

**Court No. - 50**

**Case :-** WRIT - B No. - 3916 of 2024

**Petitioner :-** Sita Ram And Another

**Respondent :-** Board Of Revenue And 5 Others

**Counsel for Petitioner :-** Achal Singh

**Counsel for Respondent :-** C.S.C.,Pradeep Singh

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

1. Heard Shri Achal Singh, learned counsel for the petitioners and learned Standing Counsel for the State-respondent Nos. 1 to 3 and 6. Shri Pradeep Singh, learned counsel has accepted notice on behalf of respondent No. 5, the Gram Sabha-LMC concerned.

2. The writ petition has been filed questioning the legality, propriety and correctness of the order dated 7.6.2024 passed by the Board of Revenue, U.P. at Lucknow in Revision registered as REV/300/2013-2014/Sonbhadra (Sita Ram and others versus Suresh Prasad and others), under Section 219 of the U.P. Land Revenue Act, 1901 whereby the order dated 15.10.2013 passed by the Addl. Commissioner (Administration), Vindhyachal Mandal, Mirzapur preferred by the contesting respondent No. 4, assailing the orders dated 29.8.2002 of the Tehsildar, Judicial, Robertsganj in Case No. 4/56/956/2001-02, under Section 34 of the Land Revenue Act (Punwasi Devi versus Banteshwari) as also the order dated 6.7.2007 passed by the Sub Divisional Magistrate, Robertsganj, in appeal No. 55 of 2002, under Section 210 of the Land Revenue Act, has been upheld.

3. It is the case of the petitioners that one Banteshwari son of Ram Tarak was the recorded tenure holder of Arazi Nos. 188 area 0.38 hectare, 189 अ area 0.13 hectare, 279 ख area 0.038 hectare, 302 area 0.013 hectare, 325 area 0.410 hectare, 630 अ area 0.503 hectare, total six plots, having area 1.015 hectare situate in village Lodhi, Pargana Madhar, Robertsganj, Sonbhadra. The said Banteshwari is stated to have expired on 11.12.1999. A mutation application was filed by the petitioner No. 2 on the ground that Banteshwari had executed an

unregistered Will on 1.12.1999 in her favour and her name be mutated over the plots in dispute. A mutation case No. 545/1999 was registered in the Court of Tehsildar, Judicial, Robertsganj, District Sonbhadra. It is contended that the Revenue Inspector ignoring the claim set up by the petitioner No. 2 on the basis of the Will dated 1.12.1999 proceeded to record the name of Sita Ram and Suresh Prasad under P.A. 11 vide order dated 1.2.2000. Suresh Prasad, respondent No. 4 opposed the mutation case No. 545 of 1999 by filing objections on 31.8.2000. Another objection dated 18.7.2001 is stated to have been filed by the petitioner No. 1, Sita Ram claiming himself to be the only heir and legal representative of deceased Banteshwari being his son and also the fact of being in actual physical possession of the land in dispute.

4. In the objection, so filed, the petitioner No. 1 took the plea that the respondent No. 4 was not the son of Banteshwari son of Ram Tarak but the son of Banteshwari son of Ram Tawakal in the mutation Case No. 545 of 1999. The petitioner No. 2, Punwasi filed the original Will, Khatauni, Kisan Bahi and affidavit before the Tehsildar, Judicial, Robertsganj. She also got examined one Surinder Kumar Singh and Sadan Singh, the witnesses of the Will besides herself and Janardan Singh. The Tehsildar, Judicial, Robertsganj, ignoring the voluminous evidences led by the petitioner No. 2 vide his order dated 29.8.2002 rejected the mutation application of petitioner No. 2, Punwasi and at the same time set aside the order dated 1.2.2000 by which the names of petitioner No. 1 and the respondent No. 4 were recorded under P.A.11 and directed the name of Sita Ram, the petitioner No. 1 to be recorded over the plots in dispute.

5. The respondent No. 4, aggrieved by the order dated 29.8.2002 filed an appeal being Appeal No. 55 of 2002, under Section 210 of the U.P. Land Revenue Act before the Sub Divisional Officer. Another, appeal, being Appeal No. 3 of 2002 was filed by the petitioner No. 2, namely, Punwasi Devi. The Sub Divisional Magistrate, Robertsganj, dismissed both the aforesaid appeals by common order dated 6.7.2007.

6. Against the orders dated 29.8.2002 and 6.7.2007, the respondent No. 4 preferred a revision, being Revision No. 22/24/42/235/39, under Section 219 of the U.P. Land Revenue Act before the Addl. Commissioner, Vindhyachal Mandal, Mirzapur. The revision was allowed by the Commissioner vide order dated 15.10.2013. The orders dated 29.8.2002 and 6.7.2007 were set aside and the order of the Revenue Inspector dated 1.2.2000 was upheld. Thereafter, the petitioners filed a joint revision under Section 219 of the U.P. Land Revenue Act assailing the order dated 15.10.2013 before the Board of Revenue, U.P. at Allahabad which was registered as Revision No. 300 of 2013-14. The Board of Revenue has dismissed the revision on 7.6.2024, which order has been assailed by means of the present writ petition.

7. Learned counsel for the petitioners has argued that the Board of Revenue has manifestly erred in allowing the revision filed by the respondent No. 4 and upholding the order passed by the Addl. Commissioner dated 15.10.2013. Before the Sub Divisional Officer, the respondent No. 4 had utterly failed to establish his claim that he was the son of Banteshwari. The Addl. Commissioner on a total erroneous appreciation of the evidence proceeded to hold that Banteshwari son of Ram Tarak and Banteshwari son of Ram Tawakal were one and the same persons and the burden was erroneously placed upon the petitioners to prove that respondent No. 4 was not the son of Banteshwari son of Ram Tarak. It is also contended that the Revisional Authorities i.e. both the Addl. Commissioner as well as Board of Revenue have not taken into consideration the fact that the petitioners were and are in actual physical possession of the land in dispute and the mutation order ought to have been passed in their favour.

8. Matter requires consideration.

9. Issue notice to unrepresented respondent No.4, returnable at an early date. Steps be taken within a week.

10. All the respondents are granted four weeks' time to file counter affidavit. Two weeks' thereafter is granted to the petitioner to file rejoinder affidavit.

11. List thereafter.

12. Till the next date of listing, no third party rights shall be created by either parties.

**Order Date :- 4.10.2024**

Ravi Prakash

(Ashutosh Srivastava, J.)