



2026:AHC:37560

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - B No. - 654 of 2026

Bal Krishna @ Shashikant And 7 Others

.....Petitioner(s)

Versus

Board Of Revenue U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s) : Aprajit Yadav, Shivam Mishra,
Shyam Lal Yadav
Counsel for Respondent(s) : Azad Rai, C.S.C., Gautam Baghel,
Rajjan Lal Goyal, Utkarsh Singh

Court No. - 55

HON'BLE CHANDRA KUMAR RAI, J.

1. Heard Sri Shyam Lal Yadav and Sri Aprajit Yadav, learned counsel for the petitioners, Sri Gautam Baghel and Sri Utkarsh Singh, learned counsel for respondent no.2, Sri Awadhesh Kumar Patel, learned standing counsel for the state-respondents and Sri Azad Rai, learned counsel for the respondent-gaon sabha.

2. Brief facts of the case are that proceeding under Section 34 of the U.P. Revenue Code, 2006 has been initiated by the petitioners on 4.8.2025 which was entertained by the Tehsildar, Koraon, Prayagraj. Notice was issued and interim order was granted on 13.10.2025, staying the order, recording the name of respondent no.2, passed by the Revenue Inspector. Against the order passed by the Tehsildar on 13.10.2025, revision under Section 210 of the U.P. Revenue Code, 2006 was filed by respondent no.2 before the Board of Revenue. The Board of Revenue under the impugned order dated 21.1.2026, set aside the order dated 13.10.2025 and remitted the matter back before the Tehsildar to decide the application for interim relief within a month and the entire mutation proceeding within 6 months, in accordance with law. Hence, this writ petition for the following relief:-

"Issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 21.01.2026 passed by the Respondent No.1 (Board of Revenue, U.P. at Prayagraj in Revision No.5812/2025 (Computerized Case No.AL20250203005812) Sushila Devi vs. Ramrati Devi and

Others under Section-210 of the U.P. Revenue Code, 2006."

3. Counsel for the petitioners submitted that in the mutation proceeding initiated by the petitioners, notice was issued to the other side and the interim order was granted by the Tehsildar. He submitted that in place of contesting the mutation proceeding before the Tehsildar by filing an appropriate application for vacating the interim relief granted by the Tehsildar, direct revision was filed before the Board of Revenue and the Board of Revenue set aside the order dated 13.10.2025 in *ex parte* manner. It is further submitted that notice was not served upon the petitioners while passing the impugned order by the Board of Revenue. He placed the order-sheet of the proceeding and the other records, in order to demonstrate that the order passed by the Board of Revenue was *ex parte*. He submitted that the order passed by the Board of Revenue on 21.1.2026 be set aside and the matter be sent back before the Board of Revenue to decide the revision afresh. He placed reliance on the decision of this Court, reported in **2023 (158) RD 409, Raj Kumar vs. Board of Revenue and Others** in support of his submission.

4. On the other hand, learned counsel for respondent no.2 submitted that mutation proceeding was initiated by the petitioners on 4.8.2025 in which interim order has been granted in illegal manner, staying the order of Revenue Inspector by which respondent no.2 was ordered to be recorded. He submitted that the name of respondent no.2 was ordered to be recorded in the year 1994, as such, there was no occasion to grant interim order, staying the operation of the order, recording the name of respondent no.2, about 30 years ago. He submitted that the Board of Revenue has set aside the interim order passed by the Tehsildar and remitted the matter back to consider the application for interim relief as well as the entire mutation proceeding in accordance with law. He submitted that no interference is required against the order passed by the Board of Revenue and petitioner should contest the proceeding before the Tehsildar in accordance with law.

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 mutation proceeding under Section 34 of the U.P. Revenue Code, 2006, initiated by the petitioners, is pending before the Tehsildar. There is also no dispute about the fact that the Tehsildar has initially granted interim order on 13.10.2025 but in revision, the Board of Revenue has set aside the interim order passed by the Tehsildar and remitted the matter back before the Tehsildar to decide the matter, regarding grant of interim relief as well as mutation case on merit, in accordance with law.

7. It is material to mention that death of Roop Narayan has taken place in the year 1991, respondent no.2 was recorded in the revenue records in the year 1994 and the mutation proceeding has been initiated by the petitioners for the first time in the year 2025.

8. It is the admitted position that the Board of Revenue has passed the impugned order in *ex parte* manner and remitted the matter back before the Tehsildar to decide the prayer for interim relief as well as the mutation application on merit, as such, the petitioners, who have applied for mutation after 34 years, from the date of death of Roop Narain, have full opportunity to contest the proceeding for grant of interim relief as well as mutation case on merit in the presence of respondent no.2 before the Tehsildar in accordance with law. It will be not in the interest of justice to remand the matter back before the Board of Revenue.

9. This Court in the case reported in **1985 R.D. 71 Paras Nath singh Vs. The Deputy Director of Consolidation and others** has held that if by setting aside the impugned order another illegal order will be restored then the Court under Article 226 of the Constitution of India should not interfere with the impugned order although the order impugned is illegal or irregular. Paragraph No.21 of the judgment rendered in Paras Nath (supra) is relevant which is as follows:

21. It is, no doubt, correct to say that any order passed without jurisdiction is a nullity and deserves to be quashed. But if as a result of quashing that order another wrong and illegal order would be restored, this Court would refuse to interfere with the impugned order which appears to be quite proper equitable and just order. As mentioned above, the power under Article 226 of the Constitution is devised to advance justice and not to thwart it. To me it appears to be well settled that an order which is illegal cannot be

quashed or set aside in writ jurisdiction if quashing of it results in bringing on record another illegal order."

10. Considering the entire facts and circumstances of the case, without expressing any opinion on the merits of the mutation case, this petition is disposed of with the direction to Tehsildar, Koraon, Prayagraj to decide the prayer for interim relief, as expeditiously as possible, preferably within a period of 1 month, from the date of production of a certified copy of this order before the authority concerned and decide the entire mutation proceeding, expeditiously, preferably within a period of 3 months (in place of 6 months as directed by the Board of Revenue), from the date of passing of order on the interim relief application, after affording proper opportunity of hearing to the parties concerned, in accordance with law.

February 19, 2026
C.Prakash

(Chandra Kumar Rai,J.)