

Court No. - 18

Case :- WRIT - B No. - 1056 of 2023

Petitioner :- Kandhai Lal

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Revenue, Lucknow And Others

Counsel for Petitioner :- Somdutta Singh

Counsel for Respondent :- C.S.C., Adarsh Kumar Tripathi, Gyanendra Pathak, Pankaj Gupta

Hon'ble Shree Prakash Singh, J.

1. At the very outset, counsel appearing for the petitioner submits that he may be permitted to correct the memo of the petition during the course of the day.
2. Learned counsel appearing for the State has no objection.
3. In view of the aforesaid submission, the counsel for the petitioner is permitted to correct the same during the course of the day.
4. Heard Shri Somdutta Singh, learned counsel for petitioner, Standing Counsel for State and perused the material placed on record.
5. The instant petition has been filed with a prayer to quash the order dated 17.10.2023 passed by opposite party no.2, Member, Board of Revenue, U.P., Allahabad in Case No. REV/4/2006-2007/ Shrivasti, Computerized Case No.AL2006086299228 (Kashiram Vs. Bechu) under Section 229-B of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950.
6. Learned counsel for the petitioner submits that against the order of Additional Sub-Divisional Magistrate, Nanpara, District- Bahraich dated 22.01.2001, an appeal was preferred before the Commissioner vide Appeal No.179/65 under Section

331 (3) of U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred as "Act, 1950") which was decided vide order dated 28.09.2006 in favour of the petitioner. Against the same a revision was preferred by the respondent nos.5 to 7 which was decided by the Board of Revenue vide order dated 17.10.2023.

7. Contention of learned counsel for the petitioner is that the respondents have chosen the wrong forum by way of challenging the order in revision, before the Board of Revenue as the same is against the provisions of law. He added that against the order passed under Section 331 (3) of the Act, 1950, the statutory efficacious remedy is second appeal which is provided under Section 331 (4) of the Act, 1950 itself. He added that prima facie the aforesaid order passed by the Board of Revenue is not maintainable on the ground of the maintainability itself. He submits that since the order is passed by Board of Revenue in the Revision Petition against the provisions prescribed under the Act, 1950, therefore, the same is unsustainable.

8. The learned Standing Counsel appearing for the State did not rebut the aforesaid fact.

9. Considering the submission of learned counsel for parties, it transpires that against the order passed by the appellate court under Section 331 (3) of the Act, 1950, the revision was preferred by the private respondents and the same was also decided on 17.10.2023 whereas it is fact remains that against the order passed by the appellate court, under Section 331 (3) of the Act, 1950, the statutory remedy is an appeal and therefore the order passed by the Board of Revenue entertaining a revision against the order passed under Section 331 (3) of the Act, 1950 is ab initio unlawful. Resultantly, the order dated

17.10.2023 is hereby set aside and the respondents are at liberty to approach appropriate forum, by way of seeking correct remedy as provided, under the Act, 1950.

10. In view of the aforesaid, the instant petition is hereby **allowed**.

11. Case is being decided at the admission stage and therefore, the notices to the private respondents are hereby dispensed with.

Order Date :- 29.11.2023

Mohd. Sharif