

(2006) 11 AHC CK 0197

Allahabad High Court

Case No: None

Jagdish Narain,
Parmeshwari Narain
and Ram Narain and
Hari Krishna

APPELLANT

Vs

Board of Revenue and
Fazal Ahmad

RESPONDENT

Date of Decision: Nov. 1, 2006

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115

Citation: (2007) 1 ADJ 434 : (2007) 5 AWC 5283

Hon'ble Judges: Ashok Bhushan, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ashok Bhushan, J.

Heard Sri V.K.S. Chaudhary, Senior Advocate, assisted by Sri K.N. Saxena, for the petitioners and Sri Sharad Malviya, appearing for respondent No. 2.

2. By this writ petition, the petitioners have prayed for quashing the order dated 13th June, 2003 (Annexure-13 to the writ petition) passed by Board of Revenue allowing the revision filed by respondent No. 2 (Fazal Ahmad) u/s 219 of U.P. Land Revenue Act, 1901 and the order dated 8th July, 2003 (Annexure-14 to the writ petition) rejecting the review application filed by the petitioners for reviewing the order dated 13th June, 2003 of the Board of Revenue. The orders passed by Board of Revenue in revision arose from proceedings of mutation u/s 34 of U.P. Land Revenue Act, 1901. The application for mutation dated 16.9.1996 was filed by respondent No. 2 praying for expunction of the name of the petitioners from the land in dispute on the basis of the order passed by Civil Court in favour of respondent No. 2, which was affirmed up to the Supreme Court vide

judgment dated 12.1.1987. The respondent No. 2 in the mutation application stated that the grove in dispute was purchased by respondent No. 2 on 11th April, 1968 in a Court auction sale, which was confirmed. The validity of the Court auction sale was challenged by the petitioners in the Civil Court on the basis of two sale deeds of the year 1957 and 1959 which was decided in favour of respondent No. 2 up to the Supreme Court on 12.1.1987. The application further stated that on proceedings taken by respondent No. 2 in the Civil Court for giving Dakhal of the grove in question, orders were passed on 15.12.1995 to give possession and possession was handed over by the Amin of the Civil Court to respondent No. 2 on 16.12.1995. The application prayed that the names of Jagdish Narain and Jugal Kishore recorded in the revenue records on the aforesaid grove be expunged and the name of respondent No. 2 be recorded. The said mutation application has ultimately been allowed by the Board of Revenue by the impugned judgment against which present writ petition has been filed. It is well settled that mutation proceedings u/s 34 of U.P. Land Revenue Act, 1901 are summary proceedings which do not decide any title of the party and the writ petition challenging the orders passed in mutation proceedings generally are not entertained by this Court, however, in view of the facts and circumstances of the present case, as mentioned hereinafter, and the chequered history of the case it is appropriate that submissions of counsel for the parties be considered.

3. Brief facts necessary to be noted for deciding this writ petition are; in pursuance of a decree passed in Suit No. 21 of 1946 Lal Hajari Lal v. Abdul Hai, the grove in dispute was auctioned on 11th April, 1968 in favour of respondent No. 2. On the basis of two sale deeds dated 22.12.1957 and 21.3.1969, an objection was filed by the petitioners and their predecessors in interest against the auction sale taking the case that they have purchased the grove in question by the above mentioned sale deeds from the heirs of Abdul Hai which cannot be auctioned in pursuance of the decree passed in Suit No. 21 of 1946. The case of the petitioners further was that the grove was not subject matter of Suit No. 21 of 1946 and the same could not have been auctioned. The objection was rejected on 16.11.1970. A suit being Suit No. 114 of 1970 was filed by the petitioners praying for declaration that plaintiffs are the owners of the grove and the said grove is not capable of auction in execution Case No. 4 of 1968 in pursuance of decree in Suit No. 21 of 1946. An injunction was also sought against defendant (respondent No. 2) that he be restrained from dispossessing the plaintiff on the basis of the aforesaid decree. The suit was contested by respondent No. 2 and was ultimately dismissed by the Civil Judge, Jhansi vide its judgment and order dated 24.2.1973. The Civil Judge upheld the auction and held that the sale deeds dated 22.12.1957 and 21.3.1969 were hit by doctrine of lis pendens and did not give any right to the plaintiffs. The order of the Civil Judge was challenged in this Court by filing a first appeal by the petitioners. This Court vide its judgment and order dated 1st August, 1986 passed in First Appeal No. 52 of 1973 Jugal Kishore and Ors. v. Smt. Ayesha Khatoon dismissed the appeal confirming the judgment of the Civil Judge. Against the order of this Court dated 1st August, 1986 an SLP was filed which too was dismissed on 1.12.1995. After the end of the above first series of litigation, respondent

No. 2 moved an application for issue of the sale certificate on the basis of the auction sale held in Execution Case No. 4 of 1968 of the grove in question. Again objections were filed by the petitioners to the application of respondent No. 2, which was rejected by the Civil Judge on 14.5.1993. Against the said order a revision was filed by the petitioners which too was rejected on 20th May, 1993. A writ petition being Writ Petition No. 19170 of 1993 was filed by the petitioners thereafter which too was dismissed by this Court on 26th April, 1995. The sale certificate was issued in favour of respondent No. 2 on the basis of which an application was moved by respondent No. 2 for issuing warrant of delivery of possession with regard to the property purchased by him, i.e., grove in question. The said application was again objected by the petitioners and the said objections were rejected by the Civil Judge on 14.12.1995. A revision was also dismissed on 31.1.1996. The said orders were challenged by means of Writ Petition No. 6123 of 1996 before this High Court which too was dismissed on 15.2.1996. It is further relevant to be noted that above both the orders of this Court dismissing the writ petitions of the petitioners were challenged in the Apex Court by filing special leave petitions, which too were rejected. In pursuance of the order of the Civil Court the possession was ultimately delivered to respondent No. 2 by the Court Amin on 16.12.1995. After taking possession of the grove in question, an application was moved by respondent No. 2 before the Naib Tahsildar for expunging the names of the petitioners from the revenue records and for recording his name. The said application was filed on 16.9.1996 after the end of the above mentioned prolong litigations, which ultimately decided against the petitioners and in favour of respondent No. 2. The natural consequence of the abovenoted decisions of the Civil Court in favour of respondent No. 2 was that on the basis of the said judgments of the Court, which were affirmed up to the Apex Court, the name of respondent No. 2 ought to have entered into the revenue records and names of the petitioners ought to have been expunged which were mutated on 26th July, 1960 on the basis of the sale deeds dated 22.12.1957 and 21.3.1959. The rights of the petitioners on the basis of above two sale deeds having been finally pronounced up to the Apex Court, striking of the names of the petitioners was only consequential and need no elaborate discussion or decision, but the facts of the present case reveals that even for the above incorporation of name in the revenue records respondent No. 2 was dragged in a prolong litigation by the petitioners on after one and the application filed in the year 1996 could ultimately be allowed by the Board of Revenue on 13th June, 2003 after about 7 years after several phase of litigations which shall also be hereinafter noticed. Against the orders passed by Board of Revenue for mutating the name of respondent No. 2 in the revenue records, the petitioners have come up in this writ petition raising several objections and contentions, which were already repelled by series of litigations between the parties in the Civil Court.

4. Sri V.K.S. Chaudhary, Senior Advocate, appearing for the petitioners, in support of the writ petition, challenging the order of the Board of Revenue, contended that revision was filed before the Board of Revenue against an interlocutory order dated 4th June, 2003 of the Naib Tahsildar, hence the Board of Revenue was not competent to decide the mutation application, which was pending consideration before the Naib Tahsildar. He

submits that revision itself was not maintainable having been filed against an interlocutory order. Reliance has been placed by counsel for the petitioners on the judgment of this Court reported in 2002 A.C.J. 1417; Hari Bahadur Lakhtakia v. The District Judge, Allahabad and Ors. judgment of Board of Revenue reported in 2001(92) R.D. 137 ; Mahendra Pratap Singh v. State of U.P. and judgment of this Court in 1991 RD 30; Gunai v. Gaon Sabha and Ors. Sri Chaudhary further contended that the grove in question has been purchased by auction sale by respondent No. 2 and the sale certificate issued in pursuance thereof does not mention the plot numbers and boundaries of the grove and on the basis of the said sale certificate the petitioners can neither be dispossessed nor their names can be expunged from the revenue records. He submits that no evidence can be given for explaining the sale certificate. He has placed reliance on the judgment of the Apex Court in [Braja Kishore Jagdev Vs. Lingraj Samantaray and Others](#), Sri Chaudhary lastly submitted that the petitioners had become bhumidhar and bhurnidhari rights cannot be sold in execution of a decree. He placed reliance on judgments of the Apex Court reported in [Rana Sheo Ambar Singh Vs. Allahabad Bank Ltd., Allahabad](#),

5. Sri Sharad Malviya, learned Counsel for the respondent No. 2, refuting the submissions of petitioners, contended that all the submissions raised by the petitioners with regard to identity of the grove land and the validity of the auction sale in favour of respondent No. 2 has already been adjudicated and decided in favour of respondent No. 2 and the said question cannot be raised by the petitioners in mutation proceedings. He further submitted that in the suit filed by the petitioners being Suit No. 114 of 1970, the rights were claimed by the petitioners on the basis of their sale deeds dated 22.12.1957 and 21.3.1959 attacking the auction sale in favour of respondent No. 2. The said suit having been dismissed after rejecting the contentions of the petitioners, it is not open for them to raise those objections in the mutation proceedings.

6. I have considered the submissions and perused the record.

7. The first submission of counsel for the petitioners is regarding competence of the Board of Revenue to allow the mutation application in the revision finally and further as to maintainability of the revision against an interlocutory order. Before considering the above submission, it is relevant to note the proceedings taken by the Court on the mutation application filed by the respondents. As noted above, the mutation application was filed by respondent No. 2 in the year 1996 mentioning the above facts. The mutation application was finally allowed on 15th April, 1996 against which restoration application was filed by the petitioners which was allowed on 17th June, 1996 and on an appeal filed by respondent No. 2 an order was passed by the appellate authority on 5th September, 1997 remanding the mutation case to the Tahsildar for deciding on merits; The petitioners filed a revision before the Commissioner, Jhansi Division, Jhansi which was rejected. The Tahsildar after the said order rejected the mutation application of respondent No. 2 vide order dated 9th August, 2000 observing that in sale certificate the sale is of grove situate at Datia Gate Jhansi Mausuma Eidgah from which area is not clear and the application requires decision of title which cannot be done in mutation proceedings, hence the

application is rejected. Against the said order an appeal was filed before the Sub Divisional Officer by respondent No. 2 which was allowed and the order of Naib Tahsildar dated 9th August, 2000 was set-aside. The appellate Court noted the submission of respondent No. 2 that all dispute regarding the identity and nature of the property has been decided by the Civil Court which needs no consideration by the mutation Court. Against the order of appellate authority dated 18th March, 2002, a revision was filed before the Commissioner by the petitioners which too was dismissed on 30th April, 2002. Before the mutation Court again petitioners filed certain objections regarding identity of the property. Respondent No. 2 also filed objection taking exception to the objection of petitioners and stated in his objection dated 4th June, 2003 that the objection of the petitioners are not maintainable since the sale deeds dated 22.12.1957 and 21.3.1959 on the basis of which petitioners' claim their right has already been declared to be void up to the Apex Court they having been hit by doctrine of lis pendens, hence it be decided as to whether the objection of the petitioners are maintainable or not. The Naib Tahsildar on 4th June, 2003 rejected the above objection of the petitioners making only observation that the objections are not in accordance with law. Against the said order of Naib Tahsildar revision was filed before the Board of Revenue. The Board of Revenue after noticing the litigations between the parties which went up to the Apex Court took the view that objections which are being raised by the petitioners cannot be accepted with regard to identity and boundaries of the land, the objections of the petitioners are baseless, hence the names of the petitioners are liable to be expunged from the revenue records and name of respondent No. 2 is liable to be entered.

8. Section 219 of the U.P. Land Revenue Act, 1901 provides for revision. Section 219 is extracted below:

[219. Revision.- (1) The Board or the Commissioner or the Additional Commissioner or the Collector or the Record Officer, or the Settlement Officer, may call for the record of any case decided or proceeding held by any revenue court subordinate to him in which no appeal lies or where an appeal lies but has not been preferred, for the purpose of satisfying himself as to the legality or propriety of the order passed or proceeding held and if such subordinate revenue court appears to have-

(a) exercised a jurisdiction not vested in it by law, or

(b) failed to exercise a jurisdiction so vested, or

(c) acted in the exercise of jurisdiction illegality or with material irregularity.

the Board or the Commissioner or the Additional Commissioner or the Collector or the Record Officer, or the Settlement Officer, as the case may be, may pass such order in the case as he thinks fit.

(2) If an application under this section has been moved by any person either to the Board, or to the Commissioner, or to the Additional Commissioner or to the Collector or to the

Record Officer or to the Settlement Officer, no further application by the same person shall be entertained by any other of them.]

9. Section 219 of the U.P. Land Revenue Act, 1901 gives power to the Board of Revenue to call for the record of any case decided or proceeding held by any revenue Court. Learned Counsel for the petitioners contended that since the order passed by Naib Tahsildar was only an interlocutory order, no revision lay and further the Board of Revenue could not have finally decided the mutation application. Learned Counsel for the petitioner also contended that power of Board of Revenue u/s 219 is akin to the power of the revisional Court u/s 115 of C.P.C. Learned Counsel for the petitioners cited judgment in Hari Bahadur Lakhtakia's case (supra) in which this Court held that revision do not lay u/s 115 of C.P.C. against an interlocutory order passed by the trial Court. u/s 115 of C.P.C. the High Court may call for the record of any case which has been decided by any Court subordinate to the High Court. The words used in Section 219 of U.P. Land Revenue Act, 1901 contains two clauses, i.e., Board may call for the record of any case decided or proceeding held. The jurisdiction u/s 219 of U.P. Land Revenue Act, 1901 is thus wider than jurisdiction u/s 115 of C.P.C. With regard to any proceeding taken by revenue Court subordinate to the Board of Revenue, the record can be called and the Board can pass such order as in the case it thinks fit. In the present case application of mutation was earlier rejected by the Tahsildar on misconceived ground which order was subsequently set-aside. The dispute pertaining to identity of grove and its boundaries were already decided in the Civil Court and all objections raised by the petitioners were rejected. In spite of respondent No. 2 objecting consideration of various type of objections raised by the petitioners, the Naib Tahsildar did not consider the said objection of respondent No. 2 and wanted to proceed again for deciding the matter. The revisional Court in facts of the present case did not commit any error in entertaining the revision and deciding the revision itself and passing the order in the revision allowing the mutation application. As observed above, the mutation order was only a consequential order in facts of the present case in view of the rights of the parties having been settled up to the Apex Court. The petitioners wanted to reopen the issues which were already settled by the Civil Court and the objections raised by the petitioners were nothing but abuse of the process of the Court. The revisional Court has rightly entertained the revision and passed a final order on the mutation application which was required to be passed in view of the judgment of the civil Court in proceedings between the parties. The revisional court in passing the final orders on mutation application has also rightly referred to powers of superior court u/s 231 of U.P. Land Revenue Act, 1901 The decision relied by counsel for the petitioners in Hari Bahadur Lakhtakia's case (supra) has no application in the facts of the present case. Another case relied by the petitioners is Gunai's case (supra). It was a case in which it was held that the word "may" used in Section 333 of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 is mandatory in nature. The said case has no application in facts of the present case. The next case relied by counsel for the petitioners is Mahendra Pratap Singh's case (supra) which was a judgment of the Board of Revenue by which revision was rejected which was filed against an interlocutory order

of stay with the observation that revisionist has remedy to pray for its consideration before the Court below. The said case does not help the petitioners in any manner.

10. Now comes the submission of the petitioners raised with regard to identity of land. The counsel for the petitioners submitted that sale certificate do not contain the boundaries of the grove nor plot numbers. The sale deeds of the petitioners dated 22.12.1957 and 21.3.1959 do mention the plot numbers and area of the grove as 9.74 acres. The boundaries were also mentioned. The copy of the plaint of the suit filed by the petitioners being Suit No. 114 of 1970 has been brought on the record. The case of the petitioners themselves in the suit was that the grove which is near the Eidgah at Datia Darwaja, Jhansi was purchased by the plaintiff on 22.12.1957 and 21.3.1959 and their names were recorded as such. It was specifically pleaded in paragraph 7 of the plaint that the above mentioned grove has been auctioned on 11th April, 1968 in pursuance of decree in Case No. 21 of 1946, which has been purchased by the defendant-respondent No. 2 (Fazal Ahmad). The plea of the petitioners before the Civil Court that grove could not have been sold in execution of the decree since it was not subject matter of Case No. 21 of 1946 has already been repelled by the Civil Court and the said judgment has been confirmed by this Court. Following observations were made by this Court in First Appeal No. 52 of 1973:

...Upon the culmination of the proceedings before the competent officer resulting in the demarcation of evacuee and non evacuee properties wherein the grove in question and certain other properties fell to the share of Abdul Hai, the decree-holder applied on 20th July, 1967 for final decree being drawn under Order XXXIV Rule 5 C.P.C. vide Ex. 13; the final decree was prepared on 7th October, 1967 and in execution thereof registered as Execution Case No. 4 of 1968, the grove was sold in court auction to the contesting respondent for Rs. 8100/- on April 11, 1968 the sale was confirmed on November 16, 1970 and the certificate of sale issued on 24th November, 1970. Thus, even if it were assumed, though that would be purely hypothetical upon the facts hereof, that the grove was not the subject matter of the suit right from its inception in the year 1946, this did not find place in the preliminary decree in terms of the compromise dated 23.3.1948 made part of the decree by order dated 29th August, 1953 and the sale which the appellants obtained from the heirs of Abdul Hai on December 22, 1957 or subsequently on April 21, 1959 (Ex.15) is inescapably hit by lis pendens. The effect of the rule is that this sale is rendered subservient to the rights of the parties in the action as determined by the judgment or decree. The sale cannot, in other words, serve to defeat the right which the decree holder Hazari Lal acquired by virtue of the final decree in O.S. 21 of 1946 to proceed in execution by auction sale of the property to recover his mortgage-respondent as a result of the auction sale dated April 11, 1968.

11. It is further relevant to note that when the application was moved by respondent No. 2 for issuing warrant of delivery of possession in pursuance of the sale certificate similar objections were raised by the petitioners before the Civil Court, which were rejected by the Civil Court. The matter ultimately came to this Court on a writ petition filed by the

petitioners which writ petition was also dismissed on 15.2.1996. While dismissing the writ petition of the petitioners following observations were made by this Court:

... The learned Counsel for the petitioner, however, strongly contended that no boundaries have mentioned in the sale certificate and consequently no boundaries could be mentioned in the warrant for delivery of possession. The learned Counsel has submitted that if the document the petitioner may be dispossessed from even such property which was not subject of auction sale. This objection has been considered by the executing court in detail and has been rejected on two grounds, firstly, it has been said that about the identity of the property which was auctioned, objections were raised by petitioner from time to time but they were rejected. Secondly, it has been said that the auction purchaser respondent No. 3 in his application 27-C(2) and 28-C(2) has mentioned the boundaries of the property purchased by him. Both the applications have been accepted and even if the boundaries are not shown in the sale certificate delivery of possession may be effected according to the boundaries mentioned in these applications. There is yet another ground on which basis the contention raised on behalf of petitioner deserves to be rejected. Petitioner nowhere mentioned the actual area allegedly purchased by his father of respondent No. 3. In absence of such facts there is no likelihood of any prejudice being caused to the petitioner.

In view of the aforesaid observations I do not find any force in the contention raised on behalf of the learned Counsel for the petitioner. The court below has already said that the Amin while delivering possession shall take care to tally the boundaries of the property as mentioned in application No. 27-C(2) and 28-C(2). Learned Counsel for the petitioner has further submitted that the sale certificate or the warrant of delivery of possession cannot be altered or improved on the basis of the applications No. 27-C(2) and 28-C(2).

In my opinion, this contention too has no force. The property was auctioned by the Court. The Auction purchaser has already paid the money, sale has been confirmed and sale certificate has been issued. In such circumstances it is the Court's obligation to deliver possession of the property to auction purchaser and if there is any clerical or arithmetical mistake in the documents, it may be removed in the interest of justice, more so when petitioner's claim has already been rejected in suit.

12. The other submissions of the petitioners that bhumidhari rights could not have been sold and that the grove was not the subject matter of Suit No. 21 of 1946 are the submissions which have already been repelled in civil litigations between the parties. The petitioners again and again are raising the same objections unhesitatingly only to prolong the litigation and harass and involve the respondent No. 2 in further litigations. None of the submissions of the petitioners have any substance.

13. As noted above, the claim of the petitioners on the basis of two sale deeds dated 22.12.1957 and 21.3.1959 was negatived up to the Apex Court. The first phase of litigation went up to the Apex Court arising out of Suit No. 114 of 1970. Again two series

of litigations was initiated by the petitioners, one in the execution proceeding and another when the application was given by respondent No. 2 for delivery of possession. Both the proceedings were decided in favour of respondent No. 2. In mutation proceedings also the petitioners repeated the same objections which were earlier rejected. In view of the above conduct of the petitioners, the writ petition deserves to be dismissed with special costs to be paid by the petitioners to respondent No. 2.

14. In view of the foregoing discussions, the writ petition is dismissed with costs quantified as Rs. 10,000/-to be paid by the petitioners to respondent No. 2 within two months.