



2026:AHC:19374

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - B No. - 3662 of 2025

Tahir Ali Khan And Another

.....Petitioner(s)

Versus

Board Of Revenue Prayagraj And 7
Others

.....Respondent(s)

Counsel for Petitioner(s)	: Shoar Mohammad Khan
Counsel for Respondent(s)	: C.S.C., Quazi Mohammad Akaram

Court No. - 55

HON'BLE CHANDRA KUMAR RAI, J.

1. Heard Mr. Shoar Mohammad Khan, learned counsel for the petitioners, Mr. Quazi Mohammad Akaram, learned counsel for respondent nos. 2 to 5 and Mr. B.N. Pathak, learned standing counsel for the state-respondents.

2. Brief facts of the case are that Suit No. 99 of 2002-03 (Tahir Ali Khan versus state of U.P.) and Suit No. 100 of 2002-03 (Mohd Ali Khan versus state of U.P.), under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the "U.P. Z.A. & L.R. Act") filed by the petitioners as well as petitioners' father in respect to plot no. 90 area 0.645 hectare and plot no.86, area 3.67 hect., situated in village- Tashka, Tehasil-sadar, District- Rampur was dismissed by the trial court vide judgment and decree dated 30.8.2003. Against the judgment and decree dated 30.8.2003, two appeals were filed before the Commissioner which were registered as Appeal No.248 of 2002-03 and Appeal No.249 of 2002-03. The Additional Commissioner (Judicial), Moradabad Division, Moradabad vide judgment and decree dated 9.10.2003, set aside the judgment and decree passed by the trial court and decreed the plaintiff's suit in respect to disputed plots. Against the judgment and decree dated

9.10.2003, passed by the Additional Commissioner in appeals, recall applications dated 9.2.2004 and 15.4.2004 were filed by the persons who were not the parties to the suit proceedings. The Additional Commissioner vide order dated 21.7.2005, set aside the judgment and decree dated 9.10.2003 passed in Appeal No.248 of 2002-03 and Appeal No.249 of 2002-03 and restored the suit proceeding for fresh adjudication by trial court in accordance with law. Against the order of the Additional Commissioner dated 21.7.2005, petitioners have filed revision under Section 333 of the U.P.Z.A. & L.R. Act before the Board of Revenue. The revision filed by the petitioners was dismissed in default vide order dated 15.4.2004. Hence, this writ petition for the following relief:-

"I. to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 15.04.2024 passed by Learned Board of Revenue, Allahabad dismissing the Revision No.82/2004-05 (Tahir Ali Khan Vs. Nagar Palika Parishad and others) dismissing the same in default of prosecution as well as order dated 21.07.2005 passed by Additional Commissioner (Judicial) IInd, Moradabad Division, Moradabad in Appeal No.249 of 2002-03 (Tahir Ali Khan Vs. State of U.P.) recalling the judgment and order dated 09.10.2003 passed by it and remanding the same to Sub Divisional Officer, Sadar, Rampur, in respect of Gata No.90, measuring 0.645 hectare, situated at Village-Tashka, Tehsil-Sadar, District-Rampur."

3. Counsel for the petitioners submitted that suit under Section 229-B of the U.P. Z.A. & L.R. Act filed by the petitioners as well as petitioners' father were decreed in appeal by Additional Commissioner in proper manner. It is further submitted that Nagar palika as well as Sajid Khan and others have filed restoration/recall application, who were not the parties in suit appeal, as such, they have no right to file restoration application against the judgment and

decree passed in appeal, arising out of the suit proceeding under Section 229-B of the U.P. Z.A. & L.R. Act. He further submitted that the Additional Commissioner has illegally recalled the judgment and decree passed in appeal and restored the suit proceeding for fresh adjudication. He submitted that revision filed by the petitioners has been dismissed in default by the Board of Revenue, as such, the impugned orders should be set aside. He also submitted that respondent nos. 2 to 5 who have filed restoration application before the Additional Commissioner, have filed an affidavit before this Court that they have no interest in the matter and not pressing their restoration/recall for the restoration of the suit proceeding initiated by the petitioners under Section 229-B of the U.P. Z.A. & L.R. Act in respect to the plot in question. He submitted that in view of the affidavit filed by the private respondents, the writ petition should be allowed, setting aside the impugned orders passed by the Board of Revenue as well as the Additional Commissioner and the judgment and decree dated 9.10.2003 passed in Appeal No.249 of 2002-03 be maintained.

4. Learned counsel for private respondent nos. 2 to 5 submitted that writ petition filed by the petitioners be allowed and the petitioners' restoration/recall application be rejected as they are not interested to pursue the matter against the judgment and decree dated 9.10.2003 passed in appeal by the Additional Commissioner in favour of the petitioners.

5. Learned Standing Counsel for State submitted that no interference is required against judgments / orders passed by Board of Revenue & Additional Commissioner.

6. I have considered the arguments advanced by learned counsel for the parties and perused the records.

7. There is no dispute about the fact that suit under Section 229-B of the U.P. Z.A. & L.R. Act filed by the petitioners as well as petitioner's father was decreed in appeal by the Additional Commissioner vide judgment and decree dated 9.10.2003. There is also no dispute about the fact that the

respondent nos. 2 to 5 were not the parties in the suit proceeding under Section 229-B of the U.P. Z.A. & L.R. Act but on the restoration/recall application filed by private respondents nos. 2 to 5, as well as Nagar palika the judgment & decree dated 9.10.2003 has been recalled and the suit proceeding has been restored. There is also no dispute about the fact that revision filed by petitioner has been dismissed in default.

8. It is material to mention that against the dismissal of Revision No.81 of 2004-05 filed by petitioner's father, Writ B No. 3902 of 2024 was allowed by this Court vide order dated 25.11.2024, setting aside the order dated 18.9.2024 & 21.7.2005 and the matter was remitted back before first appellate court/ Commissioner to decide the recall applications filed against the order dated 9.10.2023. In pursuance of the order of this Court dated 25.11.2024, application dated 6.3.2025 was filed in Appeal No.248 of 2002-03 for not pressing their restoration applications dated 9.2.2004 as well as 15.4.2004, accordingly, Additional Commissioner vide order dated 5.5.2025 allowed the application dated 6.3.2025 and rejected the recall applications dated 9.2.2004 & 15.4.2004 as well as maintained the judgment and decree dated 9.10.2023. The order dated 5.5.2025 passed by Additional Commissioner runs as under:-

"आदेश पत्रक

न्यायालय: अपर आयुक्त, प्रथम

मण्डल : मुरादाबाद, जनपद: रामपुर, तहसील: सदर

वाद संख्या:-697/2025

कंप्यूटरीकृत वाद संख्या:-C202513000000697

मोहम्मद अली खा बनाम उ०प्र० सरकार अंतर्गत धारा:-

331 (3), अधिनियम: उ०प्र० ज० वि० भू० व्य०

अधिनियम, 1950

आदेश

पत्रावली प्रस्तुत । प्रार्थना पत्र देहिन्दागण के विद्वान अधिवक्ता को प्रार्थना पत्र दिनांकित 06.03.2025 पर सुना गया तथा प्रस्तुत अभिलेखों का अवलोकन किया गया। मा० उच्च न्यायालय इलाहाबाद में याचिका सं० 3902/2024 नासिर अली खां आदि बनाम बोर्ड ऑफ रेवेन्यू आदि में पारित आदेश दिनांक 25.11.2024 के अन्तर्गत इस न्यायालय द्वारा पूर्व पारित आक्षेपित आदेश दिनांक 21.07.2005 एवं मा० राजस्व परिषद द्वारा पारित आदेश दिनांक 18.09.2024 को निरस्त करते हुए रिकॉल प्रार्थना पत्र दिनांक 09.02.2004 तथा 15.04.2004 पर पुनः सुनवाई किये जाने हेतु आदेशित किया गया है और चूंकि रिकॉल प्रार्थना पत्र देहिन्दा / देहिन्दागण रिकॉल प्रार्थना पत्र दिनांक 09.02.2004 तथा 15.04.2004 को बल न देने के कारण निरस्त कराना तथा आदेश दिनांक 09.10.2003 को यथावत रखना चाहते हैं अतः ऐसी स्थिति में प्रार्थीगण साजिद खां आदि का प्रार्थना पत्र दिनांक 06.03.2025 स्वीकार किया जाता है तथा रिकॉल प्रार्थना पत्र दिनांक 09.02.2004 व दिनांक 15.04.2004 निरस्त किये जाते हैं तथा आदेश दिनांक 09.10.2003 यथावत रखते हुए अपील की कार्यवाही समाप्त की जाती है। बाद आवश्यक कार्यवाही इस न्यायालय की पत्रावली दाखिल दफ्तर हो ।

(सर्वेश कुमार गुप्ता)

अपर आयुक्त-प्रथम, मुरादाबाद मण्डल, मुरादाबाद।

05.05.2025"

9. It is material to mention that respondent nos. 2 to 5 who have filed recall application against the judgment and decree passed in Appeal No.249 of 2002-03, are not pressing their claim, as such, fresh adjudication of suit proceeding under Section 229-B of the U.P. Z.A. & L.R. Act is abuse of process of law. It is also material to mention that in another suit filed by the petitioner's father which was decreed in appeal, the similar circumstance arose and the

Additional Commissioner has ultimately rejected the recall applications dated 9.2.2004/15.4.2004 and maintained the judgment and decree dated 9.10.2003, as such, the remand before the Board of Revenue or the Additional Commissioner or trial court, is not in the interest of justice, rather to maintain the decree of the 1st appellate court dated 9.10.2003, passed by the Additional Commissioner in Appeal No.249 of 2002-03.

10. Considering the entire facts and circumstances of the case, the impugned order dated 15.4.2024 passed by respondent no.1/Board of Revenue as well as the order dated 21.7.2005 passed by the respondent no.7/Additional Commissioner (Judicial), Moradabad Division, Moradabad in Appeal No.249 of 2002-03 are liable to set aside and the same are hereby set aside.

11. **The writ petition stands allowed** and the judgment and decree dated 9.10.2003 passed by the Additional Commissioner (Judicial), Moradabad Division in Appeal No.249 of 2002-03 is hereby maintained.

January 28, 2026
C.Prakash

(Chandra Kumar Rai,J.)