



2026:AHC:36604

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - B No. - 36 of 2026

Kaushik Selat

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s) : Kripa Shankar Shukla

Counsel for Respondent(s) : Anirudh Pratap Singh, Ajeet Kumar Shukla, C.S.C., Sarvesh Kant Shukla

Court No. - 55

HON'BLE CHANDRA KUMAR RAI, J.

1. Heard Sri Radha Mohan Pandey, learned counsel, holding the brief of Sri Kripa Shankar Shukla, learned counsel for the petitioner, Sri Anirudh Pratap Singh and Sri Ajeet Kumar Shukla, learned counsel for respondent no.4 and Sri Ajay Kumar Baranwal, learned standing counsel for the state-respondents.

2. Brief facts of the case are that in the proceeding under Section 34 of the U.P. Revenue Code, 2006, the Naib Tehsildar has passed the order dated 24.5.2023 for recording the name of respondent no.4 on the basis of unregistered will deed dated 7.2.1997. Against the order passed by the Naib Tehsildar dated 24.5.2023, restoration application under Section 209-Ja of the U.P. Revenue Code, 2006, was filed by the petitioner along with prayer for condonation of delay. The aforementioned delay condonation application as well as restoration application was heard and decided by the Naib Tehsildar vide order dated 1.3.2024, after granting benefit of Section 5 of the Limitation Act as well as set aside the order dated 24.5.2023. The mutation case was restored to its original number for fresh decision in accordance with law. Against the order dated 1.3.2024, revision under Section 210 of the U.P. Revenue Code, 2006 was filed by respondent no.4 before the Board of Revenue. The aforementioned revision was heard and decided by the learned Member, Board of Revenue and vide order dated 4.12.2025, setting aside the order of

the Naib Tehsildar dated 1.3.2024 and directed the Naib Tehsildar to decide the restoration application as well as delay condonation application by passing a fresh order in accordance with law. Hence, this writ petition for the following reliefs:-

"I. Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 04.12.2025 passed by the respondent no.2 (Annexure no.11);

II. Issue a writ, order or direction in the nature of mandamus, directing the respondents not to create the third party interest for selling and purchasing the aforesaid land in question."

3. Counsel for the petitioner submitted that mutation application filed by respondent no.4, on the basis of unregistered will deed dated 7.2.1997, in the year 2022, has been allowed in illegal and arbitrary manner. He submitted that the name of the petitioner was ordered to be recorded in place of deceased in proper manner. He submitted that on the restoration application along with prayer for condonation of delay filed by the petitioner, the Naib Tehsildar has granted benefit of Section 5 of the Limitation Act and restored the mutation proceeding on its original number for a fresh decision. He submitted that direct revision was filed before the Board of Revenue and the order restoring the mutation case on its original number, has been set aside in illegal and arbitrary manner. He submitted that the order passed by the Board of Revenue should be set aside and the order dated 1.3.2024 passed by the Naib Tehsildar be restored so that the mutation proceeding can be decided on merit in accordance with law.

4. On the other hand, learned counsel for respondent no.4 submitted that there is no illegality in the order of the Board of Revenue by which the restoration application as well as delay condonation application has been ordered to be decided afresh in accordance with law. He submitted that no proper finding has been recorded for condonation of delay, as such, the Board of Revenue exercised the jurisdiction in the interest of justice. He submitted

that the Judgement passed by this Court in the case reported in **2016 RD 501, Sukumar Mitra vs. Smt. Kavit Gunami**, has been taken into consideration by the Board of Revenue while passing the impugned order, as such, no interference is required in the matter.

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

6. There is no dispute about the fact that the order for mutation was passed by the Naib Tehsildar for recording the name of respondent no.4. There is also no dispute about the fact that on the restoration application filed by the petitioner, order of mutation has been recalled and the mutation proceeding has been restored on its original number. There is also no dispute about the fact that in revision filed by respondent no.4, the order of the Naib Tehsildar dated 1.3.2024 has been set aside and the Naib Tehsildar was directed to decide the restoration application as well as application for condonation of delay in proper manner.

7. The perusal of the order passed by the Board of Revenue will be relevant for consideration which is as under:-

"उक्त प्रतिपादित सिद्धान्त के अनुसार अवर न्यायालय द्वारा प्रश्नगत आदेश में प्रतिपक्षीगण को धारा 5 मियांद अधिनियम का लाभ दिये जाने से पूर्व यह उल्लेख नहीं किया है कि प्रतिपक्षीगण द्वारा पुर्नस्थापन प्रार्थना पत्र प्रस्तुत करने में हुये विलम्ब का जो कारण दर्शाया गया है वह पर्याप्त एवं संतोषजनक है। विधि का यह सुस्थापित सिद्धान्त है कि विलम्ब के बिन्दु पर बिना विधि अनुसार विचार किये हुये न्यायालय को वाद के गुण दोष पर सुनवाई का क्षेत्राधिकार नहीं प्राप्त है। उपरोक्त के अतिरिक्त नामांतरण न्यायालय द्वारा पारित आदेश दिनांक 24.05.2023 में यह उल्लेख किया गया है कि नामांतरण वाद में गजट/रजिस्ट्री जारी की गयी परन्तु अवर न्यायालय द्वारा प्रस्तुत आदेश में उक्त तथ्य के सम्बन्ध में कोई भी विवेचना नहीं की है। उपरोक्त के आधार पर अवर न्यायालय द्वारा प्रगत आदेश से प्रतिपक्षीगण द्वारा प्रस्तुत पुर्नस्थापन प्रार्थना पत्र को स्वीकार किया जाना इतिपूर्ण प्रतीत होता है। न्यायहित में प्रकरण को पुर्नस्थापन प्रार्थना पत्र पर उपरोक्त विवेचना के आलोक में पुनः सुनवाई किये जाने हेतु न्याय संगत प्रतीत होता है। निगरानी में बत प्रतीत होता है निगरानी आंशिक रूप से स्वीकार किये जाने योग्य है।

अतः निगरानी स्वीकार की जाती है नायब तहसीलदार द्वारा पारित आदेश दिनांक 01.03.2024 निरस्त किया जाता है। नायब तहसीलदार उभयपक्षों को सुनवाई का अवसर प्रदान करते हुये मियांद प्रार्थना पत्र एवं रेस्टोरेशन प्रार्थना पत्र का निस्तारण मुखर आदेश से करेंगे। राजस्व अभिलेखों में पूर्व की स्थिति बहात की जाती है। अवर न्यायालय के अभिलेख वापस भेजे जायें इस वाद में यदि कोई स्थगन आदेश हो तो निरस्त किया जाता है। बाद आवश्यक कार्यवाही इस न्यायालय की पत्रावली दाखिल दफ्तर की जाये।

नरेन्द्र प्रसाद पाण्डेय)

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सदस्य (न्यायिक)"

8. Considering the finding recorded by the Board of Revenue, it is demonstrated that proper finding on the application for condonation of delay, has not been recorded, as such, there is no illegality in remitting the matter before the Naib Tehsildar to decide the time-barred restoration application filed by the petitioner afresh.

9. Considering the entire facts and circumstances of the case, without expressing any opinion on the merits of the case, this petition is disposed of with the direction to respondent no.3/Naib Tehsildar, Kaswar Raja, Raja Talab, Varanasi to decide the restoration application as well as delay condonation matter afresh, as directed by the Board of Revenue under order dated 4.12.2025, as expeditiously as possible, preferably within a period of 2 months, from the date of production of a certified copy of this order before the authority concerned, after affording proper opportunity of hearing to the parties concerned, in accordance with law.

February 18, 2026

C.Prakash

(Chandra Kumar Rai,J.)