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Pardeshi and ors. Vs. Additional Commissioner (Judicial/First) and ors.

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Court : Allahabad

Decided On : Feb-25-2004

Reported in : 2004(2)AWC1537

Judge : Ashok Bhushan, J.

Acts : [Constitution of India](#) - Article 226; [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) - Sections 198, 198(4) and 333; Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 2002; Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 1997

Appeal No. : C.M.W.P. No. 6378 of 2004

Appellant : Pardeshi and ors.

Respondent : Additional Commissioner (Judicial/First) and ors.

Advocate for Def. : Triveni Shanker, Adv. and ;Ajay Shankar, S.C.

Advocate for Pet/Ap. : A.K. Srivastava, Adv.

Disposition : Petition dismissed

Judgement :

Ashok Bhushan, J.

1. Heard counsel for the petitioners and the counsel appearing for the respondents.

2. A preliminary objection has been raised by Shri Triveni Shanker appearing for the respondents that there is a statutory alternate remedy of filing revision under Section 333 of U. P. Zamindari Abolition and Land Reforms Act against the impugned order dated 12.9.2003 passed by Additional Commissioner, Varanasi Division, Varanasi, in the revision which was filed by the respondents, hence the writ petition cannot be entertained.

3. The brief facts necessary for deciding the preliminary objection raised by the respondents are : a proceeding under Section 198 (4) of U. P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as Act) were initiated on 18.7.1.995 by the contesting respondents. Order was passed by the Chief Revenue Officer dated 14.8.2001 rejecting the application. A revision was filed by the contesting respondents against the said order before the Additional Commissioner (Kedar Nath v. Pardeshi and Ors.). The Additional Commissioner vide his order dated 12.9.2003 allowed the revision and set aside the order of Chief Revenue Officer dated 14.8.2001. The revisional court remitted the file to the trial court. Against the order dated 12.9.2003 passed by Additional Commissioner this writ petition has been filed.

4. The submission of the counsel for the respondents is that the revision which has been allowed by the Additional Commissioner by the revisional court was filed by the respondents the petitioner is free to invoke the revisional jurisdiction of the Board of Revenue. The counsel submitted that prohibition of invoking the revisional jurisdiction brought in the statute by amendment of U. P. Act No. 20 of 1997 is on the person who has moved a revision either before the Board or to the Commissioner. The submission is that since the revision application was filed by the respondents, Section 333 (2) of the Act is not attracted and at the instance of the petitioner the revision is maintainable. Reliance has been placed by the counsel for the respondents on the judgment of this Court in Dinesh and Ors. v. Board of Revenue and Ors., 2002 (2) AWC 1144. This Court while considering Section 332 (2) held that same person cannot file two revisions. It was held in

paragraph 15 :

'15. There is one more reason due to which the order of Board of Revenue cannot be sustained. Section 333 of U. P. Zamindari Abolition and Land Reforms Act was amended by U. P. Act No. 20 of 1997 with effect from 14.10.1997, the amended provision of Section 333 has been quoted above in this judgment. By the said amendment, Section 333 (2) has been added with effect from 14.10.1997 that if any application under the section has been moved by any person either to the Board or to the Commissioner or to the Additional Commissioner, no further application by the same person shall be entertained by either of them. This clearly meant that same person cannot file two revisions.'

5. The amendment made in Section 198 by U. P. Act No. 11 of 2002 with effect from 20.7.2002 are not retrospective and the proceeding initiated under Section 198 (4) of the U. P. Zamindari Abolition and Land Reforms Act prior to amendment has to be taken to its logical end. The revisional jurisdiction was invoked by the respondents under Section 333 by filing an application before Commissioner and still the said jurisdiction is available to petitioner under Section 333. Section 1 of U. P. Act No. 11 of 2002 specifically provides that Section 8 which contains amendment in Section 198 of the Act shall come into force on July 20, 2002. Section 11 which deals with repeal and savings of the U. P. Act No. 11 of 2002 is also relevant to note. Section 11 is quoted below :

'11. Repeal and savings.--(1) The Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Ordinance, 2002 (U. P. Ordinance No. 4 of 2002), the Uttar Pradesh Zamindari Abolition and Land Reforms (Second Amendment) Ordinance, 2002 (U. P. Ordinance No. 15 of 2002) and the Uttar Pradesh Zamindari Abolition and Land Reforms (Third Amendment) Ordinance, 2002 (U. P. Ordinance No. 16 of 2002) are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the provisions of the principal Act as amended by the Ordinances referred to in Sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of the Principal Act as amended by this Act as if the provisions of this Act were in force at all material times.'

6. Amendment of Section 11 (2) makes it clear that the said provision is with regard to action taken under the provisions of Principal Act as amended by (U. P. Ordinance No. 16 of 2002). In the present case no action was taken under Ordinance No. 16 of 2002 due to which the said Sub-section (2) of Section 11 has no application.

7. From foregoing discussions, it is clear that against the order impugned in the writ petition, petitioners have statutory remedy of filing revision under Section 333 before the Board of Revenue. In view of the availability of the statutory remedy, the writ petition cannot be entertained. It is open to the petitioners to avail statutory remedy before the Board of Revenue in accordance with Section 333. The certified copy of the impugned judgment may be returned to the counsel for the petitioner.

8. With the above observations, the writ petition is dismissed on the ground of alternative remedy.

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