

over the public utility land of the Gaon Sabha pending.

11. Khetauni, which has been enclosed with the instructions letter, also indicates that the gata in question is recorded as Rasta (public pathway) in the revenue record and the public pathway/ Rasta may not be encroached by any person as such encroachment would create serious prejudice and hindrance to the public at large. Since the next date for hearing of the restoration/ recall applications has been fixed for 27.05.2023, therefore, I do not find any good ground or reason to keep this PIL pending any longer, accordingly, this PIL is disposed of at the admission stage directing the competent revenue authority to dispose of recall applications, strictly in accordance with law, by affording an opportunity of hearing to the parties concerned, with expedition, if possible on the date fixed or within further fifteen days and shall ensure that the illegal encroachment over the public utility land be removed strictly in accordance with law.

12. The Senior Registrar of this Court shall provide certified copy of this order to the Principal Secretary, Department of Revenue, Civil Secretariat, U.P., Lucknow and the Collector, Gonda within three working days for perusal and necessary action against the erring officials/ officers.

13. Since the aforesaid direction has been issued for the entire State i.e. State of U.P., therefore, the Principal Secretary, Department of Revenue, Civil Secretariat, U.P., Lucknow shall issue necessary directions/ directives/ circular to ensure that the public utility land of Gaon Sabha is free from encroachment and such public utility land be utilized only for the purpose it has been recorded in the revenue record.

14. This PIL is accordingly **disposed of.**

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**(2023) 5 ILRA 1524**

**ORIGINAL JURISDICTION  
CIVIL SIDE**

**DATED: LUCKNOW 03.05.2023**

**BEFORE**

**THE HON'BLE RAJESH SINGH CHAUHAN, J.**

Writ B No. 1002222 of 1999

**Kamlesh Kumar** ...Petitioner  
**Versus**  
**Board of Revenue Lucknow & Ors.**  
...Respondents

**Counsel for the Petitioner:**

T.N Gupta, Durga Prasad, I.D. Shukla, Mehdi Abbas Rizvi, S.K. Mehrotra, S.K. Singh, T.N. Gupta

**Counsel for the Respondents:**

C.S.C., R.N. Gupta, Seema Devi

**Civil Law - U.P. Land Revenue Act, 1901 - Section 218 - Section 218 of the Land Revenue Act h repealed by the U.P. Act No. 20 of 1997 w.e.f. 18.08.1997 - Section 10 of the 1997 Amendment Act - By the impugned order, the Board of Revenue remanded the case for a fresh decision to the Commissioner in accordance with S. 218 of the Land Revenue Act. Held: Following the law laid down in *Shri Ram Vs Board of Revenue U.P., Lucknow & ors.*, 1999 (1) JCLR 1010 and *Ravi Shanker Tripathi Vs Board of Revenue, U.P., Lucknow through its Chairman & Ors.*, 2007 (1) ADJ 23, the Court held that the transitory provision contained in Section 10 of the 1997 Amendment Act saved only those proceedings which were pending before the Board of Revenue. Therefore, the proceedings which were pending before the Commissioner or the Additional Commissioner on 18.08.1997 were**

**required to be decided under the provisions of Section 219 of the amended Act. The impugned order was set aside.**

**Allowed.** (E-5)

**List of Cases cited:**

1. *Shri Ram Vs Board of Revenue U.P., Lucknow & ors., 1999 (1) JCLR 1010*
2. *Kali Shanker Dwivedi Vs Board of Revenue & ors., 2000 (18) LCD 1401*
3. *Ravi Shanker Tripathi Vs Board of Revenue, U.P., Lucknow through its Chairman & ors., 2007 (1) ADJ 23*

(Delivered by Hon'ble Rajesh Singh Chauhan, J.)

1. Heard Shri Mehdi Abbas Rizvi, learned counsel for the petitioner, Shri A.S. Tiwari, learned Additional Chief Standing Counsel for the State-respondents and Ms. Seema Devi, learned counsel for the intervener assisted by Shri Amrendra Nath Tripathi, who has filed his vakalatnama on behalf of the opposite party no.5/intervener. Said vakalatnama is taken on record.

2. By means of this petition, the petitioner has assailed the order dated 29.06.1999 (Annexure No. 1) passed by opposite party no. 1 by which he has remanded the revision to the Commissioner for fresh decision under Section 218 of the U.P. Land Revenue Act, 1901 (hereinafter referred to as "Land Revenue Act") as it was prevailing prior to 18.08.1997.

3. While assailing the aforesaid impugned order, learned counsel for the petitioner has stated that the opposite party no.1 has committed manifest error of law in remanding back the case for fresh decision

to the Commissioner in accordance with Section 218 of the Land Revenue Act as it was applicable prior to 18.08.1997. Further, since Section 218 of the Land Revenue Act has been repealed by the U.P. Act No. 20 of 1997 with effect from 18.08.1997, any proceeding under such Section cannot be instituted now.

4. Shri Mehdi Abbas Rizvi, learned counsel for the petitioner has also submitted that the opposite party no. 1 has no legal authority to supersede the legal provisions of the Land Revenue Act by its quasi judicial order and to prescribe incorrect, confusing and wrong jurisdiction. Further, the opposite party no. 1 has wrongly held that the order dated 16.04.1999 passed by the learned Commissioner is without jurisdiction but in fact the said order is quite just, proper and legal. Therefore, the impugned order dated 29.06.1999 is completely illegal, void, contrary to the law and natural justice. On the first date of admission, this Court has passed the order dated 17.08.1999, which reads as under:-

*"Admit.*

*Issue notice to opposite party no. 2.*

*Notice on behalf of the opposite party no.1 has been accepted by the learned Chief Standing Counsel and Shri R.N. Gupta, Advocate has accepted notice on behalf of the opposite party no.3."*

5. Learned counsel for the petitioner has stated that in view of decision of this Court in re; **Shri Ram versus Board of Revenue U.P. Lucknow and Others, 1999 (1) JCLR 1010**, the issue in question is no more res integra and has held as under:-

*"In view of this transitory provision only references which were*

*pending before the Board of Revenue were saved and revisions pending before the Commissioner or Additional Commissioner were not saved, and as such the Commissioner or the Additional Commissioner ought to have decided the revisions pending before them on 18.08.1997 under Section 219 of the Act. Under the circumstances the judgment passed by the Board of Revenue on 11.01.1999 cannot be sustained.*

*The writ petition succeeds and is allowed. The order dated 11.01.1999 passed by the Board of Revenue (Annexure No.2 to the writ petition) is set aside. The petitioner is directed to move an application before the Board of Revenue about maintainability of the revision which shall be decided expeditiously, in accordance with law."*

6. Notably, on account of two conflicting views, one in re; **Kali Shanker Dwivedi vs. Board of Revenue & Ors., 2000 (18) LCD 1401** and another in re; **Shri Ram** (supra), the issue was referred before the Division Bench in re; **Ravi Shanker Tripathi versus Board of Revenue, U.P., Lucknow through its Chairman & Ors., 2007 (1) ADJ 23**. So as to resolve the controversy in question, paras 5, 12 and 18 in re; **Ravi Shanker Tripathi** (supra) would be necessary to be reproduced herein below:-

*"5. We must also reproduce Section 10 of the 1997 Amendment Act which is a transitory provision:*

*10. Transitory Provisions - Notwithstanding anything contained in this Act all cases referred to the Board under Section 218 of the U.P. Land Revenue Act, 1901, or under Section 333-A of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 as they stood*

*immediately before the commencement of this Act and pending before the Board on the date of such commencement shall continue to be heard and decided by the Board as if this Act has not been enacted.*

*12. In the present case the application under Section 218 of the unamended Act was filed prior to 18.08.1997 but it was decided after the amendment had come into force with effect from 18.08.1997. On the said date, the Additional Commissioner, Allahabad Division, Allahabad, had the jurisdiction to decide the Revision under Section 219 of the amended Act. The transitory provision contained in Section 10 of the Act provides that only those proceedings which were pending before the Board on the date of such commencement shall continue to be heard by the Board as if the amendment had not come into force. This clearly demonstrates that other proceedings that were pending were required to be decided under the provisions of the amended Act.*

*18. In the present case there is a transitory provision contained in Section 10 of the amendment Act which save only those proceedings which were pending before the Board of Revenue. Thus, the proceeding which was pending before the Additional Commissioner on 18.08.1997 was required to be decided under the provisions of Section 219 of the amended Act. We are, therefore, unable to subscribe to the view taken by the learned Judge in Kali Shanker Dwivedi (supra) and agree with the view taken in Sri Ram (supra)." (emphasis supplied)*

7. In the aforesaid reference, the Division Bench has answered the reference in Para 34 in re; **Ravi Shanker Tripathi** (supra), which reads as under:-

*"34. For all the reasons stated above, we answer the reference that the*

