

**(2001) 10 AHC CK 0024**

**Allahabad High Court**

**Case No:** C.M.W.P. No. 33610 of 2001

Sri Lal Bachan

APPELLANT

Vs

Board of Revenue, Uttar Pradesh  
and Others

RESPONDENT

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**Date of Decision:** Oct. 31, 2001

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Land Revenue Act, 1901 - Section 32, 33, 40(2), 40(3), 40A

**Citation:** (2002) 1 AWC 169 : (2002) 93 RD 6

**Hon'ble Judges:** Ashok Bhushan, J

**Bench:** Single Bench

**Advocate:** Vivek Prasad Mathur and Lal Bachan, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

Ashok Bhushan, J.

Heard Sri Vivek Prasad Mathur. Advocate appearing for the petitioner and the learned standing counsel appearing for the respondent Nos. 1 to 5.

2. By this writ petition, the petitioner has prayed for quashing the order dated 20.6.2001 passed by the Board of Revenue, Lucknow. rejecting the restoration application of the petitioner for recalling the order dated 26.2.2001. and the order dated 26.2.2001 passed by the Board of Revenue allowing the reference and setting aside the order dated 10.6.1997 of the Sub-Divisional Officer. The petitioner has further prayed for quashing of the order dated 12.8.1997 passed by the Additional Commissioner, Gorakhpur, making reference to the Board of Revenue for setting aside the order dated 10.6.1997 of the Sub-Divisional Officer, Bans. Orders dated 28.11.1996 and 24.10.1994 passed by the Naib Tahsildar. Bans, have also been prayed to be quashed. The present writ petition has arisen out of the mutation proceedings u/s 34 of the U.P. Land Revenue Act, 1901 (hereinafter to be referred as

"the Act).

3. The facts of the case as set out in the writ petition are that after the death of Smt. Chandra Dei, the mother of the petitioner, the name of the petitioner was mutated on the basis of succession in the revenue record on 18.7.1994. The respondent No. 6 moved an application before the Naib Tahsildar for mutating his name on the basis of alleged sale deed executed by the petitioner's mother. By order dated 24.10.1994 the Naib Tahsildar mutated the name of respondent No. 6 in the revenue records on the basis of the alleged sale-deed. The petitioner, when came to know about the aforesaid order dated 24.10.1994, moved a restoration/recall application for recalling of the order dated 24.10.1994. The restoration application was rejected by the Naib Tahsildar vide order dated 28.11.1996. The appeal of the petitioner was allowed by order dated 10.6.1997 of the Sub-Divisional Officer. The respondent No. 6 filed a revision before the Additional Commissioner against the order dated 10.6.1997. The Additional Commissioner made reference to the Board of Revenue vide his referring order dated 12.8.1997 recommending that the order of the Sub-Divisional Officer dated 10.6.1997 be set aside. The petitioner has also made reference to the Suit No. 469 of 1996 which is claimed to have been filed by him against the respondent for permanent injunction praying that defendant be restrained from interfering in his possession. The interim injunction is claimed to have been granted in favour of the petitioner vide order dated 3.2.1997 against which a miscellaneous appeal was filed which was dismissed on 16.7.2001. The petitioner appeared and filed objection before the Board of Revenue after the reference was made by the Additional Commissioner to the Board of Revenue. The Board of Revenue vide its order dated 26.2.2001 accepted the recommendation of the Additional Commissioner and set aside the order of the Sub-Divisional Officer dated 10.6.1997. The petitioner moved recall/restoration application dated 26.2.2001 to recall the order dated 26.2.2001 which has been rejected by the Board of Revenue vide its order dated 20.6.2001. The petitioner has come up in the writ petition challenging the orders passed by the Naib Tahsildar, Additional Commissioner and the Board of Revenue. The consequence of the orders passed by the revenue authorities in proceedings u/s 34 of the Act is that the name of the respondent No. 6 has been directed to be mutated u/s 34 of the U. P. Land Revenue Act on the land. Learned standing counsel has submitted that the writ petition arising out of the proceedings u/s 34 of the Act is not maintainable.

4. Counsel for the petitioner submitted that the writ petition is fully maintainable. Counsel for the petitioner submitted that the effect of the mutation order passed in favour of the respondent No. 6 is that the name of the petitioner which was mutated after the death of his mother stood expunged. Counsel for the petitioner further submitted that the writ petition is fully maintainable under Article 226 of the Constitution. Counsel for the petitioner referred to the judgment of the Apex Court in Whirlpool Corporation v. Registrar of Trade Marks. 1999 (2) AWC 254 cccc : 1998 (VIII) SCC 1. Counsel for the petitioner has further placed reliance on a judgment of

this Court in *Sridhar Tripathi v. Board of Revenue, U.P. and others*, 1996 RD 100.

5. Having heard counsel for the parties and after perusing the record, following three questions arise in the present writ petition :

(1) Whether a writ petition arising out of the proceedings u/s 34 of the U.P. Land Revenue Act, 1901 is maintainable under Article 226 of the Constitution?

(2) If the writ petition arising out of the proceedings u/s 34 of the U.P. Land Revenue Act, is held to be maintainable, what is the scope of interference by this Court?

(3) Whether in facts of the present case, petitioner is entitled for any relief by this Court?

6. For considering the first question, It will be necessary to look into the nature and scope of proceedings u/s 34 of the U. P. Land Revenue Act. Section 32 of the Act provides that there shall be a record of right for each village which shall consist of a register of all persons cultivating or otherwise occupying land. Section 33 deals with the annual register. Section 33. Subsections (1) and (2) are extracted below :

Section 33, Sub-section (1) :

"The Collector shall maintain the record-of-rights and for that purpose shall annually, or at such longer intervals as the State Government may prescribe, cause to be prepared an amended register maintained in Section 32.

The registers so prepared shall be called the annual register."

Sub-section (2) :

"The Collector shall cause to be recorded in the annual registers :

(a) all successions and transfers in accordance with the provisions of Section 35 ; or

(b) other charges that may take place in respect of any land :

and shall also correct all error and omissions in accordance with the provisions of Section 39 :

Provided that the power to record a change under clause (b) shall not be construed to include the power to decide a dispute involving any question of title."

7. Section 34 of the Act provides that a person obtaining possession of any land by succession or transfer shall report such succession or transfer to the Tahsildar of the Tahsil. Section 40 of the Act provides that dispute regarding entries in annual register shall be decided on the basis of possession. Section 40 is quoted below :

"40. Settlement of disputes as to entries in annual register.--(1) All disputes regarding entries in the annual registers shall be decided on the basis of possession.

(2) If in the course of inquiry into a dispute under this Section, the Collector or the Tahsildar is unable to satisfy himself as to which party is in possession, he shall ascertain by summary inquiry who is the person best entitled to the property, and shall put such person in possession,"

8. The above provision indicate that entry in the annual register has to be made on the basis of possession obtained by a person on land. Sub-section (2) of Section 40 although provides that in case Collector or Tahsildar is unable to satisfy himself as to which party is in possession, he shall ascertain by summary inquiry who is the person best entitled to the property, and shall put such person in possession. Thus, even entitlement of a person has to be ascertained only by a summary inquiry. Section 35 which deals with the procedure also uses the words "if the succession or transfer appears to have taken place". The use of word "appears" denote that a prima/facie view has to be taken and the issue is not to be conclusively decided. Proviso to Section 33 subsection (2) clarifies the nature of power in following words :  
"Provided that the power to record a change under clause (b) shall not be construed to include the power to decide a dispute involving any question of title,"

9. This proviso makes it clear that in proceedings u/s 33 which enjoins the Collector to record the succession and transfers has not to decide the dispute involving any question of title. Section 33 requires the Collector to cause change in accordance with the provisions of Section 35. Section 35 provides for procedure of receiving report of succession or transfer u/s 34 or upon facts otherwise coming to his knowledge. Thus, the power u/s 33 and the power to be exercised u/s 35 on the basis of report u/s 34 is the same which does not include any power to decide any dispute involving any question of title. Sub-section (3) of Section 40 of the Act, as before its amendment by U. P. Land Laws (Amendment) Act X of 1961, was as under :

"Section 40 (3).--No order as to possession passed under this Section shall debar any person from establishing any right to the property in any civil or revenue court having jurisdiction."

After deleting Sub-section (3) of Section 40, another provision, namely. Section 40A was added by U. P, Land Laws (Amendment] Act X of 1961 which is as follows :

"Section 40A. Savings as to title suits.--No order passed u/s 33, Section 35. Section 39. Section 40, Section 41 or Section 54 shall bar any suit in a competent court for relief on the basis of a right in a holding."

10. The above provision of the U. P. Land Revenue Act clearly establishes that proceedings u/s 34 are only summary proceedings on the basis of possession which do not decide any question of title and the orders passed in mutation proceedings do not come in way of a person in getting his rights adjudicated in regular suit. The orders passed in mutation proceedings are subject to adjudication of title by

competent court.

11. This Court had occasion to consider the scope and nature of proceedings u/s 34 of the Act in several decisions. The Division Bench of this Court considered the controversy in case of Jaipal Minor o. Board of Revenue, U.P., Allahabad and others. 1956 ALJ 807. The Division Bench in the aforesaid judgment held that it has been the consistent practice of the High Court not to interfere with orders made by the Board of Revenue in cases in which the only question at issue is whether the name of the petitioner should be entered in the record of rights. The Division Bench laid down the law in following words :

"The contention of learned counsel for the petitioner is that the Board of Revenue in passing this order exceeded its jurisdiction. It has, however, been the consistent practice of this Court not to interfere with orders made by the Board of Revenue in cases in which the only question at issue is whether the name of the petitioner should be entered in the record of rights. That record is primarily maintained for revenue purposes and an entry therein has reference only to possession. Such an entry does not ordinarily confer upon the person in whose favour it is made any title to the property in question, and his right to establish his title thereto is expressly reserved by Section 40 (3) of the Act. The only exception to this general rule is in those cases in which the entry itself confers a title on the petitioner by virtue of the provisions of the U. P. Zamindari Abolition and Land Reforms Act. This petition does not fall in that class and we think, therefore, this Court should not entertain it. It is accordingly dismissed with costs."

12. The same view has been followed by this Court in several other decisions. Learned single Judge in Smt Lakmati and another v. Board of Revenue, U. P.. Allahabad and another 1985 ALJ 70 after noticing earlier cases laid down same law in paragraph 8. The same view has been reiterated by the learned single Judge in the cases namely, Smt. Kalindri Devi v. Board of Revenue 1987 (2) AWC 5 : 1987 ALJ 919 [Smt. Rani Devi Vs. Board of Revenue, U.P. at Lucknow and others](#), and Kunj Bihari v. Board of Revenue and others. 2001 (I)AWC 613 : 2001 RD 166 . The learned single Judge of this Court in the case of [Rudra Pratap and Another Vs. Board of Revenue, U.P. and Others](#) , had entertained the writ petition on the ground that the Board of Revenue had not ordered for mutation in favour of third respondent merely on the basis of possession.

13. Another judgment which has been heavily relied by the counsel for the petitioner in Sridhar Tripathi v. Board of Revenue, U.P. and others. 1996 (87) RD 100. In this case, the learned single Judge of this Court entertained the writ petition by overruling the preliminary objection. The Apex Court in the case of Whirlpool Corporation v. Registrar of Trade Marks (supra) while examining the scope of entertaining the writ petition under Article 226 of the Constitution despite of availability of alternative remedy held as under :

"15. Under Article 226 of the Constitution the High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself-certain restriction one of which is that if an effective and efficacious remedy is available, the High Court would normally exercise its Jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

14. The Apex Court while considering the scope of Article 226 in [U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others](#), laid down as under :

"When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals, whether incorporated or not or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. The High Court does not interfere when an equally efficacious alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a right. A party may not be allowed to bypass the normal channel of civil and criminal litigation. The High Court does not act like a proverbial "bull in a china shop" in the exercise of its jurisdiction under Article 226."

15. As far as questions of maintainability of the writ petition against the orders passed by the Board of Revenue or Tehsildar is concerned, writ petition cannot be held to "be non-maintainable, whenever any Court or Tribunal exercising statutory jurisdiction passes an order, the writ petition against the said order of any public officer is maintainable under Article 226 of the Constitution because High Court has power to correct any error committed by any public authority in exercise of statutory power.

16. But I hasten to add in the aforesaid observation that this court has refused to entertain the writ petition challenging the orders passed in proceedings u/s 34 of the Act on the ground that there is always an alternative remedy of adjudication of title by civil suit, Learned single Judge in Lekhraj and others v. Board of Revenue and others 1980 ALJ 905 after considering various judgments of this Court has held :

"Accordingly. I uphold the preliminary objection raised on behalf of the opposite party No. 4 and dismiss this petition under Article 226 of the Constitution on the ground of the existence of an equally efficacious alternative remedy by way of filing the regular suit to establish title."

17. This Court has consistently taken the view as is apparent from the decisions of this Court referred above that writ petition challenging the orders passed in mutation proceedings are not to be entertained. To my mind, apart from there being remedy of getting the title adjudicated in regular suit, there is one more reason for not entertaining such writ petition. The orders passed u/s 34 of the Act are only based on possession which do not determine the title of the parties. Even if this Court entertains the writ petition and decides the writ petition on merits, the orders passed in mutation proceedings will remain orders in summary proceedings and the orders passed in the proceedings will not finally determine the title of the parties.

18. In view of the above discussions, it is clear that although the writ petition arising out of the mutation proceedings cannot be held to be non-maintainable but this Court does not entertain the writ petition under Article 226 of the Constitution due to reason that parties have right to get the title adjudicated by regular suit and the orders passed in mutation proceedings are summary in nature.

19. The second question which needs to be considered is as to in what circumstances the writ petition can be entertained arising out of the mutation proceedings. The Division Bench of this Court in Jalpal's case (supra) has referred to "exception to the general rule in following words :

"The only exception to this general rule is in those cases in which the entry itself confers a title on the petitioner by virtue of the provisions of the U.P. Zamindari Abolition and Land Reforms Act. This petition does not fall in that class and we think therefore, this Court should not entertain it. It is accordingly dismissed with costs."

20. Learned single Judge in Sridhar's case (supra) also entertained the writ petition. The learned single Judge in the aforesaid writ petition by entertaining the writ petition had noted that the aforesaid case was not simple mutation case but in the said case, mutation was being claimed on the basis of the orders passed by the consolidation authorities on the basis of the sale-deed. It was claimed in that writ petition that the name on the basis of the sale-deed was mutated by consolidation authorities and name also came in C. H. Form No. 45 but the said entry was not corrected in the revenue records, hence the mutation was filed. That was the distinguishing feature which was found by the Court and due to that reason, the said writ petition was entertained. The Court in the aforesaid case also endorsed the view that had it been the case of simple mutation, the writ petition could not have been entertained. It was held in paragraph 9 of the aforesaid case :

"9. In the present case, as already mentioned, it was not a case of simple mutation of the name of the respondent No. 3 on the basis of the sale-deed. The said deed is said to be dated 10.7.1967 allegedly executed by the petitioner in favour of the respondent No. 3. The fact that the sale-deed was executed by the petitioner has been denied vehemently. The said sale-deed is claimed to have been placed before the consolidation authorities in 1968 and the name of the respondent No. 3 was recorded as owner on the basis of the said sale-deed over-the plot in question. Had that been the simple case based on that mutation of names in consolidation proceedings was made in 1968 soon after the execution of the sale-deed and on the basis of the said consolidation entries on C. H. Form No. 45. the name of the opposite party No. 3 continued to be recorded in the revenue records thereafter denotification of village u/s 52 of the Act continuously, there was no difficulty in refusing to entertain the writ petition challenging the mutation entries under Article 226 of the Constitution."

21. Another case in which this Court had entertained the writ petition was Rudra Pratap's case (supra) in which case the Court interfered on the ground that the Board of Revenue while deciding the mutation case has also decided the question of title. The learned single Judge observed in paragraph 2 in the said judgment as under :

"In that case, no doubt, It was held that mutation proceedings ordinarily relate to the question of possession and do not decide the question of title for which there is a separate remedy by way of a suit and as such the High Court should not interfere in the order passed in mutation proceedings. But it was also observed in that case that this consideration should not be applied in cases where the question of title is also decided in mutation proceedings. In my opinion the present case belongs to that category of cases inasmuch as the Board of Revenue has proceeded to decide the question of title. The Board of Revenue has not ordered mutation in favour of the third respondent merely on the basis of her possession, but it has ordered mutation in her favour on the ground that she is entitled to succeed to the land in dispute whereas the petitioners are not so entitled. The finding even if not conclusive, does throw a shadow on the clear title of the petitioners. The petitioners, in my opinion, are entitled to seek the assistance of the Court to remove that shadow and it is not necessary to drive them to the remedy of a suit."

22. The cases in which writ petition can also be entertained arising out of the mutation proceedings may be cases in which an authority not having Jurisdiction has passed an order or interfered with an order passed in the proceedings. The writ petition challenging an order passed without jurisdiction can be entertained by the Court despite availability of an alternative remedy. However, in that case also, the Court will interfere only when it appears that substantial injustice has been suffered by a party. In view of the above discussion, it is held that the writ petition arising out of the mutation proceedings u/s 34. U.P. Land Revenue Act cannot be entertained by



this Court subject to only exception as laid down by the Division Bench in Jaipal's case (supra). The writ petition may also be entertained where authority passing the order had no jurisdiction.

23. The third question which arises in the writ petition is as to whether in view of the facts of the present case, the present writ petition can be entertained. From the facts of the case as stated in the writ petition, it is clear that the writ petitioner is claiming his right on the basis of succession on death of Smt. Chandra Dei. The respondent No. 6 is claiming on the basis of sale-deed from the said Smt. Chandra Dei. The dispute was squarely covered by Section 34 of the Act and was simple case of mutation as contemplated in Section 34 of the Act. The orders passed in mutation proceedings are only summary in nature which does not entitle the petitioner to invoke the jurisdiction of this Court under Article 226 of the Constitution. In view of what has been said above, the present writ petition cannot be entertained. It is however, observed that the impugned order passed in mutation proceedings being in summary proceedings, will not come in the way of the petitioner in seeking adjudication of his title before the competent court. The orders passed in the mutation proceedings are always subject to decision by competent court entitled to adjudicate the title.

24. Subject to the above observations the writ petition is dismissed.