

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

**Chapter VIII, Rule 32(2) (b))
Description of case**

Case No. Writ Petition No. 7464 of 2001 (M/S)

Smt. Manorama Devi and others

Vs.

Board of Revenue, U.P. Lucknow and others.

Date of decision: 30-10-04

For the approval of:

Hon'ble Mr. Justice B.S. Verma, J.

- Whether the order/judgment should be sent to the reports for reporting? (Yes)
- Whether the reporters be allowed to see the judgment? ()

Reserved Judgment
IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No7464 of 2001 (M/S)
(Old No.2108/98)

Smt. Manorama Devi and others. ... **Petitioners.**

Versus

Board of Revenue, Uttar Pradesh,
Lucknow and 3 others. ... **Respondents.**

Mr. M.C. Pande, learned counsel for the petitioners.
Sri Nand Prasad, learned Standing Counsel for respondent nos. 1 and 2.
Mr. M.S.Pal, Mr.Rajendra Dobhal, & learned Sr.Advocate, Sr. S.N.Babulkar,
learned counsel for the respondent No.3.

Date October 30, 2004

Hon'ble B.S.Verma, J.

By means of this Writ Petition, the petitioners have challenged the order dated 22-09-1990, passed by Assistant Collector, Kotdwar, (Pauri Garhwal) *Annexure-8* to the Writ Petition, Judgment and order, dated 15-11-1997 and 27.8.1998, passed by the Board of Revenue, U.P. Lucknow in Reference No. L.R. 93-94 and Review No. 3, which was preferred against the order dated 15.11.1997 aforesaid (*Annexure 11 & 12 to the Writ Petition*) and prayed for quashing the impugned orders. By the impugned order dated 22.9.90, the respondent no.2 allowed the application of respondent no.3 for recording her name in Khata No. 10 of village Sitavpur, Patti Sukharon and also ordered for making entries in the names of respondent no. 3 and Chandan Singh, husband of petitioner no.1 Manorama Devi and father of respondent no.4, showing equal half share each over certain land of Khata No. 10. By order dated 15.11.97 (Annexure-11), the respondent no.1 confirmed the order of Assistant Collector and rejected the Reference preferred against it. Subsequently, the Review Petition was also dismissed in-limine vide Annexure-12.

Brief facts, giving rise to this petition, are that on 26.12.1989 the respondent No.3 Smt. Kunwari Devi moved on

application (Annexure-5) in the Court of Assistant Collector (Respondent No.2) Kotdwar under Sections 33/39 of U.P. Land Revenue Act, alleging therein that the land of Khata No. 7, area 4.90 acres was recorded in her name and the land of Khata No. 5, situated in village Sitabpur, Patti Sukhoron, Tahsil Kotdwar, District Pauri Garhwal was recorded in the name of respondent No.3 Smt. Kunwari Devi, and land worth 3.93 acre is recorded in the name of Chandan Singh, husband of the petitioner no.1 and respondent no.3 Kunwari Devi jointly, but in the month of November 1989, said Kunwari Devi came to know that her name has not been recorded in the Khatauni of 1391 of 1396 Fasali year. The land which was earlier recorded in her name has now been recorded in the name of Sri Chandan Singh, the husband of petitioner no.1 by mistake, though the same should have been recorded in her name, therefore, out of the total land of 7.29 acre, land to the extent of 6.89 acre of Khata No. 10 be recorded in her name. Consequently, the case was registered in the Court of Assistant Collector who directed the Tahsildar for making necessary enquiries. Tahsildar concerned issued notices to all Bhumidhars of relevant Khata Khatauni in pursuance of the provisions of Uttar Pradesh Land Revenue Act (*in short the Act*) and Rules; but none came forward to file objections. Subsequently, notices were also served through publication in "*Dainik Jagaran*" dated 13.5.1990; but even then none appeared to file objections and contest the proceedings. Then, the respondent no.2 proceeded with the case and after considering entire material before him, passed order, dated 22.9.1990, as mentioned above, directing that plot no. 90 measuring 4.7 acre, plot no. 103, area .08 acre, plot No. 104, area 0.03 acre and plot no. 107B area 0.09 acre total 4.90 acre land of Khata No. 10 be separated and a separate Khata be prepared in the name of Smt. Kunwari Devi and the land be recorded in the name of respondent no.3 Smt. Kunwari Devi. The Assistant Collector also directed that out of the rest land of Khata No.10, i.e. plot no. 58A, area 0.47 acre, plot no. 59 area 3.22 acre and plot no. 104B area 0.29 acre (total 3.98 acre), the share of Smt. Kunwari

Devi and Sri Chandan Singh be shown to the extent of half share each, meaning thereby that land to the extent of 1.99 acre be recorded in the name of Smt. Kunwari Devi.

Aggrieved by the said impugned judgment and order Annexure-8, the petitioners preferred Revision No. 17 of 1992-93, who, ultimately, made a recommendation to the Board of Revenue for setting aside the order dated 22.9.1990 and for remand of the case to Assistant Collector. As already mentioned earlier, the Respondent No.1 has rejected the reference and review petitions vide Annexures 11 and 12, which gave rise to the present writ petition.

The petitioners have challenged the impugned order on the grounds inter alia that Smt. Kunwari Devi, respondent no.3 in collusion with Mahendra Singh moved application dated 26.11.89 before Assistant Collector, Ist Class, i.e. respondent no.2 under Sections 33/39 of Z.A. and L.R. Act after 25 years, so that the long standing entries in favour of Chandan Singh and could not be corrected in summary proceeding and her Khata can be separated by way of a suit under Section 176 and 229 of the U.P. Z.A. and L.R.Act. To sum up, the main grounds on which the impugned judgment and orders by the petitioners are that the entry being long standing, neither any application under Sections 33/39 of the U.P.Z.A. and L.R.Act can be entertained, nor any order could be passed by the Collector under the aforesaid Sections. The respondent no.3 would have filed a regular suit and the entry cannot be corrected in summary proceeding; that the petitioners could not be compelled or forced by respondent nos. 1 and 2 for filing a regular suit in spite of the fact that the revenue records were in their favour and their names in the revenue record were continuing for about 15-25 years.

I have heard learned counsel for both the parties and have carefully gone through the entire material on record including the impugned orders.

In order to scrutinize the entire controversy involved in the present case, it is expedient to sum up the entire case, which gave rise to this writ petition. According to respondent no.3, Kunwari Devi, facts of the case are that Sri Sitab Singh and Sri Umrao Singh were two real brothers. Sri Sitab Singh has one son named Lal Singh. Sri Umrao Singh was succeeded by his only son Chandan Singh. Thus, after the death of Sitab Singh and Umrao Singh, the entire land devolved to them to the extent of half share. Lal Singh also died leaving behind his widow Kunwari Devi. This Kunwari Devi moved an application on 26.12.1989 before the Assistant Collector Kotdwar alleging therein that land of settlement Khatauni Khata No. 7 area 4.90 acre was recorded in her name and land of Khatauni Khata No. 5 area 3.90 area was recorded in the name of Chandan Singh and the applicant Kunwari Devi jointly. The applicant came to know in the month of November 1989 that the Opposite Party Chandan Singh has illegally and surreptitiously got the entire land recorded in his own name in the revenue records. The applicant Kunwari Devi has therefore prayed that the land of her share be ordered to be entered in her name in the revenue records. The fact that the land had been recorded in the name of Kunwari Devi in the revenue record has not been challenged at any stage of the proceedings by the petitioners, who are legal heirs of aforesaid Chandan Singh.

The Assistant Collector, First Class, Kotdwar, vide his judgment and order dated 22-9-1990 has passed the order in favour of the applicant Kunwari and directed Tahsildar Kotdwar to enter the land in the name of Kunwari Devi as mentioned earlier. Aggrieved by the judgment and order of the Assistant Collector, the petitioners preferred a Revision No. 17/92-93, Smt. Manorama Devi and others Vs. Smt. Kunwari Devi, before the Additional

Commissioner, who vide his order dated 30-10-1993 made a recommendation to set aside the order of the Assistant Collector and thereby made a reference to the Board of Revenue. The only ground mentioned by the Additional Commissioner (Administration) in his order dated 30.10.1993 is that the revisionists were not given adequate opportunity to contest the proceedings before the Assistant Collector. The said Reference has been registered as Reference No. 5 L.R.93-94, Smt. Manorama Devi Vs. Kunwari Devi. The Board of Revenue proceeded with the case. Ultimately, vide order dated 15-11-1997, the order of the Additional Commissioner was set aside. In its order, the Board of Revenue has discussed all the aspects of the case. It has been observed in the order that there were entries in the Khatauni in the name of Smt. Kunwari Devi, but her name was deleted from the revenue records without the order of the competent court and the entire land has been recorded in the name of Chandan Singh. The Board of Revenue also made a reference to the enquiry report of the Tahsildar concerned, which proves that the applicant-respondent no.3 Kunwari Devi was recorded as Bhumidhar in the revenue records. By slip of pen, the name of Kunwari could not be entered in the revenue records. It has also been observed in the order that the notice of the application made by the said Kunwari Devi was issued to all the co-share holders. Since sufficient service could not be effected on them, therefore, service by publication was ordered and the notice was published in Dainik Jagran, but none including the writ petitioners appeared to contest the proceedings. Witness Mahendra Singh was produced on behalf of the applicant Kunwari Devi, who had supported the contention of the said Kunwari Devi. It has also been found that the name of Kunwari Devi was left by slip of pen. It has also been observed in the order that the name of Kunwari Devi found place in the earlier settlement Khata Kuatauni No. 5, wherein the land had been recorded in the names of Kuwnari Devi, widow of Lal Singh and Chandan Singh. In Khata No. 7, there is entry in the name of Kunwari Devi. However, the name of Kunwari Devi could not be entered in the Khatauni of the years

1391 to 1396 Fasali, 1397 to 1402 Fasali prepared by Patwari. Ultimately, the Board of Revenue did not find favour with the findings of Additional Commissioner and the order dated 22-9-1990 passed by the Assistant Collector was upheld. It has also been observed in the order, dated 15-11-1997 that the aggrieved party may seek alternative remedy before the competent court. Aggrieved by this order, the petitioners have come up before this Court in the Writ Petition.

The main contention of the petitioners is that the proceedings under Section 33/39 of the Land Revenue Act are summary in nature, therefore, the correction of entries in the said proceeding was not legally maintainable and that the long standing entries should not have been corrected. In support of their contention, regarding maintainability of the writ petition, the petitioners have relied on the Ruling of the Allahabad High Court in the case of *"Tauzi-Ul-Haq and others vs. Board of Revenue and others (1994, A.L.J., 964)*. In the present case, as already narrated above, it has been found by the Board of Revenue that the name of the applicant-respondent no. 3 Smt. Kunwari Devi was found to have been left by slip of pen and without order of the competent court. In para no. 19 of the case-law, the High Court of Allahabad has observed that *"But from the facts in the present case it would be evident that the application for correction of entries is not legally maintainable and attracts the abuse of the process of the Court, referred to in Appendix X of the U.P. Revenue Court Manual. The error in the revenue entries of which correction can be sought should be obvious one and particularly of a clerical nature."* In the instant case, the correction ordered by the Assistant Collector vide his order dated 22-09-1990 was purely of a clerical nature, especially because the entries in the name of applicant-respondent no.3 in the disputed Khatas were existing from before and her name has been left in the subsequent Khataunis without the order of the competent court, therefore, the Board of Revenue has rightly observed that the

mistake had occurred by slip of pen and the Assistant Collector has passed a legal order. I am unable to take a different view in the matter. The case-law referred to by the learned counsel for the petitioners is of no avail to the petitioners, rather the same supports the case of the respondent No.3, Smt. Kunwari Devi.

The learned counsel for the petitioners has also relied on the ruling in the case of *M/s Mahalakshmi Land and Finance Company Pvt. Ltd. vs. Board of Revenue, U.P. Lucknow and others (S.C.D., 1997, page 220)*, in which similar view has been taken by the Allahabad High Court and it has been observed that Section 33 of the Land Revenue Act stipulates correction of errors and not declaration of title. The learned Judge has held in para 8 of the said judgment that the Member, Board of Revenue, ignoring the earlier orders passed on regular side by Ceiling Authorities and the Board of Revenue has passed an order which not only sets at naught those orders but also decides title without giving an opportunity of hearing. The learned Member could not have gone beyond the jurisdiction that Section 33/39 of the U.P. Land Revenue Act provides. It is only to correct clerical errors and that too after giving an opportunity of hearing. It has also been observed by the learned Judge that "Here specifically it is so called correction in the record of rights. In the instant case also, the Assistant Collector, Ist Class, Kotdwar has corrected the Annual Register on the basis of previous Khatauni. The learned Judge further held in para 11 that "there is no real dispute between the parties and the only question is whether any accidental or clerical error was made in the previously prepared register. In the present case, the name of respondent no. 3 Kunwari Devi was recorded in the Khatauni of the previous years; but due to clerical or accidental error, her name could not find place in Patwari Khataunis, therefore, correction of clerical error alone has been ordered by the Assistant Collector Kotdwar. By the impugned order, the Assistant Collector Kotdwar has not decided any title of the petitioners or of the respondent no. 3. Therefore, this ruling too is of no avail to the

petitioners because the learned Single Judge has held that the High Court would interfere, where they are not restricted to question of possession but also decide the question of title. The case of *"Rudrapratap and another Vs. Board of Revenue, U.P. and others"* (AIR, 1975, page 125 (Allahabad HC) relied on by the learned counsel for the petitioners is also of no avail to the petitioners. In that case, reference was made to the case of *Jaipal Minor V. The Board of Revenue, U.P. Allahabad* (AIR, 1957, Allahabad, 205) and it has been held by the High Court 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 assed 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."* As has been mentioned earlier, in the present case, in the correction proceedings only clerical error was ordered to be corrected and it was not a case deciding title of the parties, therefore, this case-law is also not helpful to the petitioners.

It has also been submitted by the learned counsel for the petitioners that there were long-standing entries in the name of Chandan Singh, therefore, the correction ordered by the Assistant Collector, Kotdwar, in proceedings under Section 33/39 of the Land Revenue Act in a summary proceeding is not maintainable. The plea of long-standing entries has been taken before this Court in the Writ Petition as well as before the Additional Commissioner. Learned Member, Board of Revenue has given a categorical finding that the name of Chandan Singh has been entered by omitting the name of Smt. Kunwari Devi in a forged manner without any order of the competent court, therefore, such a plea cannot apply to the entries made by forgery. Hence there is no illegality in the order passed by Board of Revenue on the count.

The learned counsel for the petitioners has lastly relied on the case-law *"Roshan Deen Vs. Preeti Lal [(2002) 1 Supreme Court Cases 100]* in which supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution has been dealt with. In that case, in para 12 of the judgment, the Hon'ble Supreme Court has observed that *"the very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The lookout of the High Court is, therefore, no merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law."* I am in full agreement with the view of the Hon'ble Apex Court. In the present case, had the Board of Revenue not confirmed the order of Assistant Collector, then, in my opinion, injustice would have resulted to the respondent no.3, who was admittedly recorded a Bhumidhar in the earlier revenue records, but due to slip of pen, her name could not be shown in the Khatauni prepared by the Patwari for subsequent years and her name was omitted without order of the competent court. Therefore, this case-law is of no avail to the petitioners.

The petitioners have also raised a plea in the present writ petition that Sri Chandan Singh, husband of petitioner no.1, became Sirdar on the enforcement of Zamindari Abolition and thereafter acquired Bhumidhari Sanad after depositing ten times of land revenue and the order to grant Bhumidhari Sanad was duly passed by the Assistant Collector Ist Class Kotdwar on 9.9.1974. Section 134 of the Zamindari Abolition and Land Reforms Act provides the procedure to grant Bhumidhari Sanad in favour of such persons, who were recorded Bhumidhar with non-transferrable rights after depositing ten times of land revenue Sections 134 to 136 have been omitted by U.P.Act No. 8 of 1997. The procedure to grant Bhumidhari Sanad was also summary in nature. The order granting Bhumidhari Sanad in favour of the petitioners does not help them because the respondent no.3 was not a party to that

proceeding under Section 134 before Tahsildar and the order is not binding on her.

The contention of the respondents are that the Assistant Collector has only directed to correct the revenue records and directed to record the name of respondent no.3 in the proceeding under Section 33/39 of U.P. Z.A. and L.R.Act, which are summary in nature and against the judgment and order passed in the said proceeding, writ petition will not be maintainable. In support of their contention, reliance has been placed on the rulings in the case of "*Kunj Behari Vs. Board of Revenue, U.P., Lucknow and others*" [2001(92) R.D., 166], "*Mohar Tiwari Vs. Board of Revenue, U.P. Lucknow, & others* [1990, R.D. (H.) 20], "*Chandrapal Singh Vs. Board of Revenue Lucknow and others* [1996 (87) R.D. 52]" *Smt. Rani Devi Vs. Board of Revenue, U.P. at Lucknow and others*" (1999(4), A.W.C., 3038, Allahabad High Court) and "*Bindeshwari Vs. Board of Revenue and others*" (2002(1), AWC, 498 and "*Ishu Vs. State of U.P. and others* [2003(94) RD 217]. In all these cases, the Allahabad High Court has held the writ petition against mutation/correction proceedings is not maintainable. All these rulings are fully applicable to the facts of the present case.

A reference to relevant Sections of the U.P. Land Revenue Act is necessary in this writ petition. Section 33 (1) and Section 33(2) of the U.P. Land Revenue Act, 1901 read as under:

33. The annual registers- (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 mentioned in Section 32.*

The register so prepared shall be called the annual register.

(2) *The Collector shall cause to be recorded in the annual register-*

- (a) *all successions and transfers in accordance with the provisions of Section 35; or*
- (b) *other changes that may take place in respect of any land;*

and shall also correct all errors 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.

Under Article 226 of Constitution of India, in mutation proceeding, the High Court would interfere where they are not restricted to the question of possession; but also decide the question of title. In the present case, the question of title has not been decided by the courts below.

Section 39 deals with corrections of mistakes in annual register and Section 40 deals with Settlement of disputes as to entries in annual register. Both these Sections are reproduced hereunder:

39. Correction of mistakes in the annual register-(1) *An application for correction of any error or omission in the annual register shall be made to the Tahsildar.*

(2) On receiving an application under sub-section (1) or any error or omission in the annual register coming to his knowledge otherwise, the Tahsildar shall make such inquiry as appears necessary and then refer the case to the Collector, who shall dispose it of, after deciding the dispute in accordance with the provisions of Section 40.

Provided that nothing in this sub-section shall be construed to empower the Collector to decide a dispute involving any question of title.

(3) The provisions of sub-sections (1) and (2) shall prevail, notwithstanding anything contained in the U.P. Panchayat Raj Act, 1947.

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.

40-A: Savings as to title suits- No order passed under Section 33, Section 34, 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.

It may be mentioned here that the alternate remedy to bring a suit against the respondent no.3 is available to the petitioners and the Board of Revenue has also mentioned in its order dated 15-11-1997 that the aggrieved party may seek remedy before the competent court, therefore, there is no infirmity or perversity in the impugned order passed by the Board of Revenue. A perusal of the order, dated 22-09-1990 passed by the Assistant Collector Kotdwar clearly shows that the report of Tahsildar Kotdwar was obtained. Tahsildar concerned has submitted his report on 15.9.1990. It is also evident that when the processes could not be served on the opposite parties, then publication was ordered in the case. Even after publication of general notice, none came forward to contest the proceedings before the Assistant Collector. The applicant Kunwari Devi has produced Mahendra Singh, son of Chandan Singh was a witness in the case. This witness has stated on oath before the Tahsildar Kotdwar has stated that the applicant Kunwari Devi is in possession over the disputed land and the land in dispute has been recorded in her name. This statement was recorded on 2-4-1990. This is a very strong circumstance in favour of the respondent no.3. In my opinion, the Board of Revenue has not committed any illegality or infirmity in upholding the order passed by the Assistant Collector.

A perusal of the above provision in Section 40-A would show that a person aggrieved by the order passed in the correction proceedings under Section 33/39 of the U.P. Land Revenue Act can challenge it on regular side and judgment of court shall over-ride the order passed in correction proceedings. Moreover, in the case of *"Jaipal Vs. Board of Revenue, U.P. Allahabad and others"* (AIR,1957,Allahabad, 205) a Division Bench of the Allahabad High Court, in a writ petition under Article 226 made against the order of Board of Revenue entering name of certain person in record of rights has observed that *"it has been the consistent practice of Allahabad High Court not 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." Ultimately, the Writ Petition has been dismissed. I am of the consistent view that an alternative efficacious remedy was available to the petitioners. Moreover, neither there is error manifest and apparent on face of record, and no grave injustice or gross failure of justice has been occasioned thereby to the petitioner and, therefore, the writ petition is not maintainable under Article 227 of the Constitution of India, as has been held by the Hon'ble Supreme Court in the case of "***Surya Dev Rai Vs. Ram Chander Rai and Others***" [(2003) 6 Supreme Court Cases 675]. It has been held by the Apex Court that the High Court is not to convert itself a court of appeal. It has further been observed that "***Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved.***" In the present case, undisputedly alternative remedy to bring a suit in regular court is available to the petitioners as provided by Section 40-A of the U.P. Land Revenue Act.

For the discussion aforementioned, the Writ Petition is devoid of merit and must fail. The petitioners' claim shall be decided in regular suit, if they so choose to file, irrespective of any finding recorded in the impugned judgments.

The writ petition is dismissed. No order as to costs.

(B.S. Verma, J.)

RCP