

[2012] 9 S.C.R. 1

SEVA LAL

v.

SRI KANT & ORS.

(Civil Appeal No. 6247 of 2012)

SEPTEMBER 3, 2012

[R.M. LODHA AND ANIL R. DAVE, JJ.]

UTTAR PRADESH LAND REVENUE ACT, 1901:

s. 219 - Revision before Board of Revenue in 1994 after dismissal of revision u/s 218, held by High Court as not maintainable - Held: There was no provision in s.219 prior to amendment in 1997, to bar the revision filed by appellant u/s 219 - The amended provision of 1997 has no application to the pending revision application before Board of Revenue under the then existing s.219 - Order of High Court set aside and writ petition of appellant before it restored for hearing on merits.

The respondents filed an appeal u/s 210 of the Uttar Pradesh Land Revenue Act, 1901 before the Sub-Divisional Officer, challenging the mutation ordered by the Naib Tehsildar in favour of the appellant. The Sub-Divisional Officer by order dated 4.5.1993 remanded the matter to the Naib Tehsildar. The appellant's revision u/s 218 having been dismissed by the Additional Commissioner, he filed a further revision u/s 219 before the Board of Revenue, which allowed the same. However, in the writ petition filed by the respondents, the High Court held the second revision preferred by the appellant u/s 219 as not maintainable.

Allowing the appeal, the Court

HELD: 1.1 Section 218 of the Uttar Pradesh Land Revenue Act, 1901 provides that the revisional authority

A 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. In the instant case,
there was no occasion for the Additional Commissioner
B to refer the matter to the Board of Revenue as the
appellant's revision was dismissed by him. [para 6] [4-E-
F]

1.2 There was no provision in s. 219 that was existing
prior to the amendment in 1997 that if an application has
C 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. The amended provision of
D 1997 has no application to the pending revision
applications before the Board of Revenue already
preferred under the then existing s. 219 of the Act. In the
instant case, the appellant has preferred revision u/s 219
before the Board of Revenue against the order of the
E Additional Commissioner in 1994. That revision is
maintainable in law under unamended s. 219 of the Act.
Consequently, the impugned order is set aside and writ
petition of the appellant is restored to the file of the High
Court for hearing and consideration on merits in
F accordance with law. [para 7 and 9] [5-B-E, F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No.
6247 of 2012.

G From the Judgment and Order dated 09.11.2009 of the
High Court of Judicature at Allahabad in Writ Petition No.
59678 of 2009.

R.D. Upadhyay, Braham Singh, Vijay Kumar Pandita, J.P.
Tripathi, Asha Upadhyay for the Appellant.

H

Rachna Gupta, Dr. Indra Pratap Singh for the Respondents. A

The Judgment of the Court was delivered by

R.M. Lodha, J. 1. Leave granted. B

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. C D

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. E F

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. G

5. The appellant preferred the first revision before the H

A 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 :-

B “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
 C 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
 D 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
 E 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
 F 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 :-

G “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

H

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

(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. B
C
D

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. E

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. F

R.P.

Appeal allowed. G