

Jagtar Singh And Others ... vs State Of Uttarakhand And Others on 22 February, 2022

Bench: S.K.Mishra, N.S.Dhanik

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Special Appeal No. 30 of 2022

Jagtar Singh and othersAppellants

-versus-

State of Uttarakhand and othersRespondents

Judgement
22.02.2022

Advocates appeared in the case:-

For Appellant : Mr. Hari Om Bhakuni, learned counsel
for the writ applicants.

For Respondents : Mr. K. N. Joshi, learned Deputy
Advocate General for the State.

Coram: Sri S.K.Mishra, ACJ.
Shri N.S.Dhanik, J.

Upon hearing the learned counsels, the Court made the following Order (Per, S.K.Mishra, J.)

1. Perused the report of the Stamp Reporter and Notice of the Deputy Registrar, Institution Section of the High Court. On 27.01.2022, before the Vacation Judge, the matter was listed. The Vacation Judge directed the Registry to look into the matter and submit its report about the maintainability of the Special Appeal.
2. Heard Mr. Hari Om Bhakuni, learned counsel for the petitioners-appellants and Mr. K.N. Joshi, learned Deputy Advocate General for the State.
3. The petitioners - appellants herein were aggrieved by the order dated 29.02.2000 passed by the Prescribed Authority (Rural Ceiling), Dehradun, in Ceiling Misc. Case No. 7/98-99, whereby their claim for declaring them as Bhumidhar of the land, declared surplus in the hands of the tenure holder, under the provisions of U.P. Imposition of Ceiling on Land Holdings Act, 1960, was rejected. The petitioners - appellants herein filed a writ application under Article 226 / 227 of the Constitution of India seeking a writ in the nature of Certiorari for quashing of the order dated

29.02.2000, order dated 28.09.2000 and order dated 24.06.2008 and to issue a direction in the nature of Mandamus commanding the respondent- authorities not to dispossess the petitioners in compliance of the impugned orders from the disputed property.

4. The office has reported that as per Rule 5, Chapter-

VIII of the Allahabad High Court Rules, 1952 (as applicable to Uttarakhand High Court), which is being quoted by this Court in this Special Appeal, is not maintainable against the order passed by this Court under Article 226 / 227 of the Constitution of India in respect of any judgment, order or award passed by a tribunal, Court or statutory arbitrator made or purported to have been made in the exercise or jurisdiction under any Uttarakhand Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution and secondly, of the Government or any officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge.

5. For the purpose of clarity, Rule 5, Chapter-VIII of the Allahabad High Court Rules, 1952, is being quoted below:

"An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by a Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction 66[or in the exercise of the jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award--(a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge."

6. In view of such provisions, the Stamp Reporter has reported that the Special Appeal against the order passed by the learned Single Judge in exercise of the supervisory jurisdiction exercised under Article 227 of the Constitution is not maintainable.

7. Learned counsel for the appellants has very emphatically submitted that in the case of State of Madhya Pradesh & others vs. Visan Kumar Shiv Charan Lal, in Civil Appeal No. 7134 of 2008, decided on 5th December, 2008, the Hon'ble Apex Court has held that the appeal is maintainable. Learned appellants' counsel relies upon para 25 of the aforesaid judgement: We find it appropriate to quote para 25 of the aforesaid Judgement, as below:

"25. Upon a review of decided cases and a survey of the occasions, wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers labelling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the broad general difference between the two jurisdictions. Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate, revisional or corrective jurisdiction. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more. In exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, maybe, by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well."

Thus, the Hon'ble Apex Court has held that firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate, revisional or corrective jurisdiction. Secondly, in a writ of certiorari, the record of proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then, do no more. In exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgement or order but it may also make such directions as the facts and circumstances or the case may warrant.

8. Thus, we have very carefully examined the facts of the case and found that it is not a writ petition which is registered as Writ Petition Misc. Single; it is in fact an application under Article 227 of the Constitution to invoke corrective jurisdiction. Though the petitioner-appellant has prayed for a writ of certiorari to quash an order of the Subordinate Tribunal, for complete justice. Their prayer should be to rewrite the order and declare him as Bhumidhar, which can only be done under Article 227 and not under Article 226 of the Constitution. Though, it is in the practice of Uttarakhand High Court Bar Association to file a writ petition under Article 226 and 227 of the Constitution, but this Court finds that this is not proper to treat the application as writ petition. In the first and last paragraph of the application, the learned Single Judge has treated the application to be a petition

under Article 227 of the Constitution.

9. In view of the above, we find that this appeal is not maintainable. Accordingly, the same is hereby dismissed.

10. Urgent certified copy of this order be granted on proper application.

(N.S.Dhanik, J)

(S.K.Mishra, ACJ)

KKS