(2010) 04 AHC CK 0240

In the Allahabad High Court

Case No : Miscellaneous Single No. 1546 of 2009

Vikas Mohan Saxena — APPELLANT

Vs

Member Board of Revenue, U.P.At Allahabad — RESPONDENT

Date of Decision : 23-04-2010

Acts Referred:

Citation : (2010) 04 AHC CK 0240

Hon'ble Judges : Rakesh Sharma, J

Final Decision : Disposed Of

Judgement

Rakesh Sharma, J.—Heard Sri Shyam Mohan, learned Counsel for the petitioner, learned Standing Counsel appearing for the respondent Nos. 1, 2, 3 and 6.

This case was presented on 26.3.2009 and no substantial order has been passed so far. This case has come up for admission today.

2. The petitioner has assailed the order dated 30.7.2008 passed by Commissioner, Lucknow Division, Lucknow and the orders dated 10.9.2008 and 18.11.2008 passed by the Board of Revenue, Allahabad and submitting that his version was not properly considered by the said authorities.

3. The dispute relates to a plot of land situate in Saleh Nagar, Pargana Bijnore, Tehsil and District Lucknow. As per learned Counsel for the petitioner the plot in dispute was given on lease (patta) to his mother by the erstwhile zamindar of Saleh Nagar, Pargana Bijnore, Tehsil and District Lucknow. The patta was executed on 12.3.1947 in favour of Late Smt. Bhawati Devi Saxena, the mother of the petitioner in respect of plot Nos. 98Sa/1102. 313M/2045, 255/110213, 343/1525, 798M/2500 and 104/5518 of the same village and she remained in possession over the land in dispute throughout.

4. The petitioner sought correction in the revenue entries and a suit for declaration under section 229B of U.P. Zamindari Abolition and Land Reforms Act was filed by the petitioner''s mother after completing necessary formalities. The

suit was dismissed on 13th March, 1997 on the ground of maintainability. An appeal No. 230/199697 was preferred by the petitioners mother Smt. Bhagwati Devi Saxena which was allowed on 17.5.1997. The order passed by Assistant SubDivisional Officer, Lucknow dated 13.3.1997 was set aside. Parvana amaldaramad was issued and the order was incorporated in the Khatauni entry on 14021407 Fasli and kisan bahi was also prepared in her favour. Formal order was passed on 2.9.2998. The petitioner was satisfied with this arrangement.

5. One Ramesh Chandra Chhokara filed an application for restoration on the ground that his father Late Bhawan Das was owner of the disputed land. On his death in the year 1977 his name should have been recorded in the revenue entries. Earlier it was recorded in 1389 Fasli in his favour but later on it was recorded as Banjar. Objections were filed by the petitioner''s mother and the application was contested. The petitioner''s mother raising allegations of bias sought transfer of the case from the Court of Addl. Commissioner, to some other Court as the Presiding Officer was not acting properly. To the surprise of the petitioner''s mother the order dated 17.5.1997 was recalled by the Additional Commissioner on 4.11.1999. A revision was preferred to the Board of Revenue by the petitioner''s mother. The revision was allowed on 20.12.2006. The Board of Revenue, Allahabad has set aside the impugned order passed by the appellate Court on 13.12.1999 and 26.5.2000. The petitioner sought some correction in the order of the Board of Revenue, Allahabad which was allowed on 15.2.2007.

6. In the meantime, strange developments took place. The Board of Revenue vide order dated 15.2.2007 had set aside the order dated 4.11.1999 passed by the Additional Commissioner. A review was preferred by the opposite party No. 4, and lower Court record was summoned by the Board of Revenue. During this period when the Board of Revenue had summoned the record of the Additional Commissioner, the said authority without taking note that the matter was subjudice had passed another order dated 30.7.2008 unsettling the settled issues. The Addl. Commissioner had dismissed the appeal preferred by the petitioner.

7. Learned Counsel for the petitioner has challenged the order dated 30.7.2008 on the ground that learned Addl. Commissioner has not taken note of the observations and directions contained in the orders passed by the Board of Revenue on 20.12.2006 and 15.2.2007. It should have taken note that when the Board of Revenue had summoned the record available in the office of Addl. Commissioner. The proceedings in the appeal should have been stayed. The parties to the dispute were appearing before the Board of Revenue and the same parties were contesting the appeal before the Addl. Commissioner. The subordinate Court should have waited for the verdict of the superior Court i.e. Board of Revenue. Next argument of the learned Counsel for the petitioner is that once earlier order dated 4.11.1999 was set aside, it had resulted in the revival of the order dated 17.5.1997. This factual and legal position has been excluded from consideration.

8. There is sufficient force in the submissions of the learned Counsel for the petitioner. The matter does require reconsideration and be given a fresh look.

9. In view of the above, the matter is remitted back to the Commissioner, Lucknow, Division, Lucknow, appellate authority to reopen the appeal, fix a date, summon the parties and reconsider the appeal in the light of the observations made by the Board of Revenue and this Court. This Court has not expressed any opinion on merits. The above said authorities or authority is directed to allow the contesting parties opportunity of hearing, to permit them to place oral and documentary evidence in support of their versions and pass a reasoned and speaking order in accordance with law. This exercise shall be completed expeditiously, preferably within a period of four months from the dated of production of certified copy of this order.

10. Since, the matter is being remitted back the order dated 30.7.2008 passed by Commissioner Lucknow Division, Lucknow (Annexure 18 to the writ petition) and the orders dated 10.9.2008 and 18.11.2008 passed by the Board of Revenue, Allahabad (Annexures 20 and 22 to the writ petition) are quashed. The writ petition is being disposed of accordingly.

Till the disposal of the appeal the status qua in respect of the land in dispute shall be maintained and entry in revenue records shall be corrected in pursuance of the order dated 17.5.1997, passed by the Additional Commissioner, Lucknow Division, Lucknow, in Appeal No. 230/9697. Petitioner shall continue to hold her possession over the land in dispute.