



----Respondents

For Petitioner(s) : Mr. Gajendra Singh Rathore
For Respondent(s) : Mr. Gulab Chand Goyal
Mr. Suresh Chand Goyal

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Reserved on 20/11/2023

Pronounced on 11/12/2023

ORDER

REPORTABLE

1. The issue involved in these writ petitions is "when no remedy of filing appeal is prescribed in any statute, whether the aggrieved person can be left remediless?"

Factual Matrix:-

2. In the present matter, allotment of same land in question was made in favour of both the parties by the authorities in different years. Both the parties made their respective claims over the land in question and finally, after holding an enquiry, the allotment made in favour of the respondents was treated as valid.



Now, the question which remains for consideration before this Court is "whether the order passed by the Collector is final or the petitioner would have any remedy of filing appeal or not". It is in this background, the issue involved in these petitions is required to be considered.

3. Since common question of law and facts are involved in both the petitions, hence with the consent of the counsel for the parties, both the matters are taken up for final disposal and the same are being decided by this common order.

4. For the sake of convenience, the facts mentioned in S.B. Civil Writ Petition No. 6941/2023 are taken into consideration.

5. The instant petition has been filed by the petitioner against the impugned order dated 31.01.2023 passed by the Divisional Commissioner, Bharatpur by which the appeal filed by the petitioner against the judgment dated 16.10.2017, passed by the District Collector, Bharatpur, has been dismissed on the ground of jurisdiction.

Rival Submissions:-

6. Counsel for the petitioner submits that with regard to the property in question, two different 'pattas' were issued in favour of the respondents as well as the petitioner in the years 1979 and 1981 respectively. Counsel submits that while contesting their right to claim over the property in question, the matter travelled from Revenue Court to this Court and finally SBCWP No. 2928/1991 was submitted by the father of the respondent Nos. 1 to 5, which was decided by the co-ordinate Single Bench of this Court vide order dated 24.10.1996 and the Collector was directed to examine the allotment order issued in favour of the parties by



holding an enquiry. Counsel submits that the said order was challenged by both the parties before the Division Bench of this Court by way of filing two different special appeals bearing Nos. 1383/1996 and 113/1997. Counsel submits that both appeals were decided by a common order by the Division Bench vide order dated 11.02.2009 and the District Collector concerned was directed to complete the enquiry within a period of three months from the date of receipt of certified copy of the order dated 11.02.2009 and further liberty was granted to the parties to seek appropriate remedy before the appropriate forum, in accordance with law. Counsel submits that thereafter, enquiry was conducted by the District Collector, Bharatpur and finally the judgment was passed on 16.10.2017 and patta issued on 15.05.1979 in favour of the respondents was restored and the patta issued in their favour was treated to be a valid Patta.

6.1. Counsel submits that feeling aggrieved and dissatisfied by the order dated 16.10.2017 passed by the District Collector, Bharatpur, the petitioner submitted an appeal under Section 75 of the Rajasthan Land Revenue Act, 1955 before the Revenue Appellate Authority (for short, 'the RAA'). Counsel submits that during pendency of the said appeal before the RAA, the State Government issued a notification dated 17.10.2019 by which the said appeal was transferred to the Divisional Commissioner, Bharatpur. Counsel submits that instead of deciding the appeal on its merits, the Divisional Commissioner, Bharatpur vide impugned order dated 31.01.2023 rejected the appeal on the ground of maintainability. Counsel submits that since the orders are passed by the authorities, while exercising the powers contained under



the Rajasthan Land Revenue (Permanent Allotment of Evacuee Agriculture Lands) Rules, 1963 (for short, 'the Rules of 1963'), hence, the only remedy available with the petitioner was to file an appeal before the RAA. Counsel submits that the controversy involved in this petition has already been set at rest by this Court in the case of **Chhida Vs. Board of Revenue**, reported in **1986 RRD 523**. Counsel further submits that as per the judgment passed in the case of **Chhida** (supra), the appeal lies before the RAA. Counsel submits that under these circumstances, interference of this Court is warranted.

7. Per contra, counsel for the respondents opposed the arguments, raised by counsel for the petitioner and submitted that the judgment dated 16.10.2017 passed by the District Collector, Bharatpur is final and the same is not appealable before any appropriate forum of law. Counsel submits that the matter was decided by the District Collector, Bharatpur, pursuant to the direction issued by the Division Bench of this Court in favour of the respective parties, therefore, the only remedy which was available to the petitioner is to approach the Division Bench of this Court. He submits that the petitioner has not done so, hence the impugned order has attained finality. Counsel submits that the Divisional Commissioner has committed no error in rejecting the appeal on the ground of maintainability, hence, interference of this Court is not warranted. Counsel further submitted that it is settled proposition of law that if a statute is silent with regard to the remedy of filing the appeal, then the party concerned has no right to question the validity of the order passed against him. In support of their contentions, counsel for the respondents have



placed reliance upon the judgments passed by the Hon'ble Apex Court in the case of **Smt. Ganga Bai Vs. Vijay Kumar and Ors.** reported in **AIR 1974 SC 1126** and in the case of **Ishar Das and Anr. Vs. State of Haryana and Ors.** reported in **AIR 1975 P&H 29.**

8. Heard and considered the rival submissions made at Bar and perused the material available on record.

Analysis and Reasonings:-

9. Counsel for both the parties are in agreement that the impugned judgment dated 16.10.2017 has been passed by the District Collector, Bharatpur in pursuance of the order dated 11.02.2009 passed by the Division Bench of this Court in special appeals submitted by them. The direction issued by the Division Bench is reproduced as under:-

“ Since the controversy is pending for last 30 years, the District Collector concerned is now directed to complete the enquiry within three months from the date of receipt of the certified copy of this order as per directions issued by the learned Single Judge and pass necessary orders accordingly. It goes without saying that if still aggrieved by any orders passed by the Assistant collector the affected party is always free to seek proper remedy before appropriate forum in accordance with law.”

10. Both the counsel for the parties are in agreement that after passing of the above judgment dated 11.02.2009, the District Collector, Bharatpur held an enquiry, as per the provisions contained under the Rules of 1963 and the 'patta' dated



15.05.1979 issued in favour of the respondents was restored in their favour vide judgment dated 16.10.2017.

11. It is worthy to note here that while deciding the special appeals, even the Division Bench of this Court granted liberty to the aggrieved party to seek the remedy before the appropriate forum, in accordance with law.

12. Feeling aggrieved by the Collector's judgment dated 16.10.2017, the petitioner submitted an appeal under Section 75 of the Rajasthan Tenancy Act, 1955 before the Court of RAA. During pendency of the said appeal, the Department of Revenue (Group VI), Government of Rajasthan issued a notification on 17.10.2019 and the said appeal was transferred to the Court of Divisional Commissioner, Jaipur, who rejected the same vide impugned order dated 31.01.2023 by treating the appeal as not maintainable.

13. By passing the impugned order dated 31.01.2023, the Divisional Commissioner has left the petitioner remediless. It is well settled proposition of law that if there is no specific procedure prescribed under the Act or Rules or Rules of Business, in that case merely because the procedure does not find place in the statute or Rules of business, a party cannot be rendered remediless. What is paramount is to ensure that, ends of justice is served, if an opportunity is provided to the aggrieved party to approach the higher authority for examining the correctness of the order passed against him.

14. The Roman jurisprudential maxim "**ubi jus ibi remedium**" means that where law provides a right, there has to be a remedy. In other words, "**where there is a right, there is a remedy**".



Referring to the rule of "ubi jus ibi remedium", the Hon'ble Apex Court has observed in the case of **M/s. Shiv Shanker Dal Mills and Others Vs. State of Harayana** reported in **1980(2) SCC 437** that if legal injury is caused to any person, then aggrieved person has at least one remedy of appeal to challenge the correctness of the order impugned passed against him.

15. **Ubi Jus Ibi Remedium**, i.e., there is no wrong without a remedy. This maxim should be applied to evolve a principle to protect the fundamental rights of a citizen who may likely to suffer because of any of litigation. According to the maxim, whenever the common law gives a right or prohibits an injury, it also gives a remedy. In other words, whenever citizen possess certain constitutional guarantee or statutory right, that must be protected by the Courts.

16. The other maxim "**Lex Semper Dabit Remedium**", means, it is a vain thing to imagine a right without a remedy, for want of right and for want of remedy are reciprocal. In other words, if a person has a right, he must have means to vindicate and maintain it, and a remedy if he is injured in the exercise and enjoyment of it.

17. In the case of **Union of India Vs. S.B. Vohra** reported in **(2004) 2 SCC 150**, the Supreme Court had the occasion to examine the broad principles of judicial review wherein it has been observed that judicial review is a highly complex and developing subject and it is considered to be the basic feature of the Constitution. The Court in exercise of its power of judicial review would zealously guard the human rights, fundamental rights and the citizen's right of life and liberty.



18. The Division Bench of Himachal Pradesh High Court in the case of **Ravinder Chatra Vs. State of Himachal Pradesh and Ors.**, reported in **2018 SCC Online HP 1450** has dealt with the issue involved in that petition that right to appeal is a creation of statute but in absence of such provision, the aggrieved person cannot be left remediless and it has been held in para 5 as under:-

"5. There is another reason which prompts us to enable the petitioner to file the appeal. The Himachal Pradesh Public Moneys (Recovery of Dues) Act, 2000 does not provide any remedy of appeal etc. Though, the right to appeal is a creation of Statute, but, it appears to us that the petitioner cannot be left remediless on the question of determination of the actual loan amount payable by the borrower or the petitioner. We thus, direct Registrar Cooperative Societies to entertain the arbitration application/petition, as may be preferred by the petitioner under Sections 72 (d) & (e) and 73 of the 1968 Act, and adjudicated the same in accordance with law and principles of natural justice within a period of four months from the date of filing of such petition. The petitioner shall be at liberty to seek interim relief before the authority referred to above.

19. Merely because the Rules of 1963 did not provide any remedy to the aggrieved person, he cannot be left remediless. If any person is feeling himself aggrieved by any adverse order passed against him, then certainly he has every right to challenge the same before the appropriate forum of law. When a legal injury is sustained by any person, certainly he/she has remedy to



cure that injury. Even in the case of **Sunil Vasudeva and Ors. Vs. Sundar Gupta and ors.**, reported in **2019 (17) SCC 385**, the Hon'ble Apex Court has held that no party could be left remediless and whatever the grievance, the party has raised before the Court of law, has to be examined on its own merits.

20. Now the question which remains for consideration before this Court is that "Whether the appeal, filed by the petitioner against the order of District Collector, before the Revenue Appellate Authority, is maintainable or not?"

21. The similar issue came up before this Court in the case of **Chhida** (Supra) and the same was decided with the following observations in para 3 as under:-

"3. It will therefore, be clear that such of the lands which were evacuee property under the Evacuee Property Act, 1950 (Central Act 1950) and which had been allotted as evacuee property to non-claimants as a measure of rehabilitation for cultivation and which lands were acquired by the Central Government by notification No. 5113/5(14) 5511 dated 6th April, 1955 stood transferred to the State Government on payment of Rs. 1 crore. To confer rights on the non-claimants to whom the land have been allotted, the rules were framed under the powers conferred in the State Government by Section 251 of the Act read with Section 101 and 102 of the Act and the proviso to Section 34 of the Rajasthan Tenancy Act, 1955. Therefore, if the lands in dispute were such which were covered under the rules, then the forum of appeal/appeals will be as provided in the Act. As already stated earlier none of the two courts below, either the learned Revenue Appellate Authority or the learned Board of Revenue



have addressed themselves to this aspect of the matter. Without addressing themselves to this aspect of the matter, the question as to whether an appeal under Section 76 of the Act lay before the Revenue Appellate Authority could not be decided. In my opinion, there is no doubt that if the land in dispute is of the nature as dealt with in the rules and has to be allotted under the aforesaid rules, the forum of appeals shall be as provided under the provisions of the Act. The appeal against the order of the Collector shall lie to the Revenue Appellate Authority and against the order of the learned Revenue Appellate Authority passed in Second Appeal a revision will lie to the Board of Revenue under the provisions of the land Revenue Act, 1956. There is an error apparent on the face of the order of the Board of Revenue, in as much as, without going to the root of the case, as to whether the land in dispute was such which was covered under the rules, it held that an appeal did not lie under section 76 of the Act before the Revenue Appellate Authority.”

22. Hence it is clear from the law laid down by this Court in the case of **Chhida** (supra) that the order passed by the District Collector under the Rules of 1963 is appealable before the RAA. Since, the controversy involved in this petition has already been set at rest, in the case of **Chhida** (supra), the same is no more *res integra*, this Court finds no other valid reason to take a different view.

23. Since the RAA has already transferred the matter to the Divisional Commissioner, in the light of the Notification dated 17.10.2019, issued by the Government of Rajasthan, hence, the Divisional Commissioner is competent to hear and decide the appeal.



**Conclusion:-**

24. Consequently, both the petitions stand allowed and the impugned order dated 31.01.2023 is quashed and set aside and the matters are sent back to the Divisional Commissioner with direction to re-register and restore the appeals to their original numbers and thereafter, decide the same afresh, after affording due opportunity of hearing to both the sides.

25. Both the parties are directed to appear before the Divisional Commissioner on 04.01.2024.

26. Since the lis regarding allotment of land is pending between the parties for last more than four and half decades, thus, looking to the long life span of the present litigation i.e. 45 years, the Divisional Commissioner is directed to decide the appeals expeditiously, preferably within a period of three months from the date of appearance of the parties.

27. Stay application and all application(s) (pending, if any) also stand disposed of.

28. The parties are left free to bear their own costs.

(ANOOP KUMAR DHAND),J

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