



2026:AHC:826

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - B No. - 263 of 2022

Hari Krishna

.....Petitioner(s)

Versus

Board Of Revenue And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Ram Dayal Tiwari, Sr. Advocate
Counsel for Respondent(s)	:	C.S.C.

Court No. - 55

HON'BLE CHANDRA KUMAR RAI, J.

1. Heard Sri M.D. Singh, learned Senior Counsel assisted by Sri Vaibhav Goswami, learned counsel for the petitioner and Sri Ram Dhan, learned State Law Officer for the state-respondents.

2. Brief facts of the case are that dispute relates to old plot no.2601 (new plot no.1572), area 3.56 acres, old plot no.2581 (new plot no.1534), area 6.36 acres and old plot no.2598 (new plot no.1570 Ka), area 2.46 acres. Petitioner was ordered to be recorded over the plot in question by the consolidation authorities. Copy of C.H. Form no.45, bearing the order of the consolidation authorities, recording the name of the petitioner over the plot in question, is annexed as Annexure No.4 to the writ petition. The name of the petitioner was accordingly recorded in the khatauni from 1424 fasli to 1429 fasli but later on the entry was changed in respect to the plot in question. Petitioner on enquiry, came to know that the order dated 6.9.2018, has been passed by the Sub Divisional Order under Section 38(1) of the U.P. Revenue Code, 2006, accordingly, Writ Petition No.33611 of 2018 was filed by the petitioner before this Court. This Court vide order dated 3.5.2019, set aside the order of the S.D.O. dated 6.9.2018 and directed the Sub Divisional Officer to decide the matter afresh, after affording opportunity of hearing to the petitioner. In pursuance of the order of this Court dated 3.5.2019, S.D.O. passed a fresh order dated 21.10.2019, expunging the petitioner's entry. Petitioner challenged the order dated 21.10.2019 in appeal under Section 38(4) of the U.P. Revenue Code, 2006 which was heard by the Additional Commissioner, Gorakhpur Division, Gorakhpur. The

aforementioned appeal was heard and dismissed vide order dated 24.3.2021. The petitioner challenged the order dated 24.3.2021 by way of revision under Section 210 of the U.P. Revenue Code, 2006 before Board of Revenue which has been dismissed as not maintainable vide order dated 10.8.2021. Hence, this writ petition for the following relief:-

"Issue a writ, order or direction in the nature of certiorari, quashing the order of respondent no.3 dated 21.10.2019 (Annexure No.11 to the writ petition), order of respondent no.2 dated 24.3.2021 (Annexure No.12 to the writ petition) and order passed by respondent no.1 dated 10.8.2021 (Annexure No.14 to the writ petition)."

3. This Court entertained the matter on 16.5.2022 and passed the following order:-

"Heard Sri M.D. Singh Shekhar, learned Senior Counsel assisted by Sri Ram Dayal Twiari, learned counsel for the petitioner and learned Standing Counsel for State-respondents.

The petitioner has preferred the present writ petition with the prayer to quash the order dated 21.10.2019 passed by respondent No.3/Sub Divisional Magistrate Tehsil Basgoan District Gorakhpur and order dated 24.03.2021 passed by respondent No.2/Commissioner Gorakhpur Division Gorakhpur and order dated 10.08.2021 passed by respondent No.1/Board of Revenue, Lucknow U.P. A further prayer has also been made to direct the respondents not to change the nature of the land.

Facts in brief as contained in the writ petition are that the proceedings under Sub Section (1) of Section 38 was initiated by the petitioner by filing a case before the Sub Divisional Magistrate Tehsil Basgoan District Gorakhpur being Case No.RST/03689 of 2018. The aforesaid case was dismissed by him vide order dated 21.10.2019.. Aggrieved against the aforesaid order, the

petitioner preferred Appeal No.C201905000002228 of 2019 before the Commissioner Gorakhpur Division Gorakhpur under Section 38(1) of U.P. Land Revenue Code, 2006. The said appeal was rejected vide order dated 24.03.2021. Aggrieved against the aforesaid order, the petitioner preferred revision before the Board of Revenue being Revision No. REV/ 1177/2021/ Gorakhpur (Computer Case No.R20210531001177).

It is argued by learned Senior Counsel that the aforesaid revision was rejected only on the ground that the same is not maintainable. It is argued that the aforesaid finding recorded by the Board of Revenue is absolutely perverse and revision filed under Section 210 of U.P. Land Revenue Code, 2006 is maintainable. He relied upon paragraph 48 of the order dated 12.05.2022 passed by this Court in Writ Petition No.25616 of 2021 (Jainka Devi Vs. State of U.P. and others).

Matter requires consideration.

Learned Standing Counsel accepted notice on behalf of respondents.

As prayed by Standing Counsel, six weeks time is granted to file counter affidavit.

Rejoinder affidavit, if any, may be filed within two weeks thereafter.

List after exchange of affidavits.

Until further orders of this Court, parties were directed to maintain status quo on the spot"

4. In pursuance of the order of this Court, parties have exchanged their pleadings.

5. Learned Senior Counsel for the petitioner submitted that revision filed under Section 210 of the U.P. Revenue Code, 2006 against the

order passed in the proceeding under Section 38 of the U.P. Revenue Code, 2006 has been dismissed as not maintainable, without considering the amendment made vide U.P. Act No.7 of 2019 on 10.3.2019. He further placed the judgment of this Court reported in **2022 156 RD, Jhinka Devi vs. State of U.P. and 4 Others**, in order to demonstrate that revision under Section 210 of the U.P. Revenue Code, 2006 is very much maintainable against the order passed in the proceeding under Section 38 of the U.P. Revenue code, 2006.

6. Learned State Law Officer for the state submitted that there is no illegality in the exercise of jurisdiction by the Sub Divisional Officer under Section 38(1) of the U.P. Revenue Code, 2006 as well as by the Additional Commissioner under Section 38(4) of the U.P. Revenue Code, 2006, as such, dismissal of revision under Section 210 of the U.P. Revenue Code, 2006 as not maintainable by the Board of Revenue will not make any difference and writ petition is liable to be dismissed.

7. I have considered the arguments advanced by learned Senior Counsel for the petitioner, learned state law officer for the State and perused the records.

8. There is no dispute about the fact that revision under Section 210 of the U.P. Revenue Code, 2006 filed by the petitioner against the order passed in the proceeding under Section 38 of the U.P. Revenue Code, 2006 has been dismissed as not maintainable.

9. In order to appreciate the controversy involved in the matter, perusal of Section 38 of the U.P. Revenue Code, 2006 along with amendment made vide U.P. Act No.7 of 2019 w.e.f. 10.3.2019 will be relevant which is as under:-

38. Correction of [error] and omission.-(1) An application for correction of any error or omission in the map, field-book (Khasra) or record of rights (Khatauni) shall be made to the Tahsildar in the manner prescribed.

(2) On receiving an application under sub-section (1) or on any error or omission otherwise coming to his

knowledge, the Tahsildar shall make such inquiry as may appear to him to be necessary, and refer the case along with his report to the Collector in the case of map correction and to the Sub-Divisional Officer in matter of other correction.

(3) The case shall be decided by the Collector or the Sub-Divisional Officer, as the case may be, after considering any objection filed and evidence produced before him or before the Tahsildar.

(4) Any person aggrieved by an order of the Collector or the Sub-Divisional Officer, as the case may be, under sub-section (3), may prefer an appeal to the Commissioner within a period of thirty days from the date of such order, and 3[the decision of the Commissioner shall, subject to the provisions of section 210, be final]

10. Perusal of paragraph nos. 62, 63 & 64 of the Judgment passed by by this Court in Jhinka Devi (supra) will be relevant which are as under:-

"62. Construing the provisions of sub-section (4) of section 24 and Section 210 in the aforesaid manner and by applying the principle of harmonious construction the apparent conflict between the two provisions would be reconciled and the provisions of the two sections can be read in a manner so as to give full effect to both the provisions without rendering either of them redundant or otiose.

63. It would therefore follow as a necessary consequence that the order passed by the Commissioner in appeal under sub-section (4) of Section 24, which is final in the sense that there is no further appeal thereagainst, would be subject to the revisional powers of the Board to be exercised under Section 210.

64. As regards the decision in the case of Vijay Kumar and others (supra), sought to be relied upon on behalf of the petitioner, it may only be noted that the aforestated decision, was rendered in the context of the provisions of the U.P. Land Revenue Act 1901, (now repealed). The statutory scheme under the U.P. Revenue Code, being entirely different, particularly consequent to the amendments made in the year 2019 whereby the order passed in an appeal under sub-section (4) of Section 24 has been made subject to the provisions of Section 210, the aforesaid decision would have no applicability in the facts of the present case."

11. Considering the amendment made in Section 38 of the U.P. Revenue Code, 2006 vide U.P. Act No.7 of 2019 w.e.f. 10.3.2019 and the ratio of law laid down by this Court in the case of **Jhinka Devi** (supra), the impugned order dated 10.8.2021, passed by the Board of Revenue is liable to be set aside and the same is hereby set aside.

12. **The writ petition is allowed in part** and the matter is remanded back before respondent no.1/Board of Revenue, Lucknow, Uttar Pradesh to register the revision on its original number and decide the same afresh on merit, after affording opportunity of hearing to the parties, as expeditiously as possible, preferably within a period of 3 months from the date of production of the certified copy of the order, in accordance with law.

January 5, 2026
C.Prakash

(Chandra Kumar Rai,J.)