, Faizabad dated 18.02.1997 passed in First Appeal have also been challenged.

3. The contention of the learned counsel for the petitioners is that at the second appellate stage additional evidence was filed which was admitted while admitting the second appeal itself on 20.04.2004 giving the time to the respondents for

rebuttal of the same, but, thereafter when the matter was finally decided the additional evidence which had been filed was not even referred much less considered.

4. Moreover, the contentions of the petitioners were also not dealt with properly nor the issues involved decided. It is on account of this that a review application was filed which has also been erroneously dismissed, therefore, the impugned orders according to the learned counsel for the petitioners are not sustainable in law.

5. As regards the order of the Additional Commissioner and the Assistant Collector First Class, Gonda in the suit under Section 229 read with 209 of the U.P.Z.A. and L.R. Act along with Section 64 of the U.P. Urban Area Zamindari Abolition and Land Reforms Act, 1957 the arguments have been advanced on merits also. However, if ultimately the argument with regard to the second appeal itself not having been decided as per law are sustained, there would not be any need for this Court under Article 226 of the Constitution of India to enter into the merits of the controversy.

6. On a perusal Section 331(4) of the Act, 1950 the Court finds that it prescribes a second appeal on any of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 from the final order or decree passed in an appeal under subsection 3, to the authority, if any, mentioned against it in column 6 of the schedule aforesaid. The said schedule mentions the authority as the Board of Revenue, thus, against the order of the Additional Commissioner, Faizabad Division, Faizabad a second appeal lies on the same grounds as Section 100 C.P.C.

7. On a bare perusal of the order dated 20.04.2004 it is evident that the Board of Revenue admitted the second appeal.

8. By the same order dated 20.04.2004 the Court finds that the additional evidence adduced by the petitioners herein the appellant before the Board of Revenue in the second appeal was admitted obviously in terms of the Order 41, Rule 27 C.P.C. and that is why time was granted to the respondent therein to adduce evidence in rebuttal. It is not known whether any rebuttal was filed, but, it has been stated by the petitioners herein that it was not. The least that was required to be done by the Appellate Court while deciding the second appeal was to consider the said additional evidence. This has also not been done, therefore, this is a grave omission on the part of the second Appellate Court.

9. In view of the above, the manner in which the second appeal has been decided does not confirm to the requirements of law. Surprisingly, when these facts were brought to the notice of the Board of Revenue by way of a review application the same was cursorily dismissed without dealing with the relevant issues, therefore, the said order, which is also impugned herein, is also not sustainable. By way of additional evidence various Khasra and Khatauni etc. are said have been filed by the petitioners, which according to them had a bearing

over the relevant issues involved.

10. As per paragraph No. 12 of the writ petition a substantial question of law was framed by the Board of Revenue on 12.07.2006 as under :-

"Whether or not the findings recorded by the learned courts below have been arrived at after due and proper appreciation of evidence on record in correct perspective of law?"

11. On a perusal of the order of the Board of Revenue the Court finds that the second appeal has been decided without judicious application of mind to the relevant facts and issued involved in the appeal. Even if, there was no mandatory requirement of framing of substantial question of law in view of the decision of the Supreme Court rendered in the case of State of Uttrakhand v. Mohan Singh and others reported in (2012) 13 SCC 284., nevertheless, the relevant issues had to be considered with judicious application of mind as per Section 100 C.P.C. as it existed prior to 01.02.1977, which is not borne out from the order of the Board of Revenue, specially, as the additional evidence admitted by it on 20.04.2004 does not even find reference therein.

12. In view of the above, the orders of the Board of Revenue dated 31.01.2007 and order dated 05.07.2013 are hereby set-aside. The matter is remanded back to the Board of Revenue for deciding the second appeal of the petitioners afresh in accordance with law, within a period of three months from the date a certified copy of this order is submitted. The parties shall co-operate in the proceedings and shall not seek unnecessary adjournment.

13. It is, however, made clear that till the disposal of the second appeal as aforesaid status quo with regard to the possession on the spot and in the revenue records shall be maintained by the parties, who shall not alienate the property in question. It is further made clear that this Court has not adjudicated the merits of the controversy at all.

14. The Writ Petition No. 4657(M/S) of 2013 is allowed in part.

(Writ Petition No. 29390 (M/S) of 2016)

15. As far the Writ petition No. 29390(M/S) of 2016 is concerned, this has been filed seeking implementation of the order of the Assistant Collector first class dated 11.02.1991 as affirmed by the First Appellate Court on 18.02.1997.

16. However, on account of the aforesaid orders in Writ Petition No. 4657(M/S) of 2013 wherein the said orders along with order of the Board of Revenue were challenged, now the matters stands remanded to the second appellate stage before the Board of Revenue, therefore, this writ petition has lost its efficacy, specially, in view of the interim arrangement ordered by this Court as aforesaid, but without prejudice to the rights of the parties in the said proceeding.

17. The Writ Petition No. 29390(M/S) of 2016 is disposed of accordingly.

