ishu Vs. State of U.P. and ors.

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SooperKanoon Citation : sooperkanoon.com/449339

Court : Allahabad

Decided On : Jan-08-2003

Reported in : 2003(1)AWC774

Judge : S.N. Srivastava, J.

Acts : Constitution of India - Article 226; Uttar Pradesh Land Revenue Act, 1901 - Sections 33, 34, 35, 38, 40, 40A, 41 and 54

Appeal No. : C.M.W.P. No. 194 of 2003

Appellant : ishu

Respondent : State of U.P. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : H.P. Mishra, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

S.N. Srivastava, J.

1. This petition arises out of the proceedings under Section 33/39 of the U. P. Land Revenue Act. It would transpire from the record that a minor dispute relating

to correction/mutation in the revenue record, escalated in proceedings which travelled upto the stage of Commissioner and resulted in passing of the orders impugned in this petition including the orders passed by appellate as well as revisional authorities. The main plank of the grievance of the petitioner is that the authorities have not appraised the evidence and consequently merits of the case in its proper perspective.

2. I have heard learned counsel for the petitioner and also the learned counsel representing the opposite parties. Since elaborate arguments have been canvassed at the very threshold, I feel, that the petition should be decided in limine.

3. The law is well-settled that orders passed by the revenue authorities in proceedings under Sections 33, 34. 35 and 39 of the Land Revenue Act wear the badge of an order stemming from summary proceedings and by this reckoning, the petition impugning orders passed in proceedings under Sections 33, 34, 35 and 39 of the Land Revenue Act is not maintainable. The view I am taking receives reinforcement from the ratio flowing from decisions in Jaipal v. Board of Revenue and others, AIR 1957 All 205 ; Lekh Raj and Anr. v. Board of Revenue and Ors. 1981 RD 18 ; Bahori Lal and Ors. v. Board of Revenue and Ors., 1984 RD 374 ; Brahma Deo and Ors. v. Board of Revenue and Anr., 1986 RD 302 and Ram Narain and Ors. v. D.D.C. and Ors., 1990 RD 20.

4. Section 40A of the U. P. Land Revenue Act may also be referred to bolster up the aforestated view. For convenience sake Section 40A is abstracted below :

'Saving as to title suits.--No order passed under Section 33, Section 35, Section 39, Section 40, Section 41 or Section 54 shall bar any suit in a competent court for relief on the basis of a right in a holding.'

5. The quintessence of the decisions cited above and the provisions of Section 40A boils down for the view that orders emanating from proceedings having complexion of summary proceedings and arising out of Sections 33, 34, 39, 40, 41 and 54 of the Act shall not bar any suit in a competent court for the adjudication of a right of a person.

6. In the above conspectus, petition is dismissed on grounds of alternative remedy of suit.

7. Before parting, it may be observed by way of clarification that petitioner would be at liberty to institute a suit in a court of competent jurisdiction (Civil or Revenue) for obviation of his grievances and for establishing his rights and title, if any. It needs hardly be said that in case any question of limitation comes into play, petitioner shall be entitled to claim benefit of Section 14 of the Indian Limitation Act for the period the impugned proceedings lingered for decision in the forum other than the court of competent jurisdiction (civil or revenue).