

SUPREME COURT OF INDIA

Seva Lal

Vs.

Sri Kant & Ors.

S.L.P(Civil)No.1354/2010

(R.M.Lodha and Anil R.Dav,JJ.)

03.09.2012

JUDGMENT

R.M. Lodha,J.

1. Leave granted.

2. On May 4, 1992 Naib Tehsildar, Bithoor, Kanpur Nagar, allowed the application for mutation made by the appellant. Aggrieved by the order of the Naib Tehsildar, the present respondents preferred appeal under Section 210 of Uttar Pradesh Land Revenue Act, 1901 (for short, 'Act') before the Sub Divisional Officer, Kanpur. The Sub Divisional Officer by his order dated May 4, 1993 remanded the matter to the Naib Tehsildar for fresh consideration after giving opportunity to the parties. The appellant felt aggrieved by the order dated May 4, 1993 passed by the Sub Divisional Officer, Kanpur and preferred revision before the Additional Commissioner, Kanpur Division, under Section 218 of the Act. The Additional Commissioner dismissed the appellant's revision.

3. Not satisfied with the order of the Additional Commissioner, Kanpur Division, the appellant preferred further revision under Section 219 of the Act before the Board of Revenue. The Board of Revenue vide order dated 24.8.2009/1.9.2009 allowed the revision filed by the appellant, set aside the orders of the Additional Commissioner and the Sub Divisional Officer and restored the order of the Naib Tehsildar passed on May 4, 1992.

4. The present respondents challenged the order of the Board of Revenue in a Writ Petition before the Allahabad High Court. The Single Judge of the High Court has held that second revision preferred by the appellant under Section 219 of the Act was not maintainable and, accordingly, set aside the order of the Board of Revenue and directed the parties to appear before the Naib Tehsildar.

5. The appellant preferred the first revision before the Additional Commissioner, Kanpur Division, against the order dated May 4, 1993 passed by the Sub Divisional Officer, Kanpur under Section 218 of the Act. Section 218 read as under :-

"Section 218. Reference to the Board. The Commissioner, the Additional Commissioner, the Collector, the Record Officer or the Settlement Officer may call for and examine the record of any case decided or proceedings held by any officer subordinate to him for the purpose of satisfying himself as to the legality or propriety of the order passed and as to the regularity of proceedings, and, if he is of opinion that the proceeding taken or order passed by such subordinate officer should be varied, cancelled or reversed, he shall refer the case with his opinion thereon for the orders of the Board and the Board shall thereupon pass such orders as it thinks fit."

6. As noted above, the Additional Commissioner, Kanpur Division, dismissed the appellant revision preferred under Section 218 of the Act. What Section 218 provides is that the revisional authority mentioned therein if forms an opinion that the order passed by the subordinate officer needs to be varied, cancelled or reversed then it has to refer the case with its opinion to the Board of Revenue. There was no occasion for the Additional Commissioner to refer the matter to the Board of Revenue as the appellant's revision was dismissed by him. On dismissal of first revision by the Additional Commissioner, the appellant invoked the power of revision of the Board under Section 219 of the Act which in 1994 read as under :-

"Section 219. Revision before the Board.- The Board may call for the record of any case decided by any subordinate court, and if the subordinate court appears-

(a) To have exercised a jurisdiction not vested in it in law; or

(b) To have failed to exercise a jurisdiction so vested; or

(c) To have acted in the exercise of jurisdiction illegally or with material irregularity, the Board may pass such order as it thinks fit."

7. There was no provision in Section 219 that was existing prior to the amendment in 1997 that if an application has been moved by any person either to the Board or Commissioner or Additional Commissioner or the Collector or the Record Officer or the Settlement Officer, no further application by the same person shall be entertained by any of them. Sub-section (2) of Section 219 to the above effect came to be enacted for the first time vide U.P. Land Laws (Amendment) Act, 1997. The amended provision of 1997 has no application to the pending revision applications before the Board of Revenue already preferred under the then existing Section 219 of the Act. In the present case, the appellant has preferred revision under Section

219 before the Board of Revenue against the order of the Additional Commissioner in 1994. That revision is maintainable in law under unamended Section 219 of the Act.

8. The view of the High Court is thus clearly wrong that the revision application preferred by the appellant before the Board of Revenue under Section 219 of the Act was not maintainable.

9. Consequently, the Appeal is allowed, the impugned order dated November 9, 2009 is set aside and Writ Petition No. 59678 of 2009 titled "Srikant and Ors. Vs. Board of Revenue, U.P., Lucknow and Ors." is restored to the file of the Allahabad High Court for hearing and consideration on merits in accordance with law. No costs.