HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No. 825 of 2013

State of Uttarakhand through Collector ....Petitioner

Vs.

Chaudhari Lal and others …Respondents

Advocate: Mr. R.C. Arya, Standing Counsel, for the State of Uttarakhand/petitioner
Mr. Sudhir Kumar, Advocate for the respondents

Hon'ble Sharad Kumar Sharma, J.
(Via Video Conferencing)

The Miscellaneous Application No. 12379/2020 would stand allowed. Rejoinder affidavit is taken on record.

2. Heard learned counsel for the parties.

3. The precise argument of the learned counsel for the petitioner is that the order, which has been passed by the Assistant Record Officer on 12.07.2002 in Case No. 453/186 of 2001-02, while exercising its powers under Section 54 of the Land Revenue Act, is beyond his competence because the direction given therein in the operative portion of the order for directing to delete the name of the persons recorded in the revenue records in relation to the land lying in khata No. 308, khasra No. 439, having an area of 1.33 hectares, couldn't have been passed by the Assistant Record Officer, while exercising its powers under Section 54 of the Land Revenue Act and hence the order happens to be beyond his competence, because he does not have any authority vested in him, to direct to record the name of the persons in relation to the land, which is otherwise recorded as shreni 4 land in the revenue records.

4. But, however, the fact which is revealed from records, I that as against the order passed by the Assistant Record Officer, the private respondent herein had preferred an Appeal being Appeal No. 52/06/2000-01, Chaudhary Lal Vs. Arun Kumar and others, under Section 210 of the Land Revenue Act, 1901, in which the State was one of the opposite parties. In fact, if the order of the Assistant Record Officer is taken into consideration, the present petitioners did participate in the proceedings before the Assistant Record Officer, who has passed the following orders on 12.07.2002, which reads as follows:-

> ''आदेश
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> अतः आदेश किया जाता है कि खाता संख्या 308 फसली सन 1399 से 1404 फ0 ग्राम खानपुर पूर्व की गाटा संख्या 456/3 रकबा 2.321 हे. के सम्बन्ध में पूर्व पारित आदेश दिनांक 6.3.97 की पुष्टि की जाती है। राज्य सरकार चाहे तो बेदखली की कार्यवाही हेतु नियमित वाद सक्षम न्यायालय में ला सकती है। वाद आवश्यक कार्यवाही पत्रावली दाखिल दफतर हो।''

5. The order of Assistant Record Officer dated 12.07.2002, if it is taken into consideration in its totality, the direction to record the name of respondent No. 1, on the basis of earlier order dated 06.03.1997, was with a rider as it was with liberty open to the State to bring an appropriate proceedings if legally advised for seeking an appropriate order of eviction of the respondent in case if he is in the occupancy of the land which was recorded in shreni 4 land recorded with the State. Accordingly, the following direction was issued by the Assistant Record Officer in its judgement dated 12.07.2002, which has been already quoted above.

6. It is this order, which was challenged by the State of Uttarakhand by filing an Appeal being Appeal No. 52/142 of 2001-02 by invoking provisions contained under Section 210 of the Land Revenue Act. The Appeal thus preferred by the present petitioner was dismissed, holding thereof that in case if the State

comes to a conclusion that the possession of the private respondent over the disputed land has been in an unauthorised occupant, since it has already been left open by the Assistant Record Officer, to draw an appropriate proceeding of eviction, the direction issued with regard to recording the entries in the revenue record, has got no nexus with regard to the stand taken by the petitioner, where liberty was granted and reserved to them to evict the respondents in accordance with law.

7. The said judgement on a challenge being given in a Revision under Section 219 of the Land Revenue Act, being Revision No. 132 of 2002-03, has been affirmed and the Revision preferred by the petitioner has been dismissed by the impugned judgement dated 31.05.2011.

8. It is these concurrent judgements, which have been rendered in the proceedings under Section 54 of the Lad Revenue Act, which has been put to challenge by the petitioner/State in the present writ petition on the precise ground, which has already been referred hereinabove that as to whether the Assistant Record Officer, was competent enough under law, to pass an order directing recording the name of the occupant respondent over a land which is falling under shreni 4.

9. This Court is of the view that if the simplicitor language as used by the legislature under Section 54 of the Land Revenue Act is taken into consideration, in fact, the provisions contained under Section 54 of the Act, which contemplates is limited for revising the map and the records under the Chapter under which the said Section falls i.e. Chapter IV, it has made the Record Officer, as to be the competent revenue authority to carry out the survey and map corrections, field partals and thereafter to

make the necessary verifications of the current annual register in accordance with procedures provided under the Act. Section 54 in itself does not contained a specific bar, as it has been argued by the learned counsel for the petitioner, that the Assistant Record Officer, has exceeded in the exercise of its jurisdiction, by directing to record the entry with regard to the status of the land and the occupancy of the private respondent over the land in question.

10. The impact of Section 54 of the Land Revenue Act, where by the impugned judgement the liberty was granted to the petitioner to draw an appropriate proceedings for eviction, in case if the private respondents are in an unauthorised occupancy of land lying shreni 4, it meant that it was not determining the rights of private respondent to its finality, but rather it was still the scope of eviction was left open to the petitioner, but which could be resorted to with due process of law.

11. This entire controversy has also to be visualize in view of the provisions contained under Section 40A of the Act, which provides that if any person is aggrieved by the order passed under Section 54, which are the summary proceedings, the determination of the aspect of directing to record the entry in the revenue records of the private respondent in shreni 4, showing his occupancy rights will fall to be a determination which has been still made as a subject matter to be considered by drawing a regular proceedings under Section 40A of the Land Revenue Act.

12. In such an eventuality, this Court, while dismissing this writ petition, holding to be not tenable, since arising out of the summary proceedings, it is still left open for the petitioner:-

(i) To proceed in accordance with the directions issued by the Courts under Section 54 of the Land Revenue Act, where the liberty has already been granted to them to resort to the proceedings for eviction in accordance with law.

(ii) Or in an alternative, it has also been left open for the petitioner that in case if he has got any grievance as regards to the competence of the Assistant Record Officer, to direct to record the name of the petitioner in the revenue records in the light of the provisions contained under Section 54 of the Land Revenue Act, their remedy would still be open to be resorted to in accordance with Section 40A of the Land Revenue Act of 1901.

13. In view of the aforesaid two liberties already granted and reserved for the petitioner, and the statutorily since it is already provided to the petitioner under the provisions of the Land Revenue Act, I don’t find that this Court should interfere in the exercise of its supervisory jurisdiction under Article 227 of the Constitution of India in a summary proceedings where the direction to record entries in the revenue record is only of a fiscal nature and it does not lead to an inference that the person in whose favour the entries have been directed to be made, a declaration of right or title has been made of his title over the property in question.

14. In view of the aforesaid and subject to the liberties as referred above, the writ petition lacks merit and the same is hereby accordingly dismissed.

(Sharad Kumar Sharma, J.)
15.12.2020

Mahinder/