



2026:AHC:58919

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - B No. - 25095 of 2012

Rajveer Singh

.....Petitioner(s)

Versus

Board of Revenue,
Uttar Pradesh, Lucknow
and others

.....Respondent(s)

Counsel for Petitioners(s) : Mr. Devendra Kumar Yadav,
Advocate

Counsel for Respondent(s) : Mr. Sharad Chandra Upadhyay,
Standing Counsel for respondents
nos. 1 to 4

Mr. Sanjay Kumar, Advocate for
respondent no. 5

RESERVED

Court No. - 47

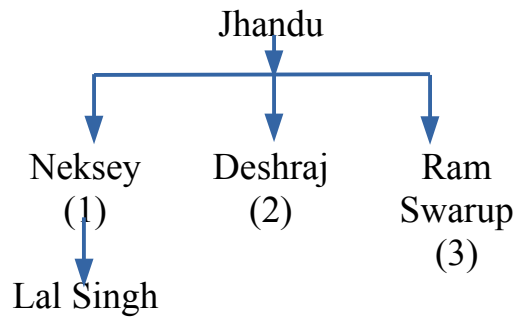
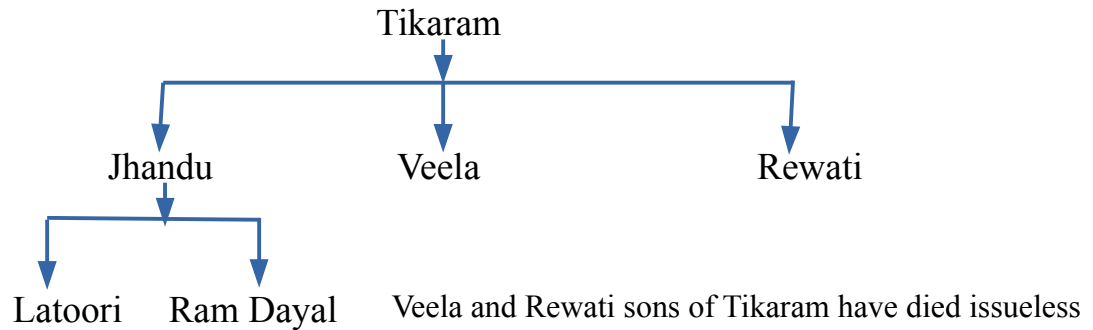
HON'BLE J.J. MUNIR, J.

This writ petition is directed against the order of the Board of Revenue, Uttar Pradesh at Lucknow in Revision No. 2462 (LR)/2005-06, rejecting the revision preferred by the petitioner and affirming an order dated 28.08.2006 passed by the Commissioner, Agra Division, Agra in Revision No. 13/2004-05 carried by the fifth respondent against an appellate order of the Sub-Divisional Officer, Tahsil Sadar, Firozabad dated 14.12.2004 passed in Appeal No. 3/2004-05 preferred by the

petitioner, allowing the said appeal and setting aside an order dated 31.05.2004 passed by the Naib Tahsildar, Uttar, Firozabad, rejecting the petitioner's restoration application made in Case No. 90T, seeking to set aside an order dated 30.09.1970 passed in the mutation case aforesaid in favour of the fifth respondent on ground that it is *ex-parte*. The facts giving rise to the present writ petition are detailed hereinbelow.

2. It is the petitioner's case that the property in dispute comprises Old Khata No. 509, now New Gata Nos. 2023/1 क, 2044/1 क, 2048/1 ख, 2454, 2489, 2490 and 2491, admeasuring a total of 1.153 hectare, which was *bhumidhari* of the petitioner's predecessors-in-title. The petitioner claims that his predecessors-in-title were in cultivatory possession of the aforesaid land, and after them, the petitioner is in continuous possession. The land is situate in Mauza Narkhi Taluka, District Firozabad. The said land shall hereinafter be called "the land in dispute". The writ petition was instituted by Rajveer Singh son of Ram Dayal, who died *pendente lite*. He was succeeded by three of his heirs, to wit, Sona Devi wife of the late Rajveer Singh, and Rahul Kumar and Kuldeep Kumar, both sons of the late Rajveer Singh. They have been substituted as petitioners nos. 1/1, 1/2 and 1/3. For the sake of convenience, they shall hereinafter be referred to as "the petitioner" in singular.

3. It is the petitioner's further case that the land in dispute was originally the tenure of one Tikaram. He had three sons, to wit, Jhandu, Veela and Revati, and a daughter, Janki. Two of the sons of Tikaram, that is to say, Veela and Revati, died issueless. The third son, Jhandu, had two sons, Laturi and Ram Dayal. The petitioner is a son of Ram Dayal. He has propounded the following pedigree :



Note – Neksey, Deshraj and Ram Swarup sons of Jhandu are the deceased Veela's sister's sons (nephew/bhanja). And Lal Singh is Veela's sister's son's son and Latoori and Ram Dayal are the deceased Veela's brother's son.

Onkar Prasad Lekhpal

4. Tikaram's daughter, Janki was married to Jhandu, apparently, a different person from Tikaram's son Jhandu, and a resident of Isauli, District Etah. Janki had three sons, to wit, Neksey, Deshraj and Ram Swarup. The fifth respondent, Lal Singh, is a son of Neksey. The petitioner asserts that he i.e. Rajveer Singh son of Ram Dayal is the one and only grandson of Jhandu, son of Tikaram in the male line, and as such, Jhandu's legal heir entitled to inherit the *bhumidhari*. It is asserted by the petitioner that there is neither a sale deed nor a will executed in favour of Lal Singh, respondent no. 5 by any *bhumidhar* of the land in dispute. Lal Singh's name was wrongly mutated in the revenue records, and he, concealing true facts, obtained an order of mutation dated 30.09.1970, which is not sustainable in law. The order dated 30.09.1970, granting mutation in favour of Lal Singh by the Naib Tahsildar, is asserted to be *ex-parte*, in the sense that it was passed without giving notice or

opportunity of hearing to the petitioner. It is castigated as an order made in violation of principles of natural justice.

5. Dwelling further on facts, the petitioner says that respondent no. 5 filed for mutation after Veela son of Tikaram died, saying that Veela was issueless and had no son or daughter or brother, entitled to inherit. He fraudulently obtained an order *ex-parte* from the Naib Tahsildar, Uttar, Firozabad dated 30.09.1970, concealing the fact that in Veela's male line, Ram Dayal's son, Rajveer Singh, was there, who was entitled to inherit. The petitioner says that he came to know about the fraud played by respondent no. 5 for the first time in the year 2003, when respondent no. 5 attempted to take possession of the land in dispute. The petitioner inquired into the matter and then moved for recall of the order dated 30.09.1970 by means of a recall application made on 25.07.2003. The application was made in Case No. 90T, where the mutation order had been passed under Section 34 of the Uttar Pradesh Land Revenue Act, 1901¹. The Naib Tahsildar, Uttar, Firozabad rejected the recall application dated 27.05.2003 made by the petitioner *vide* order dated 31.05.2004.

6. The petitioner carried an appeal to the Sub-Divisional Officer, Sadar, Firozabad, which was registered as Appeal No. 3/2004-05, under Section 210 of the LR Act. The Sub-Divisional Officer, *vide* order dated 14.12.2004, allowed the appeal and remanded the cause to the Naib Tahsildar, with a direction to decide the question of succession to the late Veela's *bhumidhari*, in the first place, under Section 171 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950², and failing an heir entitled to inherit under Section 175 ZA & LR Act.

1 'the LR Act' for short

2 'ZA & LR Act' for short

7. This order of remand dated 14.12.2004 passed by the Sub-Divisional Officer was challenged by Lal Singh, respondent no. 5, by means of Revision No. 13/2004-05 under Section 219 of the LR Act before the Commissioner, Agra Division, Agra. The Divisional Commissioner, by his order dated 28.08.2006, allowed the revision, set aside the order of remand dated 14.12.2004 passed by the Sub-Divisional Officer and restored that of the Naib Tahsildar dated 31.05.2004, rejecting the petitioner's restoration application. The order of the Divisional Commissioner was challenged by the petitioner further in revision to the Board of Revenue, Uttar Pradesh at Lucknow by means of Revision No. 2462 (LR)/2005-06. The Board of Revenue, by the order impugned dated 02.05.2012, dismissed the petitioner's revision and affirmed the Commissioner's order.

8. Aggrieved, the petitioner has instituted this writ petition.

9. A notice of motion was issued *vide* order dated 22.05.2012. After exchange of affidavits, the petition came up for admission on 17.11.2016. This Court, *vide* order dated 17.11.2016, noticing that pleadings were complete, admitted the writ petition to hearing and stayed operation of the orders dated 28.08.2016 and 02.05.2012 during the pendency of the writ petition.

10. Heard Mr. Devendra Kumar Yadav, learned Counsel for the petitioner, Mr. Sharad Chandra Upadhyay, learned Standing Counsel appearing on behalf of respondents Nos. 1 to 4, the State-respondents and Mr. Sanjay Kumar, learned Counsel appearing for respondent no. 5, the contesting respondent.

11. A perusal of the record shows that the mutation application was filed by Lal Singh, respondent no. 5 way back on 10.07.1970 with a case that he was a co-tenureholder recorded along with Veela son of Tikaram in the land in dispute. Veela had died three years ago and had no son, daughter or brother. The fifth respondent was in possession over the land in dispute as well. He, therefore, claimed the mutation on the basis of survivorship apparently, under Section 175 of the ZA & LR Act, though not said so expressly in the order of 30.09.1970, granting mutation passed by the Naib Tahsildar. The order of 30.09.1970 shows that it records satisfaction that advertisement of the application was duly made, but no objection was filed by anyone claiming a right to the land in dispute. The restoration application was filed by the petitioner, Rajveer Singh, along with Laturi son of Jhandu, his father's brother, on 18.07.2003, seeking to set aside the order dated 30.09.1970 on ground that the proceedings for mutation taken by respondent no. 5 were behind the petitioner's back and he had no knowledge of the same. The petitioner had a right to inherit Veela's *bhumidhari* upon his demise, being Veela's father's son's son's son, whereas, the other applicant, Laturi, had a right by inheritance, being Veela's father's son's son. Both these rights were claimed by the petitioner and the other co-applicant, non-petitioner Laturi, under Section 171(2)(e) ZA & LR Act, as it seems.

12. The Naib Tahsildar, who has rejected the restoration application, has recorded the fact that the case was argued before him on three points - firstly, the right to restoration, secondly, condonation of delay under Section 5 of the Limitation Act, 1963³ and lastly, if the restoration

3 'Limitation Act' for short

application was barred by Section 49 of the Uttar Pradesh Consolidation of Holdings Act, 1953⁴. The Naib Tahsildar held that mutation had been granted on 30.09.1970 in favour of the fifth respondent on the basis of succession. Thereafter, consolidation operations had been restored in Village Narkhi Taluka. The Tahsildar has remarked that the petitioner's case, that he did not have knowledge of the mutation order for 34 years, appeared to be baseless, particularly when the village was subjected to consolidation. He has remarked that consolidation operations are gazetted and CH Form 5 is distributed in the village. The Naib Tahsildar, therefore, held that the petitioner was not entitled to the benefit of Section 5 Limitation Act. He also opined that the restoration application was barred by Section 49 CH Act. It is also remarked that the authorities cited by the petitioner, that would save his case from the bar of Section 49 were in the context of declaratory suits and, therefore, of no assistance to the petitioner. In the foreshadow of the said remarks, the Naib Tahsildar rejected the restoration application.

13. In the appeal that was carried by the petitioner under Section 210 of the LR Act, the Sub-Divisional Officer remarked that the non-petitioner, Laturi, was Veela's father's son's son, whereas the petitioner was the deceased's father's son's son's son. It is also noticed by the Sub-Divisional Officer that respondent no. 5 is not a member of the deceased Veela's family, but claims right by survivorship on account of being a co-tenureholder. It is remarked that the right under Section 175 becomes available to a co-tenureholder in a situation alone where there are no heirs entitled to inherit under Section 171 ZA and LR Act. It is also said by the

4 'UP CH Act' for short

Sub-Divisional Officer that the fifth respondent, Lal Singh's father were three brothers, and he would be entitled to inherit along with Deshraj and Ram Swarup on the basis of succession. It is also said further by the Sub-Divisional Officer that these facts were suppressed by the fifth respondent from the Mutation Authority, while securing the mutation order dated 30.09.1970 in his favour. It is also remarked by the Sub-Divisional Officer that the Mutation Authority, while passing the order dated 30.09.1970, did not, at all, consider the right of inheritance to Veela's estate under Section 171 ZA & LR Act, and the mutation order was secured from the Tahsildar by the fifth respondent by playing fraud on the authority. It is then remarked that an order secured by playing fraud upon an Authority or Court cannot be saved by the bar of limitation. It was on that basis that the appeal was allowed and also the petitioner's restoration application, setting aside the order dated 31.05.2004 passed by the Naib Tahsildar. The order of mutation dated 30.09.1970 was also set aside, holding it to be one secured by fraud. The mutation matter was restored to the Naib Tahsildar's file, with the direction that rights of parties to succeed to Veela's *bhumidhari* shall first be considered in accordance with law under Section 171 ZA & LR Act, and, in the event, there is no heir found, entitled to inherit under the last mentioned provision, shall the case under Section 175 put forward by the co-sharer on the basis of survivorship be considered. Mutation orders were directed to be passed afresh in accordance with the said directions. If mutation, claimed to be wrong or erroneous, is not objected to during consolidation operations, after denotification, the right to mutation or its correction cannot be asserted.

14. The fifth respondent carried a revision to the Commissioner of the Division. The Commissioner has remarked that the order of the Naib Tahsildar rejecting the restoration application shows that the Naib Tahsildar proceeded on the basis that the claim to mutation put forward by the petitioner was barred by Section 49 UP CH Act. It is next remarked that mutation proceedings are summary in nature, which are essentially undertaken in order to safeguard the interests of the revenue, and for that purpose, correction of the record of rights. These do not, in any way, affect the title of parties. It is observed then by the Commissioner that regarding the land in dispute, the petitioner has raised a complicated question of title, for which, the remedy is by way of a regular suit. Such complicated questions of title are not meant to be decided in summary proceedings under Section 34 LR Act, and, to do so, is against the law. In proceedings under Section 34, the authority has limited jurisdiction and the Sub-Divisional Officer did not correctly exercise his jurisdiction in ordering restoration and the mutation matter to be heard on merits. The order was erroneous and not sustainable. It is with these remarks that the Commissioner allowed the revision and restored the Naib Tahsildar's order. The petitioner's revision to the Board failed, where it has been held that the Naib Tahsildar's order was sound in law. It is also remarked that the petitioner not taking steps during consolidation operations weakened his case. The Board of Revenue, therefore, dismissed the revision and affirmed the Commissioner.

15. What we notice, upon a reading of the Sub-Divisional Officer's order, is that he has remarked that the fifth respondent too had a right of inheritance under Section 171 ZA & LR Act, being a son's son of Jhandu,

with two other of his brothers being Deshraj and Ram Swarup, all of which he suppressed and claimed by survivorship under Section 175 ZA & LR Act. We think that, that remark by the Sub-Divisional Officer is ill-founded on facts, though, again, the proceedings being summary in nature, we do not express any final opinion.

16. Suffice it to notice that Tikaram had three sons, Jhandu, Veela and Revati. The petitioner represents the branch of Jhandu in the male line of descent. Veela and Revati died issueless. Tikaram had a daughter as well, named Janki, who was married to a man, also called Jhandu, a resident of Isauli, Etah. The fifth respondent is Janki's son, and his father, Jhandu appears to have been confounded for Tikaram's son Jhandu. Therefore, whatever rights respondent no. 5, Lal Singh might assert would be in the female line of descent of Tikaram, which, *prima facie*, would be excluded under Section 171(1)(ii) read with Section 171(2)(a) and 171(2)(h) ZA & LR Act, the daughter's son being excluded in the presence of the male line. These remarks, we make it clear, are absolutely tentative, and not decisive of the rights of parties. We had to clarify matters on account of some confusion that the order of the Sub-Divisional Officer, since set aside by the Commissioner, raised. The reasoning of the Commissioner is simple, and it is that, that this matter involves complicated questions of title, founded on the right of parties to inherit in preference to the other, or to claim the land in dispute failing the inheritance, by survivorship under Section 175 ZA & LR Act. No doubt, these kind of questions are beyond the competence of the Mutation Authorities to decide, considering the fact that in whatever manner and whatever be the circumstances, the fifth respondent's name came to be recorded way back on 30.09.1970. It was,

apparently, ill-advised for the petitioner, who now claims on the basis of title, to move an application to set aside that order and seek restoration of the mutation matter 34 years after the event. The proper course for the petitioner was obviously to bring a title suit, seeking declaration of his rights that he claims on the basis of inheritance under Section 171 ZA & LR Act. The claim of the petitioner, pitted against that of the fifth respondent, no doubt, involves a complicated question of title, which is way beyond the competence of Mutation Authorities to decide. If in these circumstances, the Mutation Authority found the application to set aside the mutation order, passed 34 years ago, that is to say, 34 years antedating the making of the restoration application, to be hopelessly barred by time, we do not think that any error was committed by the Naib Tahsildar in taking that view, and, *a fortiori*, by the Commissioner in restoring the Naib Tahsildar's order.

17. We must say, nevertheless, that the opinion expressed by the Naib Tahsildar about the bar of Section 49 UP CH Act is only tentative, and if a suit were brought by petitioner to establish his right under Section 171, and the same is found to be within limitation etc., the remarks of the Naib Tahsildar about the bar of Section 49 UP CH Act would not bind parties or tie-down the hands of the Court trying the title suit, in deciding that issue also, if raised independently. For the principle that complicated questions of title ought not to be gone into or decided by the Mutation Authorities, we may refer to the authorities in **Mahesh Kumar Juneja and another v. Additional Commissioner (Judicial), Moradabad Division and others**⁵ and **Amritansh Pandey v. State of U.P. and others**⁶.

5 2020 (3) ADJ 104

6 2023:AHC:167189

18. In the circumstances of the case, we do not find any good ground to interfere with the orders of the Board of Revenue and the Divisional Commissioner impugned.

19. The writ petition **fails** and stands **dismissed**.

20. The interim order dated 17.11.2016 is hereby **vacated**.

21. There shall be no order as to costs.

(J.J. MUNIR)
JUDGE

March 23, 2026

Anoop/I. Batabyal

Whether the order is speaking : Yes

Whether the order is reportable : Yes