



2026:AHC-LKO:4960

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 27 of 2026

Masjid Gaura Sailak Waqf Thru. M/C Treasurer Mohd.
Kaleem

.....Petitioner(s)

Versus

Addl. Survey Waqf Commissioner Distt. Magistrate
Barabanki Distt. Barabanki And 8 Others

.....Respondent(s)

Counsel for Petitioner(s)	: Sajjad Husain, Badar Iftikhar, Kulsoom Firoz
Counsel for Respondent(s)	: Ajay Kumar Pandey, Mohammed Hamza Shamim, Mohan Singh

Court No. - 5

HON'BLE ALOK MATHUR, J.

1. Heard Sri Sajjad Husain, learned counsel for the petitioner, Dr. Krishna Singh, learned Standing counsel on behalf of respondent No.s 1 and 2 and Sri Mohammed Hamza on behalf of respondent No.5.
2. The dispute in the present case pertains to mutation of property situated at gata No.s 137/0.840 hectare, 401/0.296 hectare, 397/0.679 hectare total three numbers having a total area of 1.815 hectare of khata No.152 in Village Gaura Sailak, Pargana and Tehsil Fatehpur, District Barabanki. It has been submitted that on the aforesaid land a mosque is existing which is in the name and style of Masjid Gaura Sailak and previously name of Sri Puttu Khan was recorded as Mutwalli as per the order dated 17.7.1979 passed by Tehsildar, Tehsil Fatehpur, District Barabanki. It has been submitted that all the Mutwallis are replaced from time to time and subsequently an application was preferred by one Aqif Kamaal Ayoobi for mutating his name in the revenue records against gata No.s 137/0.840 hectare, 401/0.296 hectare, 397/0.679 situated in Village Gaura Sailak, Pargana and Tehsil Fatehpur, District Barabanki. It has been submitted that recommendations in favour of the applicant has been made by opposite party No.4, namely Sunni Central Waqf Board.
3. The application was opposed by filing objections by one Mohammad Naseem i.e. opposite party No.8 stating that the society Madarsa Darul Uloom Gulshan A Raza Gaura Sailak is the competent authority to look after the working of the said masjid and consequently opposed the application of the petitioner under Section 34/35 of U.P. Revenue Code. The Tehsildar rejected the objections filed by opposite party No.8 and allowed the application of the petitioner vide order dated 4.4.2024 directing that name of the applicant be recorded in the

revenue records.

4. Against the order dated 4.4.2024 an appeal was filed before Sub Divisional Magistrate, who also considered the entire records produced by rival parties and found that the term of the society of the petitioner had expired on 17.9.2018 and had not been renewed thereafter and consequently found that the order of Tehsildar was illegal and arbitrary and, hence, allowed the appeal setting aside order dated 4.4.2024 and also remanded the matter to the Tehsildar for consideration afresh.
5. Learned counsel for the petitioner has vehemently submitted that as per the provisions of Section 28 of Waqf Act, 1995 District Magistrate, Additional District Magistrate or Sub Divisional Magistrate have to implement the orders of the Sunni Central Waqf Board. He submits that the appellate authority was sub Divisional Magistrate, therefore, he was bound to comply with the directions issued by Sunni Central Waqf Board and the Sub Divisional Magistrate could not have passed an order contrary to the order passed by Sunni Central Waqf Board.
6. Learned counsel for the petitioner has further submitted that as per provisions of Section 85 of the Waqf Act, 1995 no suit or other legal proceeding shall lie in any civil court, revenue court and any other authority in respect of any dispute, question or other matter relating to any waqf, waqf property or other matter which is required by or under this Act to be determined by a Tribunal.
7. Learned Standing counsel, on the other hand has opposed the prayer made by the petitioner. He submits that it is the petitioner who had approached the Tehsildar by moving application under Section 34/35 of U.P. Revenue Code for mutating the name of the petitioner in the revenue records against the disputed property. Once the Tehsildar has considered the entire matter and passed appropriate orders by means of order dated 4.4.2024, it cannot be said that no appeal would lie before Sub Divisional Magistrate in accordance with the provisions contained under Section 28 and 85 of the Waqf Act, 1995. He has further submitted that the words 'District Magistrate', 'Additional District Magistrate', or 'Sub Divisional Magistrate' in respect of Section 28 and 85 of the Waqf Act, 1995 would not mean the competent authority under U.P. Revenue Act i.e. Tehsildar, Sub Divisional Officer and the appellate authority constituted under the said Act to decide the dispute in exercise of the powers under Sections 34/35, 207 i.e. appellate authority and 210 i.e. revisional authority. He further submits that bar of jurisdiction of civil courts and other authorities is only as per the provisions of Section 85 of the Waqf Act, 1995 and it only states that any disputed questions or other matters related to the working of a waqf committee or other such matters which is mentioned under the Waqf Act be determined or adjudicated when there is no provision under the Waqf

Act to decide upon the questions of mutation proceedings in the revenue records and, therefore, submits that the objections raised by the petitioner are baseless and the petition deserves to be dismissed.

8. I have heard the rival contentions and perused the records.
9. It is noticed that the disputed questions of fact as emerged with regard to mutation of the property on which masjid is existing i.e. the land situated at gata No.s 137/0.840 hectare, 401/0.296 hectare, 397/0.679 situated in Village Gaura Sailak, Pargana and Tehsil Fatehpur, District Barabanki, the application of the petitioner was duly considered and allowed by Tehsildar by means of order dated 4.4.2024 and it seems that recommendation in favour of the petitioner are also accepted by the Sunni Central Waqf Board. It is only in the appellate proceedings before the Sub Divisional Magistrate that it has been found that there are certain infirmities with regard to tenure of the society of the petitioner, according to which, his term had expired in 2018 and has not been renewed and subsequently even though the petitioner has submitted that the finding is perverse and the term has been extended but considering that the dispute in the present case pertains to only mutation of the property which pertains to only to a person who is entitled to pay revenue to the government and does not declare right, title or interest of the person who is entitled to the said property and in case any person wants to seek declaration with regard to right, right or interest over the disputed land, that power is provided to the civil court of competent jurisdiction and such a declaration cannot be sought in mutation proceedings under Section 34/35 of U.P. Revenue Code. Apart from the above, this Court finds that the objections of the petitioner pertains to jurisdiction of Sub Divisional Magistrate under Section 28 and 85 of the Waqf Act are baseless and are accordingly rejected.
10. It is only the District Magistrate, Additional District Magistrate or Sub Divisional Magistrate who are in their capacity under any other enactment as the District Magistrate, Additional District Magistrate or the Sub Divisional Magistrate are directed to implement the orders of Waqf Board but while exercising the powers under U.P. Revenue Code that competent authority to consider appropriate application, appeal and revisions and accordingly such discharge of powers cannot be controlled by the provisions contained under Section 28 of Waqf Act, 1995. Waqf Tribunals have jurisdiction only over properties notified in the 'list of Auqaf' as provided in Chapter II or registered under Chapter V of the Waqf Act, and not over disputes concerning unregistered properties.
11. Apart from the above, we are in agreement with the arguments of learned Standing counsel that bar under Section 85 would not come in the way of proceedings for mutation under Section 34 of U.P. Revenue Code but bar under

Section 85 only extends to such matters which can be determined by the Tribunal pertaining to a person who is entitled to pay revenue or any other aspect pertaining to Waqf Act and accordingly we find that bar under section 85 is also not attracted in the present case. Section 83 of Waqf Act, 1995 mentions the constitution of Tribunal for determination of any disputed question or other matters relating to a waqf or waqf property and the aforesaid Act bars the jurisdiction of courts to entertain the dispute relating to waqf or waqf property but the dispute in the present matter does not relate to the right and title as well as nature of waqf property rather it relates to mutation proceedings and admittedly the waqf Tribunal has got no power to pass an order of mutation because the aforesaid power lies with revenue officials.

12. The aspect as to whether the petition is maintainable in proceedings under Section 34 of U.P. Revenue Code has been considered by this Court in numerous judgments and it has consistently been held that normally the High Court in exercise of its discretionary jurisdiction does not entertain writ petitions against such orders which arise out of summary proceedings.

13. In the case of **Jaipal Vs. Board of Revenue, U.P., Allahabad & Ors. AIR 1957 ALL 205**, notice was taken of the consistent practice of this Court not to interfere with the orders made by the Board of Revenue in cases in which the only question at issue was whether the name of the petitioner should be entered in the record of rights. The observations made in the judgment in this regard are as follows:-

"3. ...It has however been the consistent practice of this Court not to 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..."

14. The question with regard to the maintainability of a writ petition arising out of mutation proceedings fell for consideration in the case of **Sri Lal Bachan Vs. Board of Revenue, U.P., Lucknow & Ors., 2002 (93) RD 6**, and it was held that the High Court does not entertain a writ petition under Article 226 of the Constitution of India for the reason that mutation proceedings are only summarily drawn on the basis of possession and the parties have a right to get the title adjudicated by regular suit. The observations made in the judgment are extracted below:-

"11. This Court has consistently taken the view as is apparent from the decisions of this Court referred above that writ petition challenging the orders passed in mutation proceedings are not to be entertained. To my mind, apart from there being remedy of getting the title adjudicated in regular suit, there is one more reason for not entertaining such writ petition. The orders passed under Section 34 of the Act are only based on possession which do not determine the title of the parties. Even if this Court entertains the writ petition and decides the writ petition on merits, the orders passed in mutation proceedings will remain orders in summary proceedings and the orders passed in the proceedings will not finally determine the title of the parties."

15. Reiterating a similar view in the case of **Bindeshwari Vs. Board of Revenue & Ors., 20025 (1) AWC 498**, it was stated that mutation proceedings do not

adjudicate the rights of parties and orders passed in the said proceedings are always subject to adjudication by the competent court and therefore a writ petition against an order in mutation proceedings would not be entertainable. It was observed as follows:-

"11. ...The present writ petition arising out of the summary proceeding of mutation under Section 34 of U.P. Land Revenue Act, cannot be entertained under Article 226 of the Constitution of India. The mutation proceedings do not adjudicate the rights of the parties and orders passed in the mutation are always subject to adjudication by the competent court."

16. The settled legal position that orders of mutation are passed on the basis of possession and since no substantive rights of the parties are decided, ordinarily a writ petition would not be entertainable against such orders unless the same are found to be wholly without jurisdiction or have the effect of rendering findings which are contrary to title already decided by a competent court, was reiterated in the case of **Vinod Kumar Rajbhar Vs. State of U.P. and others, 2012 (1) ADJ 792.**

17. Taking note of the nature and scope of mutation proceedings which are summary in nature and also the fact that orders in such proceedings are passed on the basis of possession of the parties and no substantive rights are decided, this Court in **Buddh Pal Singh Vs. State of U.P. & Ors., 2012 (5) ADJ 266,** restated the principle that ordinarily a writ petition in respect of orders passed in mutation proceedings is not maintainable. It was observed as follows:-

"7. It is equally settled that the orders for mutation are passed on the basis of the possession of the parties and since no substantive rights of the parties are decided in mutation proceedings, ordinarily a writ petition is not maintainable in respect of orders passed in mutation proceedings unless found to be totally without jurisdiction or contrary to the title already decided by the competent court. The parties are always free to get their rights in respect of the disputed land adjudicated by competent court."

18. The proposition that mutation entries in revenue records do not create or extinguish title over land nor such entries have any presumptive value on title has been restated in a recent decision in the case of **Bhimabai Mahadeo Kambekar Vs. Arthur Import and Export Company & Ors., (2019) 3 SCC 191,** placing reliance upon earlier decisions in **Balwant Singh Vs. Daulat Singh¹¹ and Narasamma Vs. State of Karnataka, (2009) 5 SCC 591.** The observations made in the judgment are as follows:-

"6. This Court has consistently held that mutation of a land in the revenue records does not create or extinguish the title over such land nor has it any presumptive value on the title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. (See Sawarni v. Inder Kaur, Balwant Singh v. Daulat Singh and Narasamma v. State of Karnataka)."

19. Reference may also be had to the judgment in **Faqrud din Vs. Tajuddin, (2008) 8 SCC 12,** wherein it was held that the revenue authorities cannot decide questions of title and that mutation takes place only for certain purposes. The observations made in this regard are as follows:-

"45. Revenue authorities of the State are concerned with revenue. Mutation takes place only for certain purposes. The statutory rules must be held to be operating in a limited sense... It is well-settled that an entry in the revenue records is not a document of title. Revenue authorities cannot decide a question of title."

20. A similar observation was made in **Narain Prasad Aggarwal Vs. State of Madhya Pradesh, (2007) 11 SCC 736,** wherein it was held as follows:-

"19. Record-of-right is not a document of title. Entries made therein in terms of

Section 35 of the Evidence Act although are admissible as a relevant piece of evidence and although the same may also carry a presumption of correctness, but it is beyond any doubt or dispute that such a presumption is rebuttable..."

21. In **Union of India and others Vs. Vasavi Cooperative Housing Society Limited & Ors.**, (2014) 2 SCC 269, the principle that entries in revenue records do not confer any title was reiterated and referring to the previous decisions in **Corpn. of the City of Bangalore v. M. Papaiah**, (1989) 3 SCC 612; **Guru Amarjit Singh v. Rattan Chand**, (1993) 4 SCC 349, and **H.P. v. Keshav Ram**, (1989) 11 SCC 257, it was stated thus :-

"21. This Court in several judgments has held that the revenue records do not confer title. In Corpn. of the City of Bangalore v. M. Papaiah this Court held that: (SCC p. 615, para 5)

"5. ...It is firmly established that the revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law."

In Guru Amarjit Singh v. Rattan Chand this Court has held that: (SCC p. 352, para 2)

"2. ...that entries in the Jamabandi are not proof of title."

In State of H.P. v. Keshav Ram this Court held that: (SCC p. 259, para 5)

"5. ...an entry in the revenue papers by no stretch of imagination can form the basis for declaration of title in favour of the plaintiffs."

22. A similar view was taken in the case of **Sawarni (Smt.) Vs. Inder Kaur (Smt.) and others**, (1996) 6 SCC 223. and it was observed that the mutation of name in the revenue records does not have the effect of creating or extinguishing the title nor has any presumptive value on title and it only enables the person concerned to pay land revenue. It was stated thus :-

"7...Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question..."

23. The principle that an entry in revenue records is only for fiscal purpose and does not confer title on a person whose name appears in record-of-rights and title to the property can only be decided by a competent civil court was reiterated in the decision of **Suraj Bhan and others Vs. Financial Commissioner and others**, (2007) 6 SCC 186, and it was stated as follows :-

"9...It is well settled that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. It is settled law that entries in the revenue records or jamabandi have only "fiscal purpose" i.e. payment of land revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent civil court..."

24. The legal position that entries in revenue records do not confer any title has been considered and discussed in a recent decisions of this Court in **Harish Chandra Vs. Union of India & Ors.**, 2019 (5) ADJ 212 (DB), and **Mahesh Kumar Juneja and another Vs. Additional Commissioner Judicial Moradabad Division and others**, 2020 (146) RD 545 and it was restated that ordinarily orders passed by mutation courts are not to be interfered in writ jurisdiction as they are summary proceedings, and as such subject to a regular suit.

25. The settled legal position that an entry in revenue records does not confer title on a person whose name appears in record-of-rights and that such entries are

only for "*fiscal purpose*" and no ownership is conferred on the basis thereof and further that the question of title of a property can only be decided by a competent civil court has again been restated in a recent decision of the Supreme Court in **Jitendra Singh Vs. State of Madhya Pradesh and others., 2021 SCC OnLine SC 802**, wherein after referring to the previous authorities on the point in **Suraj Bhan Vs. Financial Commissioner, (2007) 6 SCC 186**, **Suman Verma Vs. Union of India, (2004) 12 SCC 58**, **Faqrud din Vs. Tajuddin, (2008) 9 SCC 368**, **Municipal Corporation, Aurangabad Vs. State of Maharashtra, (2015) 16 SCC 689**, **T Ravi Vs. B. Chinna Narasimha, (2017) 7 SCC 342**, **Bhimabai Mahadeo Kambekar Vs. Arthur Import & Export Co., (2019) 3 SCC 191**, **Prahlad Pradhar Vs. Sonu Kumhar, (2019) 10 SCC 259** and **Ajit Kaur Vs. Darshan Singh, (2019) 13 SCC 70**, it was observed thus :-

"8. In the case of Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186, it is observed and held by this Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only "fiscal purpose", i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court. Similar view has been expressed in the cases of Suman Verma v. Union of India, (2004) 12 SCC 58; Faqrud din v. Tajuddin, (2008) 8 SCC 12; Rajinder Singh v. State of J&K, (2008) 9 SCC 368; Municipal Corporation, Aurangabad v. State of Maharashtra, (2015) 16 SCC 689; T. Ravi v. B. Chinna Narasimha, (2017) 7 SCC 342; Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co., (2019) 3 SCC 191; Prahlad Pradhan v. Sonu Kumhar, (2019) 10 SCC 259; and Ajit Kaur v. Darshan Singh, (2019) 13 SCC 70."

26. The mutation proceedings being of a summary nature drawn on the basis of possession do not decide any question of title and the orders passed in such proceedings do not come in the way of a person in getting his rights adjudicated in a regular suit. It is for this reason that it has consistently been held that such petitions are not to be entertained in exercise of powers under Article 226 of the Constitution of India. The consistent legal position with regard to the nature of mutation proceedings, as has been held in the previous decisions, may be stated as follows :-

- (i) mutation proceedings are summary in nature wherein title of the parties over the land involved is not decided;
- (ii) mutation order or revenue entries are only for the fiscal purposes to enable the State to collect revenue from the person recorded;
- (iii) they neither extinguish nor create title;
- (iv) mutation in revenue records does not have any presumptive value on the title and no ownership is conferred on the basis of such entries;
- (v) the order of mutation does not in any way effect the title of the parties over the land in dispute; and
- (vi) such orders or entries are not documents of title and are subject to decision of the competent court.

27. Accordingly, this Court finds that the petition is bereft of merits and is accordingly **dismissed**.

28. However, we observe that in case the petitioner wishes to seek declaration with regard to his right, title or interest in the disputed property, it shall be open for him to approach the court of competent jurisdiction for seeking appropriate

reliefs in this regard.

January 20, 2026
RKM.

(Alok Mathur,J.)