

**(1997) 05 AHC CK 0201**

**Allahabad High Court**

**Case No:** C.M.W.P. No. 15078 of 1997

Smt. Queeni Banerji and Another

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

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**Date of Decision:** May 8, 1997

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Land Revenue Act, 1901 - Section 201, 210, 33, 34, 35
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 171

**Citation:** (1997) AWC 191 Supp

**Hon'ble Judges:** R.H. Zaidi, J

**Bench:** Single Bench

**Advocate:** R.C. Singh, for the Appellant; R.K. Chaube, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

R.H. Zaidi, J.

Heard learned Counsel for the Petitioners, Sri R. K. Chaube, Advocate for the contesting Respondent Nos. 3 and 4 as well as the learned standing counsel.

2. Present petition arises out of the proceedings, u/s 34/40 of the U.P. Land Revenue Act, for short the Act, and is directed against the orders passed by the Respondent Nos. 1 and 2.

3. The brief facts of the case giving rise to the present petition are that Petitioner No. 2, Desh Deep Banerji filed application u/s 34/40 of the Act claiming the mutation of his name in the revenue papers over the land in dispute on the basis of a will dated 3.2.1997, alleged to have been executed by Smt. Sundari. It was claimed by the Petitioner No. 2 that Original Suit No. 1578 of 1982 was filed by him for cancellation of the gift deed executed by Smt. Sundari in favour of Smt. Majari Christofer, which was decreed and his claim on the basis of the aforesaid will was

upheld by the civil court, therefore, his name was liable to be recorded in the revenue papers on the land in dispute. The application filed by the Petitioner No. 2 was registered as case No. 1547 of 1984, which was contested by Smt. Majari Christofer, who filed her objection pleading that the decree passed by the Munsifs court dated 21.1.1986 was reversed in Civil Appeal No. 204 of 1984, therefore, the application filed by the Petitioner No. 2 was liable to be rejected.

4. During the pendency of the said proceedings Smt. Majari Christofer died on 24.5.1986. On her death Maklin Deepak, Respondent No. 3 applied for mutation of his name on the land in dispute in the revenue papers on the basis of the will dated 15.4.1981, alleged to have been executed in his favour by Smt. Majari Christofer. The said case was registered as Case No. 1363 of 1986. Petitioners who happened to be the mother and son opposed and objected to the application filed by Maklin Deepak, pleading that he had no relationship with Smt. Majari Christofer.

5. Since in both the aforesaid cases the subject-matter of dispute and the parties were the same, therefore, they were consolidated by the order of the Tehsildar dated 17.3.1987. After following the procedure prescribed under the law, affording opportunity to the parties to lead evidence and hearing them, the applications filed by the Petitioners were rejected by the Tehsildar vide his order dated 6.8.1988. It was held that on the basis of the decree passed by the Munsif court the name of the Petitioner No. 2 could not be mutated in the revenue papers as the said decree was already reversed by the appellate court and there was no interim order granted by the High Court in the second appeal filed against the decree passed by the appellate court. The application and the claim of the Petitioner No. 1 Smt. Queeni Banerji were rejected on the ground that she being uncle's daughter (Chacheri Bahan) was not one of the heirs and successors of the deceased Majari Christofer. By the same order the name of the Respondent No. 3, Maklin Deepak was ordered to be recorded in the revenue papers in place of the deceased Smt. Majari Christofer on the basis of the registered will executed in his favour by Smt. Majari Christofer. The Petitioner No. 1 challenged the validity of the order dated 6.8.1988 before the appellate court u/s 210 of the Act. However, the appeal filed by her was dismissed by the appellate court vide order dated 7.7.1990.

6. It appears that before the decision of the aforesaid appeal, two applications dated 6.8.1988 and 16.8.1988 were filed by the Petitioner Nos. 1 and 2, respectively, u/s 201 of the Act claiming that the order dated 6.8.1988 was ex parte. The Tehsildar after hearing the parties dismissed both the restoration applications filed by the Petitioners vide his order dated 6.3.1991. Aggrieved by the judgement and order dated 6.3.1991 Petitioners filed two appeals before the -Sub-Divisional Officer u/s 210 of the Act, which were registered as Appeal Nos. 166 and 167 of 1991. Said appeals were allowed by the Sub Divisional Officer vide his order dated 4.7.1992, and without setting-aside the order dated 6.3.1991, the order dated 6.8.1988 was set-aside, and the case was remanded to the Tehsildar for decision afresh.

7. Against the order passed by the Sub-Divisional Officer dated 4.7.1992, two appeals were filed by the Respondent No. 3 before the Commissioner. The Additional Commissioner held that the Petitioner No. 1 being father's elder brother's daughter (Chacheri Bahan) cannot be the heir and successor of Smt. Majari Christofer and that the appeal filed by Desh Deepak, Petitioner No. 2 was legally not maintainable. It was also held that the name of Smt. Majari Christofer was legally recorded over the land in dispute in place of Smt. Sundari about twelve years ago on the basis of the registered gift deed. After recording said findings, the Additional Commissioner referred the matter to the Board of Revenue, U.P. with the recommendation dated 18.3.1994 to set-aside the order dated 4.7.1992 and to restore back the orders passed by the Tehsildar dated 6.8.1988 and 6.3.1991.

8. The Board of Revenue, U.P., Lucknow after hearing the learned Counsel for the parties and for the reasons recorded, accepted the reference made by the Additional Commissioner vide its order dated 3.9.1996, and set-aside the order dated 4.7.1992. The Petitioners thereafter filed a review application challenging the validity of the order dated 3.9.1996, which was also dismissed by the Respondent No. 1 vide its judgment and order dated 8.1.1997. The Petitioners thereafter filed the present petition praying for a writ, order or direction in the nature of certiorari quashing the orders dated 8.1.1997, 3.9.1996 and 18.3.1994, passed by the Respondent Nos. 1 and 2.

9. Learned Counsel for the Petitioners vehemently urged that the courts below exceeded their jurisdiction in directing the name of the Respondent Nos. 3 and 4 to be recorded in place of Smt. Majari Christofer and in rejecting the claim of the Petitioners. It was also urged that in view of the orders passed by the Consolidation Authorities, it was not open to the courts below to entertain the application filed by the Respondent No. 3 for mutation of his name in place of Smt. Majari Christofer. He has attempted to rely upon the orders contained in Annexures 1 and 2 to the writ petition.

10. On the other hand, learned Counsel for the contesting Respondents submitted that the name of Smt. Christofer was recorded in the revenue papers about twelve years ago, and the claim of the Petitioners was rejected on the ground that Smt. Majari Christofer executed a registered will in favour of the contesting Respondents, therefore, the courts below committed no error of law or jurisdiction in directing the name of the contesting Respondents to be recorded in the revenue papers. It was also urged that the claim of the contesting Respondents was also upheld by the civil court. Learned Counsel for the contesting Respondents also submitted that the order dated 7.7.1990 having become final, the appeals filed by the Petitioners against the judgment and order dated 6.3.1991 were legally not maintainable as the same were barred by the principle of res Judicata. It was also urged that the proceedings u/s 34 of the Act are summary in nature, tide of the parties are not decided in the said proceedings, the orders passed by the authorities below are not

final orders, they are subject to the decision of the competent court in regular suit, the courts below have thus observed that the Petitioners could file the regular suit for declaration of their title if they feel aggrieved by the impugned orders, therefore, the writ petition under Article 226 of the Constitution of India is not maintainable.

11. I have considered the rival submissions made by the learned Counsel for the parties and carefully perused the record.

12. In view of the provisions of Section 40 of the Act, the dispute regarding entries in the annual register are to be decided on the basis of possession. The said section reads as under:

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 Tehsildar) is unable to satisfy summary inquiry who is the person best entitled to the property and shall put such person in possession.

13. Petitioners have also not claimed the mutation of their names in the revenue papers on the basis of the possession as admittedly they were not in possession over the land in dispute before or after the death of Smt. Majari Christofer. The claim of the Petitioner No. 1 having been rejected by the courts below holding that she was father's elder brother's daughter (Chacheri Bahan) of the deceased, therefore, she was not one of heirs and successors enumerated u/s 171 of the U.P. Zamindari Abolition and Land Reforms Act. Similarly, the claim of the Petitioner No. 2 has been rejected on the ground that he has lost the case in the civil court in respect of land in dispute as the decree passed in Original Suit No. 1578 of 1982 was reversed by the appellate court. The courts below have thus not committed any error of law or Jurisdiction in rejecting the claim of the Petitioners and deciding the cases against them.

14. Further, the learned Counsel for the contesting Respondents is right in his submission that the judgment and order dated 7.7.1990, passed by the appellate court in Appeal No. 696 of 1988, which was filed against the judgment and order dated 6.8.1988 has become final, the restoration applications and the appeal filed against the order dated 6.3.1991 were legally not maintainable, they were barred by the principle of res judicata. The Sub-Divisional Officer exceeded his jurisdiction in entertaining the appeal and in allowing the same without setting-aside the order dated 6.3.1991. The Additional Commissioner was, therefore, right in making the reference to the Board of Revenue, and the Board of Revenue rightly accepted the reference and rightly set aside the order dated 4.7.1992, which was wholly arbitrary and without Jurisdiction.

15. So far as the attempt of the learned Counsel for the Petitioners to justify the claim of the Petitioners on the basis of the orders passed by the consolidation

authorities is concerned, it may be noticed that neither before the Tehsildar nor before the Additional Commissioner, nor before the Board of Revenue, the alleged orders passed by the consolidation authorities were referred to or relied upon by the Petitioners. A reference of these orders for the first time was made in the review application filed on behalf of the Petitioners before the Board of Revenue. It has not been stated that the orders passed by the consolidation authorities were ever produced before title courts below. The questions as to whether the land in dispute and parties thereto were the same or not are all questions of fact and the same cannot be permitted to be agitated for the first time before this Court. Further the proceedings u/s 34 of the Act were started on the applications made by the Petitioners themselves. The Petitioners neither pleaded before the courts below that their claim was upheld by the consolidation authorities or their names were liable to be mutated in the revenue papers on the basis of the orders passed by the said authorities. It has also not been shown as to why the Petitioners failed to get the orders passed by the consolidation authorities enforced, in the consolidation proceedings, therefore, I am not inclined to accept the argument made by the learned Counsel for the Petitioners on the basis of the order passed by the consolidation authorities, at this stage.

16. Further Section 40A of the Act provides as under:

40A. Saving 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.

17. According to the aforesaid provision, the orders (passed u/s 34/40 of the Act do not bar any suit in a competent court for declaration of title in the land in dispute. The courts below have also left open to the Petitioners, if they feel aggrieved by the impugned orders, to approach the competent authority or court for declaration of their rights in the land in dispute as the proceedings u/s 34/40 are summary in nature and orders passed in the said proceedings are not binding on parties or courts on regular side. Therefore, writ petition is also liable to be dismissed on the ground of availability of statutory alternative remedy. Reference in this regard may be made to the following decisions:

(i) Jaipal (Minor) v. Board of Revenue, U.P., Allahabad 1956 ALJ 807.

(ii) Akthar Husain and Anr. v. Board of Revenue, U.P., Lucknow and Ors. 1987 AWC 290.

(iii) Ram Bharose Lal v. State of U.P. and Ors. 1991 RD 72.

(iv) State of U.P. v. Board of Revenue 1993 AWC 932.

18. In view of the aforesaid discussion and particularly in view of the fact that the courts below themselves left it open to the Petitioners to approach the court of competent jurisdiction for declaration of their rights and title, if any, in the land in

dispute, the present petition is not maintainable.

19. No case for interference under Article 226 of the Constitution of India is made out.

20. Writ petition fails and is dismissed in limine.