

**Court No. - 50**

**Case :-** WRIT - B No. - 3111 of 2024

**Petitioner :-** Shyam Lal

**Respondent :-** Board Of Revenue And 21 Others

**Counsel for Petitioner :-** Kashi Nath Shukla, Sneh Ranjan Shukla

**Counsel for Respondent :-** C.S.C.

**Hon'ble Ashutosh Srivastava, J.**

Heard Sri Kashi Nath Shukla, learned counsel for the petitioner, learned Standing Counsel for the State Respondent Nos. 1 to 4.

The writ petition arises out of proceedings under Section 33/39 of the L.R. Act, 1901 and is directed against the order dated 28.06.2024 passed by the Board of Revenue, U.P. at Lucknow in Revision No. 505 of 2006-07, Computerized Case No. R200614580027852 (Shyam Lal Vs. Deep Chand) under Section 219 of the L. R. Act, 1901 whereby and whereunder the Revision has been rejected and the order dated 28.09.2006 passed by the Sub Divisional Officer/Up Ziladhikari, Muhammadabad Gohna, Mau in Case No. 16, under Section 33/39 rejecting the proceedings has been upheld.

It is the case of the petitioner that the dispute relates to Plot Nos. 213/2, 215/5, 231, 237, 235/1, 233 and 239 total area 0.327 hectares situated in Muhammadabad, Pargana & Tehsil Muhammadabad Gohna, District Mau. The Plots Nos. 213/2 and 215/5 contained in Khata No. 84 were recorded in the names of Jangali, Salik sons of Bhagelu and Gudari son of Katwaroo. Plot Nos. 231, 237 contained in Khata No. 126 was recorded in the name of Bhola son of Guljar, Munni and Mishri son of Gudari. Likewise, the Plot Nos. 235/1, 233 and 239 obtained in Khata No. 127 were recorded in the names of Munni, Mishri son of Gudari. The father of the petitioner Durbal and uncle Tihuli instituted a Suit under Section 229-B of the U.P.Z.A. & L.R. Act against Jangali, Salik sons of Bhagelu, Munni, Mishri son of Gudari being Suit No. 533 of 1982 seeking a declaration that the aforesaid plots were the ancestral property of the father and uncle and the defendants had got their names recorded over the plots to the exclusion of the plaintiffs. The Suit under Section 229-B was decreed vide order dated 13.09.1983 and the plaintiffs were declared co-sharers along with the defendants. The decree was not challenged and attained finality. The Sub Divisional Officer concerned issued a Parvana Amaldaramad and in pursuance of the

same the names of Durbal, father of the petitioner and uncle Tihuli was recorded over the plots as co-sharers. The names were reflected in the khatauni pertaining to 1386-1396 Fasli. However, while preparing the subsequent khatauni pertaining to 1397 to 1402 Fasli, the Circle Lekhpal consolidated the 3 Khatas i.e. 84, 126 and 127 into a Single Khata i.e. 77 and omitted to record the name of Durbal and Tihuli in the consolidated Khata No. 77. When the error was detected the petitioner along with proforma respondents filed an Application under Section 33/39 of the L. R. Act, 1901 before the Tehsildar, Muhammadabad Gohna seeking the correction of the records. The Tehsildar submitted a report before the Sub Divisional Officer recommending the proposed correction under his report dated 06.11.2003. However, in a subsequent report submitted by the Naib Tehsildar dated 03.12.2004 though the decree passed in the Suit under Section 229-B was duly acknowledged yet it was reported that the Parwana Amaldaramad was wrongly issued and the case did not fall under the purview of Section 33/39 of the L.R. Act, 1901. The Sub Divisional Officer/Up Ziladhikari rejected the proceedings under Section 33/39 vide order dated 28.09.2006. Aggrieved by the order dated 28.09.2006 the petitioner preferred a Revision under Section 219 of the L .R. Act before the Board of Revenue which revision was registered as Revision No. 505 of 2006-07/Mau. The Board of Revenue under the impugned order dated 28.06.2024 has rejected the Revision upholding the order of the Sub Divisional Officer/Up Ziladhikari.

Learned counsel for the petitioner has vehemently argued that both the Sub Divisional Officer and the Board of Revenue have proceeded on the assumption that the petitioner in substance was trying to implement the order passed in proceedings under Section 229-B of the U.P.Z.A. & L.R. Act which could not be done in proceedings under Section 33/39 of the L.R. Act. He submits that the assumption is completely misplaced inasmuch as the order passed in the proceedings under Section 229-B had already been implemented in the khatauni pertaining to 1386-1396 Fasli and only while preparing the subsequent khatunis and consolidating the Khatas 84, 126 and 127 into one Khata 77, the error crept in which was liable to be corrected in proceedings under Section 33/39 of the L.R. Act. Learned counsel for the petitioner while elaborating his submissions contends that under Section 33 of the L.R. Act, a duty is cast upon the Collector and mandates him to maintain the record of rights (khatauni), however the power to record change under the said provision shall not be construed to include the power to decide a dispute involving the question of

title. Section 39 of the L.R. Act permits an Application for correction in the Khatauni or Annual Register to be moved to the Tehsildar to correct any error or omission in the Annual Register. The Sections 33/39 in fact mandate to correct any discrepancy or mistake or error which comes to the notice of the Revenue Authorities including the implementation of the orders passed by Revenue Authorities or Consolidation Authorities which have attained finality. Reliance is placed upon a decision of Coordinate Bench of this Court in the case of ***Devendra Dutt Shukla and 4 others Vs. Additional Commissioner, Lucknow and 4 others (Misc. Single No. 3391 of 2008)*** decided on 10.05.2019.

Having heard the learned counsel for the petitioner, the Court finds substance in the submissions advanced.

Matter requires consideration.

Respondent Nos. 1 to 4 are already represented by learned Standing Counsel.

Issue notice to the Respondent Nos. 5 to 22 returnable within six weeks.

Steps within 10 days.

All the respondents, if so advised, may file counter affidavit on or before the date fixed in the matter.

List this case on the date fixed in the notice.

Meanwhile, considering the submissions of the learned counsel for the petitioner, the effect and operation of the order dated 28.06.2024 passed by the Board of Revenue in Revision No. 505/2006-07/Mau (Computerized Case No. R200614580027852 (Shyam Lal Vs. Deep Chand) under Section 219 of the L.R. Act, 1901 as well as the order dated 28.09.2006 passed by the Sub Divisional Officer/Up Ziladhikari, Mohamadabad Gohna, Mau in Case No. 16, under Section 33/39 of the L.R. Act, 1901 shall remain in abeyance till the next date of listing.

**Order Date :- 4.9.2024**

pks