(2013) 03 AHC CK 0057

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 12846 of 2013

Vishwanath Singh and Another APPELLANT

Vs

Member Board of Revenue and Others RESPONDENT

Date of Decision : 22-03-2013

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B

Citation : (2013) 5 ADJ 423 : (2013) 5 AWC 4408 : (2013) 119 RD 445

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : Rahul Sahai, for the Appellant; H.O.K. Srivastava, Mahesh Narain Singh and Mahesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Ran Vijai Singh, J.—Heard Sri Rahul Sahai, learned counsel for the petitioners, learned Standing Counsel appearing for the State-respondents, Sri Mahesh Kumar, learned counsel appearing for respondent Nos. 3 and 4 and learned counsel for the gaon sabha. Through this writ petition, the petitioners have prayed for issuing a writ of certiorari quashing the order dated 13.12.2012 passed by respondent No. 1 in restoration application No. 11 of 2012-13 (Vishwanath Singh and another v. Sub Divisional Magistrate and others) and order dated 5.11.2012 passed by the respondent No. 1 in revision No. 101 of 2007-08, vide order dated 5.11.2012, revision No. 101 of 2007-08 filed by the petitioners has been dismissed, whereas by the subsequent order dated 13.12.2012, restoration application No. 11 of 2012-13 filed by the petitioners has been rejected.

2. A counter-affidavit has been filed by Sri Mahesh Kumar on behalf of respondent No. 3 and he has also filed Vakalatnama on behalf of respondent No. 4. Learned counsel for the parties agree that this writ petition may be decided on its own merit at the admission stage without there being any further exchange of affidavits. With the consent of learned counsel for the parties, the writ petition is

taken up for final disposal.

3. The facts giving rise to this case are that the petitioners have filed declaratory suit No. 615 of 1990 u/s 229-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950, claiming their title over plot Nos. 688, 727 and 728 situated in Village Parikhara, Tehsil and District Ballia. The aforesaid suit was decreed in terms of the compromise on 30.12.1992. For recall of the aforesaid order, an application was filed by the respondents, which was allowed on 24.3.1998. The petitioners filed a revision, challenging the order dated 24.3.1998 before the Commissioner, Varanasi Division, Varanasi. The aforesaid revision was dismissed on 23.3.2001. Aggrieved by that order, the petitioners filed Writ Petition No. 16586 of 2001 before this Court. The said writ petition was allowed by this Court on 3.4.2003 and the matter was remitted back before the Court concerned to decide the recall application again. After remand, the recall application was again allowed vide order dated 18.6.2008. Challenging the aforesaid order, the petitioners filed revision No. 101 of 2007-08 before Board of Revenue, U.P., Allahabad. The revision was admitted and an interim order was also granted on 27.8.2008. In the revision, no counter-affidavit was filed to the stay application. However, the revision came up for final hearing on 5.11.2012 and the same was dismissed on merit in absence of the petitioners'' counsel on the same date after hearing counsel for the respondents. The petitioners have filed application for recall of the order; that too has been rejected by the learned Member, Board of Revenue.

4. A counter-affidavit has been filed by the respondent No. 3 with the allegations that the compromise is forged and the petitioners were evading the hearing of the revision; that is why, the revision was decided on merit in their absence. It is also stated that since the substantial justice has been done, therefore, the writ petition deserves to be dismissed.

5. It is stated in the affidavit filed in the recall application that the case was listed at serial No. 70 in the cause list, assigned to the learned Member, Board of Revenue. When the petitioners reached in the Court, it was told by the Peshkar that Court will sit at about 12.00 noon. The petitioners, knowing it that their case is listed at serial No. 70, reached at about 02.15 p.m. and it revealed that the case has already been dismissed. It is stated in the affidavit that the counsel for the petitioners had made mention that the case may be heard, but the learned Member, Board of Revenue told for filing a recall application. The petitioners had no escape except to file recall application and the recall application was filed on the very next day, i.e. on 6.11.2012, supported with an affidavit stating therein the facts as noted above. The contents of the application was duly sworn by a separate affidavit.

6. Learned Member, Board of Revenue took up the recall application on 13.12.2012 and dismissed the same with the following order:

For appreciating the controversy, the initial order dated 5.11.2012, of which recall was sought for, is also reproduced herein under:

7. It is contended by the learned counsel for the petitioners that no counter-affidavit was filed to the recall application and the statement of facts sworn on affidavit was uncontroverted, but the learned Member, Board of Revenue, while passing the impugned order, did not address himself on the grounds taken in the restoration application and rejected the restoration application by the impugned order dated 13.12.2012.

8. I am surprised to note that once the reason has been stated for recall of the order duly sworn on affidavit, how the learned Member, Board of Revenue, without noting the contents of the statement of facts sworn on affidavit and considering the same, could reject the application. It is also something beyond understanding that the revision was listed at serial No. 70, the case was taken up on the mention made by the respondents'' counsel and without there being any notice to the learned counsel for the revisionists, the revision was dismissed on merit.

9. Learned counsel for the respondents submitted that since the order has been passed on merit by imparting substantial justice to the parties, therefore, the writ petition be dismissed.

10. I am of the view that the order passed by the learned Member, Board of Revenue, dismissing the revision, is patently illegal order. Utmost, the learned Member, Board of Revenue could have dismissed the revision in default in absence of the counsel for the revisionists, but he decided the same without adverting to the grounds of revision by an almost non-speaking order as quoted in the foregoing paragraphs. When the restoration application was filed, that too had been dismissed in cursory manner, without considering the contents of the restoration application.

11. It is very often said that justice not only to be done, but it appears to have been done. Here, the circumstance speaks for itself and the same do not inspire faith that justice has been done. The learned Member, Board of Revenue did not say even a single word for deciding the case on merit in absence of the counsel for the applicant and took up the matter out of turn on the mention of other side.

12. The Apex Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , has held that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

13. The learned Member, Board of Revenue has forgotten that he is discharging the judicial function and the order is being passed on the judicial side. It is established principles of law that whenever any judicial order is passed, the version of the parties concerned are noted and considered in the order itself. But, here in the present case, reason, reasoning and contents, everything is missing in the order rejecting the restoration application. So far as the judgment passed on merit is concerned, suffice it to say, the judgment is ex parte, without considering the version of the petitioners. In my considered opinion, the

judgment rendered in the revision do not contain the ingredients of a judgment. Reference may be given in the case of Mahendra Dhar Dubey (Dead) by L.Rs. and Others Vs. Parashu Ram Pandey and Others, . In view of that, both the orders cannot be sustained in the eye of law.

14. The writ petition succeeds and is allowed.

15. The impugned orders dated 13.12.2012 passed by respondent No. 1 in restoration application No. 11 of 2012-13 (Vishwanath Singh and another v. Sub Divisional Magistrate and others) and 5.11.2012 passed by the respondent No. 1 in revision No. 101 of 2007-08 are hereby quashed. The Chairman, Board of Revenue is requested to transfer the revision No. 101 of 2007-08 before any other learned Member, Board of Revenue, who shall look into the matter and decide the same in accordance with law after hearing all concerned, within a period of six months from the date of receipt of record of the aforesaid revision, without granting any unnecessary adjournments to the learned counsel for the parties and in case adjournment is sought, that should be granted only after imposing cost on the party seeking adjournment.

