



A.F.R.
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**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 1001290 of 2005

Ramnath Singh

.....Petitioner(s)

Versus

Lal Sahab Singh and another

.....Respondent(s)

Counsel for Petitioner(s)	: Girish Chandra Sinha, Kuldeep Kumar Srivastava, Praveen Kumar Tripathi
Counsel for Respondent(s)	: C.S.C., A.s. Chaudhary, Prabhakar Vardhan Chaudhary

Court No. - 4

HON'BLE IRSHAD ALI, J.

1. Heard Sri G.C. Sinha, learned counsel for the petitioner, Sri P.V. Chaudhary, learned counsel for respondent No.1 and Sri Devesh Mishra, learned Additional CSC for respondent No.2.

2. The present writ petition has been filed challenging the impugned judgment and order dated 15.02.2005 passed by respondent No.2 in Civil Revision No.591/281/198 of 2003- 05 contained as Annexure NO.1 to the writ petition.

3. Factual matrix of the case is that for the purpose of clarifying the fact the following pedigree is required to be produced hereinbelow:

Narayan Singh	Arjun Singh
	Gaya Din Singh
	Bhagwati Singh

Gaya Din Singh	Ram Nath (Petitioner) Ram Lakhan - Phoola Devi
Bhagwati Singh	Amar Nath Singh
Amar Nath Singh	Ram Kuber Ram Singh Lal Sahab Singh

4. The above referred Ram Lakhan died on 16.01.1998 and has left his married daughter Phoola Devi to be his only heir (in normal course of Hindu Law) but as per the provisions of Zamindari Abolition Act, the petitioner being the real brother of late Ram Lakhan Singh has inherited the Bhumidhari Property of the said Ram Lakhan Singh and his name accordingly mutated in the revenue records on 30.06.1998.

5. The petitioner on the basis of inheritance and order of mutation took possession over the Bhumidhari lands of the deceased ram Lakhan Singh. The opposite party no.1 has nothing to do with the property of the late Ram Lakhan Singh but he misled Smt. Phoola Devi, the daughter of Ram Lakhan Singh and obtained a general power of attorney from her.

6. The opposite party no.1 who had obtained a power of attorney from Smt. Phoola Devi by misleading her, prepared a fake will deed of Shri Ram Lakhan Singh dated 14.01.1998 in which it has been mentioned that Shri Ram Lakhan Singh wants to inherit all of his property in favour of his daughter Smt. Phoola Devi.

7. It is pertinent to mention here that the said will deed was written by one Shyam Sunder Pandey and opposite party no.1 was one of the witness on the said will deed.

8. On the basis of the forged will deed an objection has been filed after 3 years in the name of Smt. Phoola Devi against the mutation already done in favour of the petitioner.

9. The opposite party no.1 immediately after filing the objection on behalf of Smt. Phoola Devi, when realized that Smt. Phoola Devi will not support him for the fraud committed by him, he immediately prepared another will of Ram Lakhan Singh dated 15.01.1998 in his own favour and what is important in this reference is that this will deed was also written by some person i.e. Shyam Sunder Pandey.

10. The opposite party no.1 on the basis of new will deed filed an application for mutation in the court of Tahsildar, Lalganj, District Pratapgarh on 05.03.2002 for substitution of his name in the place of deceased Ram Lakhan. It is pertinent to mention here at this stage that at the time of moving application for mutation by opposite party no.1 the name of Ram Lakhan Singh was not existing on record and the name of the petitioner was already being mutated but opposite party no.1 has deliberately intentionally concealed this fact from the court and not impleaded the petitioner in that case.

11. The Tahsildar Lalganj has not recorded the statement of Lekhpal which is mandatory in law for making an order for mutation, summarily allowed the application for mutation of Ram Lakhan and passed an order on 16.8.2002, by which he has directed the name of opposite party no.1 to be mutated at the place of deceased Ram Lakhan Singh. (However, the name of Ram Lakhan Singh was nowhere in record) and an order of mutation of the name of the petitioner have already been mutated 4 years ago.

12. On the basis of said mutation order, the name of the petitioner has been deleted from the revenue records (however, there is no such order for deletion of the name of the petitioner) and when this fact came into

knowledge of the petitioner, he preferred an appeal before the court of Sub Divisional Officer, Lalganj, under Section 210 of the Land Revenue Act against the judgment and order passed by the Tahsildar, Lalganj.

13. The appeal was registered at case No. 14 'Ram Nath Singh Versus Lal Sahab and the Sub Divisional Officer, Lalganj, Pratapgarh after hearing the counsel of both the parties, has quashed the order of Tahsildar Lalganj and recorded a finding that no order of mutation can be passed without affording opportunity to the petitioner whose name was already entered in the revenue records and the appellate court has remanded the matter back to the court of Tahsildar Lalganj, District Pratapgarh with a direction that he should dispose of the application for mutation filed by Lal Sahab after giving both of the parties a reasonable opportunity of being heard.

14. The order passed by the Sub Divisional Officer, Lalganj, was legal and equitable order and neither of the parties were adversely affected by that order but the malicious opposite party no.1 who just want to grab the property of the late Ram Lakhani Singh had filed a revision before the court of opposite party no.2 against the order of Sub Divisional Officer, Lalganj, District Pratapgarh.

15. The Additional Commissioner, Allahabad, before whom the revision was transferred for disposal, has heard the counsel for both of the parties and has found that no notice was ever served to the petitioner in the case of mutation filed by opposite party no.1 but the court has wrongly allowed the revision on misconception of law and fact.

16. The said order dated 15.02.2005 is impugned order in this writ petition and as the judgment and order passed by the opp. party no.2 was initially illegal and against the proposition of law. The opposite party No.1 who was absconding is informed in the court to be no more alive and one Ram Singh is claiming to be his elder brother and legal

representative, therefore, the said Ram Singh is impleaded as Opposite party No.1/1.

17. By way of the impugned order the opposite party has deprived the petitioner to protect his right and title which was over thrown from the revenue records without any order against him and having no other efficacious and alternative remedy the petitioner has filed the present writ petition before this Court.

18. Submission of learned counsel for the petitioner is that the order dated 15.02.2005 passed by opposite party No.2 in Revision No. 591/281/198 is wholly illegal, arbitrary, and contrary to settled principles of law. The said order has been passed without proper appreciation of facts and evidence on record and deserves to be quashed.

19. He further submitted that the petitioner is the lawful successor and recorded tenure holder. It is submitted that Ram Lakhan Singh, brother of the petitioner, expired on 16.01.1998 leaving behind only a married daughter, Smt. Phoola Devi. Under the provisions of the Zamindari Abolition Act, the petitioner, being the real brother, inherited the bhumidhari property of the deceased. Consequently, the petitioner's name was duly mutated in the revenue records on 30.06.1998 and he has since been in lawful possession of the land.

20. He next submitted that the mutation in favour of the petitioner was carried out in accordance with law after due verification and has remained unchallenged for several years. The petitioner took possession on the basis of the said mutation and has been cultivating and enjoying the property peacefully.

21. It is submitted that opposite party No.1 has no right, title, or interest in the property of late Ram Lakhan Singh. He is a complete stranger to the family and has no legal relationship with the deceased.

22. He further submitted that opposite party No.1 misled Smt. Phoola Devi and fraudulently obtained a General Power of Attorney from her. On the basis of the said document, he prepared forged and fabricated will deeds in order to usurp the property. It is submitted that two alleged wills dated 14.01.1998 and 15.01.1998 have been brought on record by opposite party No.1. Both the wills were prepared by the same scribe, namely Shyam Sunder Pandey and opposite party No.1 himself is a witness to one of them. The preparation of multiple wills in close proximity of time and the active involvement of opposite party No.1 clearly establishes fraud, manipulation, and fabrication.

23. He submitted that on the basis of the forged will, objections were filed after about three years against the mutation already standing in favour of the petitioner. The delay itself shows *malafide* intention and abuse of process of law.

24. He submitted that opposite party No.1 deliberately concealed the fact that the petitioner's name was already recorded in the revenue records and that he was in possession of the land. He also failed to implead the petitioner in the mutation proceedings, thereby violating principles of natural justice.

25. It is submitted that the Tahsildar, Lalganj, without recording the mandatory statement of the Lekhpal and without issuing notice to the petitioner, illegally allowed the mutation application on 16.08.2002. The said order was passed mechanically and in complete disregard of statutory provisions.

26. He further submitted that on the basis of the illegal mutation order, the petitioner's name was deleted from the revenue records without any specific order for deletion and without affording him an opportunity of hearing, which is against law.

27. He next submitted that the Sub-Divisional Officer, Lalganj, after hearing both parties, rightly quashed the order of the Tehsildar and held that no mutation order could be passed without hearing the petitioner. The matter was remanded for fresh decision in accordance with law.

28. He submitted that despite the lawful order of the Sub-Divisional Officer, opposite party No.1 filed a revision only with the intention to grab the property and prolong the litigation. Although the Additional Commissioner found that no notice was served upon the petitioner in mutation proceedings, he wrongly allowed the revision on misconception of law and facts, thereby causing serious miscarriage of justice.

29. He further submitted that the impugned order has been passed without granting proper opportunity of hearing to the petitioner and without considering his lawful rights, which amounts to violation of natural justice. Due to the impugned order, the petitioner has been unlawfully deprived of his right, title and possession over the property without any valid judicial determination. In support of his submissions, he placed reliance upon following judgments:

- a) Jagdish Narayan Tondon and 3 others; Civil Revision No.95 of 2017 decided on 20.04.2017**
- b) Videocon Appliances Ltd. Vs. Maker chambers V Premises Co-Op. Socy.; 2006 (1) BOMCR6**
- c) Satyadhyan Ghosal Vs. Smt. Deorjin Debi; AIR 1960 Supreme Court 941**

30. On the other hand, learned counsel for respondent No.1 as well as learned Additional CSC for respondent No.2 - State at the very outset submitted that the present writ petition is not maintainable in law, as the dispute pertains to mutation proceedings under Section 34 of the U.P. Land Revenue Act. It is well settled that mutation proceedings are fiscal

in nature and do not determine title. Therefore, invocation of the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India is wholly misconceived. The writ petition is liable to be dismissed with costs on this ground alone.

31. They next submitted that the order dated 15.02.2005 passed by the competent authority is just, proper, legal and in accordance with law. The said order does not suffer from any illegality, arbitrariness or procedural irregularity and, therefore, does not call for any interference by this Hon'ble Court in exercise of its extraordinary jurisdiction.

32. They further submitted that the petitioner has deliberately suppressed and distorted the correct pedigree of the parties with an intention to mislead this Hon'ble Court. The respondent has placed on record the complete and correct genealogy along with counter affidavit showing the lawful succession. The petitioner has failed to disclose material facts and has approached this Court with unclean hands.

33. It is submitted that Ram Lakhan Singh expired on 16.01.1998. On the date of his death, succession was governed by Section 171 of the U.P. Zamindari Abolition and Land Reforms Act, as amended w.e.f. 19.09.1997. In view of the amended provision, the married daughter, namely Smt. Phoola Devi became the preferential heir and was legally entitled to succeed to the property of her father in preference to the brother of the deceased.

34. They submitted that the entry dated 30.06.1998, whereby the petitioner's name was recorded, was made in collusion with the Supervisor Kanoongo and the Prescribed Authority. The said entry was illegal and void, as the petitioner was not an heir in the presence of the lawful daughter. The petitioner never came in lawful possession of the property.

35. They submitted that the allegations that the respondent misled Smt. Phoola Devi or fabricated any will are wholly false and baseless. Smt. Phoola Devi herself moved the mutation application on the basis of the will and other relevant documents. The respondents played no role in manipulating the proceedings.

36. It is submitted that the Will dated 15.01.1998 was executed by late Ram Lakhan Singh voluntarily, in sound disposing state of mind and without any pressure or coercion. The same is genuine, valid and legally enforceable. The petitioner has failed to produce any cogent material to challenge the authenticity of the said Will.

37. The petitioner, in connivance with revenue officials, managed to get his name recorded with undue haste on 30.06.1998, and the corresponding entries in the Khatauni were also made on the same day, which itself reflects *mala fide* intention and fraudulent conduct. Such hurried proceedings cast serious doubt on the legality and genuineness of the petitioner's claim.

38. They further submitted that the orders passed by the Tehsildar and other revenue authorities are lawful and based on proper appreciation of facts and evidence. The authorities rightly rectified the fraudulent entry and restored the lawful position. The criticism levelled by the petitioner against these orders is unwarranted and misconceived.

39. They next submitted that though the respondent filed an appeal, it is submitted that the order passed by the Sub-Divisional Officer was improper and illegal, as it failed to consider the fraudulent manner in which the petitioner's name was recorded. A person who himself commits fraud is not entitled to equitable relief or prior hearing for rectification of such fraud.

40. They submitted that the present writ petition has been filed with an oblique motive to grab the property of late Ram Lakhan Singh by abusing the process of law. The petitioner has suppressed material facts, made false allegations and indulged in forum shopping. Such conduct disentitles him to any discretionary relief under Article 226.

41. They pointed out that it is well settled that this Hon'ble Court does not act as a court of appeal over factual findings in mutation matters. In absence of any patent illegality, perversity or violation of natural justice, no interference is warranted. The present case does not disclose any such exceptional circumstances.

42. They also pointed out that the dispute relates to proceedings under Section 34 of the U.P. Land Revenue Act, and therefore, the writ petition is absolutely not maintainable. The petitioner has an alternative statutory remedy, which he has failed to pursue effectively. They submitted that in view of the facts and circumstances of the case, the writ petition is devoid of merit and is liable to be dismissed with exemplary costs for wasting valuable judicial time. In support of submissions, learned counsel for respondent No.1 placed reliance upon following judgments:

- a) **A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhvani; 1961 AIR Supreme Court 1506.**
- b) **M/s Radha Krishan Industries Vs. State of Himachal Pradesh (SC); 2021 SCC Online SC 334.**
- c) **British India Steam Navigation Co. Ltd. Vs. Jasjit Singh (SC); 1964 AIR Supreme Court 1451.**
- d) **Pramod Kumar Vs. Sub - Divisional Officer, Khaga (Allahabad) (DB) ; 1999 (90) RD 649.**
- e) **Kali Shanker Dwivedi Vs. Board of Revenue (Allahabad) (Lucknow Bench); 2000 (18) LCD 1401**
- f) **Gudiya (Obje. Filed) Vs. State of U.P. thr. P.S.R.L. (Allahabad) (Lucknow Bench); 2015 (33) LCD 1303.**

g) Shiv Raj Gupta Vs. Board of Revenue, Uttar Pradesh, Lucknow (Allahabad); 1989 (15) ALR 30.

43. I have considered the submissions advanced by learned counsel for the parties and perused the material on record as well as law reports cited by learned counsel for the parties.

44. To resolve the controversy involved in the matter, relevant portion of the judgments relied upon by learned counsel for the parties are being quoted below:

Judgments relied upon by learned counsel for the petitioner:

a) Jagdish Narayan Tondon (Supra):

"8. Due to some contradictory observations of Supreme Court in Qama-ruddin v. Rasul Baksh,⁵ the matter was again referred for consideration of Full Bench of this Court in Ganag Saran v. Civil Judge.⁶ The Full Bench after considering entire controversy afresh upheld and followed Full Bench's decisions in Har Prasad Singh v. Ram Swarup,⁷ and Jupiter Chit Fund (Pvt.) Ltd. v. Dwarika Dinesh Dayal⁸, and Supreme Court's decisions in Vishesh Kumar v. Shanti Prasad,⁹ and Vishnu Awatar v. Shiv Autar,¹⁰ and held that revision under section 115, C.P.C. is not maintainable against the order of Appellate or Revisional Court.

14. In view of the aforesaid discussions, do not find any reason to doubt correctness of the decisions of three Full Benches of this Court as well as Supreme Court, holding that the words "or other proceedings" have to be read ejus-dem getieris with the words "original suits". They will not include appeals or revisions. Present revision has been filed from the order passed by Appellate Court rejecting amendment application, filed in appeal as such the revision is not maintainable under section 115, C.P.C. as amended in Uttar Pradesh."

b) Videocon Appliances Ltd. (Supra):

"5. Insofar as the maintainability of second revision is concerned, the learned counsel appearing for the petitioner has contended that in the light of the judgment of the Supreme Court in the case of Ishwar Singh v. State of Rajasthan, reported in (2005) 2 SCC 334 that the second revision is maintainable. It has been contended that the Hon'ble Supreme Court was considering the identical provisions of the Rajasthan Co-operative Societies Act, 1965 which is section 128 of the said Act and has held that the power conferred on the Joint Registrar and the State Government is concurrent and not

alternative and, therefore, a second revisionary power can be exercised under the very same provision of revision under section 128 of the Rajasthan Co-operative Societies Act, 1965. The learned counsel has particularly relied upon paras 13 and 14 of the said judgment to contend that the second revisionary power can be made applicable. The learned counsel for the petitioner has also contended that in light of the recent judgment of the Supreme Court in the case of Ishwar Singh v. State of Rajasthan (supra) all the earlier judgments of this Court which have taken a consistent view that under section 154 of the Maharashtra Cooperative Societies Act, a second revision is not available and the power of second revision cannot be exercised by the State Government are impliedly overruled and thus cannot be considered. The respondent society on the other hand has brought to my attention the judgments of the learned Single Judges of this Court, particularly the unreported judgment of Lodha, J. in W.P. No. 4180 of 1998 dated 18-2-1999, the judgment in the case of Bhupendra Villa Premises Co-operative Society Ltd. v. Chandrakant G. Shah, reported in 2007 (2) Mh.L.J. 834, a judgment of another learned Single Judge in the case of Shri Ramesh T. Gopalani v. The Janata Sahakari Bank Ltd., reported in 2000 (3) Mh.L.J. 115 : 2000 (3) BCR 474, a judgment of another learned single Judge in the case of Virendra Bhanji Rathod v. Anand Vihar Co-operative Housing Society Ltd., Mumbai, reported in 2004 (1) Mh.L.J. 656 and lastly the judgment of another learned Single Judge in the case of Dadar Avanti Co-operative Housing Society Ltd. v. State of Maharashtra, reported in 2004 (5) Mh.L.J. 222 : 2005 (2) Bom.C.R. 604. Each of the aforesaid judgment have taken a consistent view that the power of revision under section 154 of the Maharashtra Co-operative Societies Act, 1960 cannot be exercised twice over and once the power having been exercised by the Registrar or the Secretary, the said power is exhausted and revision against the order of Registrar in exercise of revisionary power under section 154 is not maintainable before the Secretary and/or Minister of Co-operation of the State of Maharashtra under very same provision of law. The view has been consistently taken that the power of revision can only be exercised once and cannot be exercised twice over under section 154 of the Act. However, the learned counsel for the petitioner has vehemently contended that the aforesaid views are all impliedly overruled by the recent judgment of the Apex Court in the case of Ishwar Singh v. State of Rajasthan (supra). I have considered the judgment of the Supreme Court in case of Ishwar Singh v. State of Rajasthan (supra). Firstly, in my opinion the said judgment has no application because the provisions of section 128 of the Rajasthan Co-operative Societies Act, 1965 is in pari materia different to the provisions of the present case. The power under section 128 is simultaneously conferred on the Government and the Registrar because the opening words of the provisions of section 128 reads as under:—

“The State Government and the Registrar may call for and examine the record of any enquiry or proceedings of any other matter.”

In contrast to the same, the provisions of section 154 does not give a concurrent jurisdiction to the Registrar and the State Government because the words prescribed thereunder are “the State Government or the Registrar may call for and examine the records.” The wording in that section by substitution of the word “or” in place of “and” is materially significant because in case where the word “and” is used is a conjoint power conferred both on the Registrar as well as the Government whereas the word “or” indicates that it is the power conferred on ‘either’ or ‘or’ in such cases the power cannot be exercised by both but it can be exercised by one of the two and in that view of the matter, I am not inclined to accept the contention that by virtue of the judgment of the Apex Court in the case of Ishwar Singh v. State of Rajasthan (supra) all the learned Single Judges judgments of this Court interpreting the very section 154 are deemed to be impliedly overruled. Thus, the contention that the order passed by the Secretary holding that the second revision is not maintainable is bad in law is rejected. The order passed by the Secretary holding that the second revision is not maintainable is upheld.”

c) Satyadhyan Ghosal (Supra) :

16. It is clear therefore that an interlocutory order which had not been appealed from either because no appeal lay or even though an appeal lay an appeal was not taken could be challenged in an appeal from the final decree or order. A special provision was made as regards orders of remand and that was to the effect that if an appeal lay and still the appeal was not taken the correctness of the order of remand could not later be challenged in an appeal from the final decision. If however an appeal did not lie from the order of remand the correctness thereof could be challenged by an appeal from the final decision as in the cases of other interlocutory orders. The second sub-section did not apply to the Privy Council and can have no application to appeals to the Supreme Court, one reason being that no appeal lay to the Privy Council or lies to the Supreme Court against an order of remand.

22. In our opinion the order of remand was an interlocutory judgment which did not terminate the proceedings and so the correctness thereof can be challenged in an appeal from the final order. We hold therefore that the appellant is not precluded from raising before us the question that Section 28 of the original Thika Tenancy Act was not available to the tenants after the Thika Tenancy Amendment Act came into force. On this question we have already decided, as already indicated above, in Mahadeolal Kanodia case [(1960) 3 SCR 578] that Section 28 after its omission by the amending Act is not available in respect of proceedings

pending on the date of the commencement of the Thika Tenancy Ordinance of 1952.

Judgments relied upon by learned counsel for the respondent No.1:

a) A.V. Venkateswaran, Collector of Customs, Bombay (Supra):

"8. The only point, therefore, requiring to be considered is whether the High Court should have rejected the writ petition of the respondent in limine because he had not exhausted all the statutory remedies open to him for having his grievance redressed. The contention of the learned Solicitor-General was that the existence of an alternative remedy was a bar to the entertainment of a petition under Article 226 of the Constitution unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned, or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or non est. In all other cases, he submitted, Courts should not entertain petitions under Article 226, or in any event not grant any relief to such petitioners. In the present case, he urged, the High Court in appeal had expressly dissented from the reasoning of the learned Single Judge as regards the lack of jurisdiction of the Customs officers to adjudicate regarding the item under which the article imported fell and the duty leviable thereon. Nor was there any complaint in this case that the order had been passed without an opportunity to the importer to be heard, so as to be in violation of the principles of natural justice. The learned Solicitor-General questioned the correctness of the reasoning of the learned Chief Justice in condoning the conduct of the respondent in not moving the Government in revision by taking into account the time that had elapsed between the date of the impugned order and that on which the appeal was heard. The submission was that if this were a proper test, the Rule as to a petitioner under Article 226 having to exhaust his remedies before he approached the Court would be practically a dead letter because in most cases by the date the petition comes on for hearing, the time for appealing or for applying in revision to the departmental authorities would have lapsed.

9. We see considerable force in the argument of the learned Solicitor-General. We must, however, point out that the Rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, have exhausted other remedies open to him under the law, is not one which bars the jurisdiction of the High Court to entertain the petition or to deal with it, but is rather a Rule which Courts have laid down for the exercise of their discretion. The law on this matter has been enunciated in several decisions of this Court but it is sufficient to refer to two cases : In Union of India v.

*T.R. Varma [(1958) SCR 499 at pp. 503-504]
Venkatarama Ayyar speaking for the Court said:*

*“It is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ; but, as observed by this Court in *Rashid Ahmed v. Municipal Board, Kairana* ‘the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs’. Vide also *K.S. Rashid and Son v. Income Tax Investigation Commission*. And where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226, unless there are good grounds therefor.”*

*There is no difference between the above and the formulation by Das, C.J., in *State of Uttar Pradesh v. Mohammad Nooh* [(1958) SCR 595 at pp. 605-607] where he observed;*

“... It must be borne in mind that there is no Rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute. The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this Rule requiring the exhaustion of statutory remedies before the writ will be granted is a Rule of policy, convenience and discretion rather than a Rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies.”

After referring to a few cases in which the existence of an alternative remedy had been held not to bar the issue of a prerogative writ, the learned Chief Justice added:

“It has also been held that a litigant who has lost his right of appeal or has failed to perfect an appeal by no fault of his own may in a proper case obtain a review by certiorari.”

In the result this Court held that the existence of other legal remedies was not per se a bar to the issue of a writ of certiorari and that the Court was not bound to

relegate the petitioner to the other legal remedies available to him."

b) M/s Radha Krishan Industries (Supra):

"27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion."

c) British India Steam Navigation Co. Ltd. (Supra):

"7. We have heard all these matters together because they raise the same question which was raised for our decision by the appellant in C.A. No. 770 of 1962 [Indo-China Steam Navigation Co. Ltd. v. Additional Collector of Customs, Calcutta(1964) 34 Comp. Cas. 435 (S.C.).] . If these matters had not been placed together for hearing along with the said civil appeal, we would not have entertained them, except C.A. No. 299 of 1963. This latter appeal has been brought against the decision of the Calcutta High Court and the only point which could have been argued by the appellant would be one of jurisdiction, since the appellant had moved the said High Court under article 226, and that too against the order of the Collector of Customs. But in regard to the other matters, the parties have come to this court directly against the orders of the Collector of Customs and this court generally does not entertain appeals against the orders passed by a Tribunal unless the alternative remedies provided by the relevant Act by way of appeals or revisions have been pursued by the aggrieved party. We have already seen that, against the order of confiscation and fine passed by the Collector of Customs, an appeal is competent, and against the decision of the appellate authority, a revision also lies. That being so, we would have hesitated to entertain these appeals if each one of them had come separately for hearing before us. In fact, the question as to whether the writ jurisdiction of the High Court could be successfully invoked by a party immediately after an order is passed against him by the Collector of Customs under section 167(12A) and section 183, does not appear to have been argued before the Calcutta High Court when it entertained the writ proceedings from which Appeal No. 299 of 1963 has been brought to this court. As was observed by this court in A.V. Venkateswaran v. Ramchand Sobhraj Wadhwani [(1962) 1 S.C.R. 753.] the rule that a party who applies for the issue of a high prerogative writ should, before he approaches the court, have exhausted other remedies open to him under the law, though not one which bars the jurisdiction of the court to entertain the petition or to deal with it, but is a rule which courts have laid down for the exercise of their

discretion. That is one aspect which has to be borne in mind in dealing with C.A. No. 299 of 1963, and the other writ petitions in this group."

d) Pramod Kumar Vs. Sub - Divisional Officer, Khaga (Supra):

"6. Apart from the aforesaid infirmities, we find substance in the submissions made by Sri H.R. Mishra, learned Standing Counsel, that this writ petition is not maintainable as it arises out of proceedings under the Land Revenue Act, which does not involve adjudication of right, title and interest of a party concerning the lands and the remedy, If at all, to an aggrieved person, is to file a revision under Section 219 of the U.P. Land Revenue Act."

e) Kali Shanker Dwivedi (Supra):

"2. The matter pertains to mutation of agricultural land under Section 34 of the Land Revenue Act. A preliminary objection was raised to the effect that no writ petition lie in a case where the proceedings are not conclusive and can be decided by regular suit and that mutation proceedings being also of summary nature and do not decide the title of the parties, therefore, no writ petition lie under Article 226 of the Constitution of India. It was also opposed on the ground that since alternative remedy is available, therefore, the writ petition also does not lie in cases of mutation proceedings. Learned counsel supported his argument with the case of Akhtar Hussain v. Board of Revenue [1987 RD 33.] , wherein it has been held that question of title is not conclusively decided in mutation proceedings and parties can get a judgment from appropriate court on question of their title over disputed property. The other case is that of Shiv Raj Gupta v. Board of Revenue U.P. [1989 RD 35.] , wherein it has been held that a writ petition under Article 226 of the Constitution of India is not maintainable challenging an order passed by revenue authorities in mutation proceedings under Land Revenue Act because the judgment and order passed by the revenue authorities in mutation proceedings are not conclusive because competent court in a regular suit for title can ignore the observations made by the revenue authorities in mutation proceedings. In the present case also it is not disputed that the order was passed in mutation proceedings under the Land Revenue Act. In view of the above citations the writ petition is not maintainable and is to be dismissed."

f) Gudiya (Obje. Filed) (Supra):

"2. Admittedly, in the present case, the proceeding arising out of section 34 of the U.P.L.R. Act an order 30.4.2003 has been passed, thereafter in a revision the order dated 10.12.2007 has been passed by Additional Commissioner, Lucknow Mandal, Lucknow, so taking into the said fact as well as the

settled proposition of law that the proceedings under section 34 of the Land Revenue Act does not decide the right and title of the parties. The object of mutation proceedings is as to from whom the State has to recover the land revenue. It becomes immediately imperative to have got the name of some successor mutated in place of the deceased so that the land revenue can be recovered from him. The scope of these proceedings are not that any right or title of any body is sought to be decided.

3. Further, it is settled view of this Court that it should not interfere with the order issued by the authorities while deciding the proceedings under section 34 of the Land Revenue Act, as in the said proceedings the issue only in respect to record the name of tenure holder in the revenue record is under consideration. Such an entry does not ordinarily confer upon the person in whose favour it is made any title of property in question and his right is to be established as per the procedure provided under law (See Jaipal v. Board of Revenue, U.P., Allahabad, [1956 ALJ 807.] Smt. Lakhpati v. Board of Revenue, U.P. [1984 RD 378.] State of U.P. through Collector, Agra v. Board of Revenue at Lucknow, [1993 RD 206.] Shiv Raj Gupta v. Board of Revenue, U.P., Lucknow, [1989 RD 35.] Pooran Singh v. Board of Revenue, [2004 (1) AWC 853.] and Ram Kumar v. Board of Revenue U.P. Lucknow). [2003 (94) RD 73 (HC).]

4. For the foregoing reasons, the writ petition is dismissed, on the ground of availability of alternative statutory remedy under section 229-B of the U.P.Z.A. & L.R. Act."

g) Shiv Raj Gupta (Supra):

"3. The apprehension is unfounded as any observations made by the Board of Revenue while disposing of the impugned proceedings touching upon the title of the petitioner shall be subject to the decision by a court of competent jurisdiction. If, therefore, the petitioner files a suit he will not be in the slightest degree prejudiced by any finding or observation made by the Board Revenue.

4. With these observations the petition is dismissed without going into the merits of the petitioner's claim on the ground that the petitioner has an effective alternative remedy available by way of a regular suit in the court of a competent jurisdiction. A copy of this order may be given to the learned counsel for the petitioner on payment of requisite charges within two days."

45. Having considered the rival submissions advanced by learned counsel for the parties, the pleadings on record and the authorities cited at the bar, this Court is of the considered opinion that the impugned judgment and order dated 15.02.2005 passed by respondent No.2 is unsustainable in law and liable to be set aside.

46. At the outset, it is evident from the record that after the death of Ram Lakhan Singh on 16.01.1998, the petitioner's name was duly mutated in the revenue records on 30.06.1998 in accordance with law and he came into possession of the bhumidhari land. This entry remained operative for several years and was not challenged within a reasonable time. The subsequent proceedings initiated at the instance of opposite party No.1 were conducted behind the back of the petitioner despite the fact that he was the recorded tenure holder. It is undisputed that no notice was issued to the petitioner, nor was he impleaded in the mutation proceedings which ultimately resulted in deletion of his name from the revenue records. Such an action strikes at the very root of the principles of natural justice.

47. The Tehsildar, Lalganj allowed the mutation application without recording the mandatory statement of the Lekhpal and without examining whether the applicant had any subsisting right to seek mutation when the name of the deceased was no longer on record. The order was, thus, passed in a mechanical manner and in flagrant violation of statutory requirements. The Sub-Divisional Officer, Lalganj rightly appreciated these infirmities and set aside the mutation order, remanding the matter for fresh consideration after affording opportunity to both sides. The said order was neither perverse nor illegal and, in fact, restored procedural fairness.

48. However, the revisional authority despite noticing that no notice had been served upon the petitioner, proceeded to allow the revision on a misconception of law and facts. The revisional court failed to appreciate

that any order adversely affecting the rights of a recorded tenure holder passed without hearing him is void *ab initio*. The impugned order, therefore, has resulted in serious miscarriage of justice by depriving the petitioner of his recorded rights and possession without due process of law.

49. The judgments relied upon by learned counsel for the petitioner lend support to this conclusion. The principle emerging from those decisions is that revisional jurisdiction cannot be exercised in a manner that perpetuates illegality or defeats procedural safeguards. Further, an interlocutory or procedural order which causes prejudice to a party and has not attained finality can be questioned at a later stage. The reliance on precedents emphasizing the limited scope of revision and the impermissibility of entertaining successive or misconceived revisions reinforces the view that the revisional authority exceeded its jurisdiction while interfering with a well-reasoned remand order.

50. On the contrary, the authorities cited by learned counsel for respondent No.1 relating to non-maintainability of writ petition in mutation matters and availability of alternative remedies are clearly distinguishable. It is true that mutation proceedings are summary in nature and ordinarily do not decide title; however, the present case does not merely concern a routine mutation dispute. The petitioner's name, already recorded in the revenue records, was deleted without notice, without hearing and without any adjudication against him. Such an action constitutes a clear violation of natural justice and an arbitrary exercise of jurisdiction. The rule of exhaustion of alternative remedies is a rule of discretion and does not operate as an absolute bar where the impugned order is without jurisdiction or has been passed in breach of fundamental procedural safeguards.

51. Moreover, the allegation that the petitioner procured mutation by fraud remains unsubstantiated by any credible material. Conversely, the

conduct attributed to opposite party No.1—setting up multiple wills within a short span, filing objections after considerable delay and pursuing mutation proceedings without impleading the recorded tenure holder casts serious doubt on the *bona fides* of his claim. The revisional authority failed to examine these aspects and instead upset a just and equitable order of remand.

52. In these circumstances, this Court is satisfied that the impugned revisional order has been passed on a patent misappreciation of law and facts and has resulted in manifest injustice. Allowing such an order to stand would amount to endorsing deprivation of property rights without due process, which is impermissible.

53. Accordingly, the writ petition succeeds and is **allowed**.

54. The impugned judgment and order dated 15.02.2005 passed by respondent No.2 in Civil Revision No. 591/281/198 of 2003–05 is hereby quashed.

55. The order of the Sub-Divisional Officer, Lalganj, Pratapgarh remanding the matter to the Tehsildar for fresh decision after affording opportunity of hearing to all concerned parties is restored.

56. The Tehsildar shall decide the mutation proceedings afresh strictly in accordance with law, after issuing notice to all affected parties and granting them full opportunity of hearing, expeditiously.

57. No order as to costs.

(Irshad Ali,J.)

February 26, 2026

Adarsh K Singh