

49. The writ petition is accordingly disposed of.

W.P. allowed. (E-9)

2. Brief facts of the case are that petitioner's father- Jangi Yadav was granted lease of plot nos. 228, 117, 119, 120, 121 and 122. On the basis of the lease executed in favour of the petitioner's father, his name was accordingly recorded in the revenue records in respect to plot no.228 only but the name of the petitioner's father was not recorded over the remaining plots, accordingly, in the proceeding under Sections 33/39 of the U.P. Land Revenue Act, an order was passed by the revenue authority for recording the name of the petitioner's father but later on the order was recalled. The village in question was brought under consolidation operation by way of notification issued under Section 4(2) of the U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the "U.P. C.H. Act") on 27.6.1981. Against the

basic year entry, an objection under Section 9(A)2 of the U.P. C.H. Act was filed by the petitioner's father in respect to plot in question. The Consolidation Officer vide order dated 25.9.1986, directed to record the name of the petitioner's father- Jangi Yadav over the plot in question on the basis of lease executed in his favour. In para no. 8 of the writ petition, it is mentioned that no appeal and revision has been filed by gram panchayat/land management committee against the order of the Consolidation Officer dated 25.9.1986. In C.H. Form No.45, name of the petitioner's father was recorded over the plot in question. Petitioner's father expired in the year 1990 and after the death of the petitioner's father, petitioner and his brothers have been recorded over the plot in question. An application dated 26.6.1997 was filed by one Sahabdin, a resident of village Sarai Haji before the District Magistrate/Deputy District Director of Consolidation with the prayer that the record of Case No.45, under Sections 33/39 of the U.P. Land Revenue Act be summoned and the entry made in favour of the petitioner's father may be cancelled. The Chief Revenue Officer vide order dated 24.7.1997 directed to record the disputed plot in the name of the Gram Sabha. The petitioner challenged the order dated 24.7.1997 before this Court by way of Writ Petition No.34748 of 1997 which was dismissed by this Court vide order dated 20.10.1997 on the ground of alternative remedy. The petitioner challenged the order dated 24.7.1997 by way of revision before the Commissioner on 3.11.1997. The aforementioned revision was heard and allowed by the Addl. Commissioner vide order dated 12.5.1998, setting aside the order dated 24.7.1997 on the ground that the Consolidation Officer in the title proceeding has passed the order to

record the name of the petitioner's father over the plot in question and the order has attained finality. Against the order dated 12.5.1998, Sahabdin filed a revision before the Board of Revenue and the Board of Revenue vide order dated 17.8.1998 has set aside the order of the Additional Commissioner dated 12.5.1998, on the ground that in view of the provisions contained under the Act, the order passed by the Commissioner cannot be sustained as the Commissioner cannot allow the revision rather he can make reference to the Board of Revenue for allowing or dismissing the revision. Hence, this writ petition on behalf of the petitioner for the following reliefs:-

“1. Issue a writ, order or direction in the nature of certiorari, quashing the order dated 17.8.1998, passed by the respondent no.1 contained in Annexure No.14 to this Writ Petition.

2. Issue a writ, order or direction in the nature of mandamus, commanding the respondent not to give effect in any manner referred to above.”

3. This Court entertained the matter on 10.5.1999 and stayed the effect and operation of the order impugned dated 17.8.1998. In pursuance of the order dated 10.5.1999, no counter has been filed by the State and the Gaon Sabha.

4. The instant petition was dismissed under Chapter XII Rule 4 of the Allahabad High Court Rules, 1952 against respondent no.4 who was complainant of the proceeding, as such, there is difficulty to decide the instant petition on merit because writ petition arises out of the proceeding under Section 33/39 of the U.P. Land Revenue Act and State/Gram Panchayat are parties in the instant petition.

5. Counsel for the petitioner submitted that in view of the order dated 25.9.1986 passed by the Consolidation Officer in the title proceeding under Section 9-A(2) of the U.P. C.H. Act, the order passed for expunging the petitioner's entry in the proceeding under Section 33/39 of the U.P. Land Revenue Act, cannot be sustained in the eye of law. It is further submitted that the Additional Commissioner after considering each and every aspect of the matter, has allowed the revision and set aside the order passed in the proceeding under Sections 33/39 of the U.P. Land Revenue Act. He submitted that the revision was filed before the Commissioner and after the amendment made in the Act, the Commissioner was competent to allow the revision on merit rather to make reference before the Board of Revenue. He submitted that the Board of Revenue has illegally set aside the order and remanded the matter again before the Commissioner for deciding the revision afresh. He submitted that specific averment has been made in paragraph no.8 of the writ petition that order passed by the Consolidation Officer has become final as no appeal/revision has been filed by any one. He submitted that C.H. Form No.45 is annexed along with the writ petition in order to demonstrate that the petitioner's father was recorded over the plot in question on the basis of the order passed by the Consolidation Officer, as such, there is no illegality in the order of Addl. Commissioner, allowing the revision filed by the petitioner. He submitted that the impugned order passed by the Board of Revenue should be set aside and the order passed by the Additional Commissioner dated 12.5.1998 should be affirmed.

6. On the other hand, learned standing counsel submitted that no interference is

required against the order impugned dated 17.8.1998 as under the impugned order only the matter has been remanded back before the Commissioner to decide the revision afresh in accordance with the provisions of the Act. He submitted that the Chief Revenue Officer has rightly expunged the petitioner's entry which has been illegally set aside by the Additional Commissioner in revision. He submitted that no interference is required in the matter and the writ petition is liable to be dismissed.

7. I have considered the arguments advanced by learned counsel for the parties and perused the records.

8. There is no dispute about the fact that in the proceeding under Section 33/39 of the U.P. Land Revenue Act, the order was passed by the Chief Revenue Officer on 24.7.1997 but in revision the order passed by the Chief Revenue Officer was set aside and the entry of the petitioner's father was maintained. There is also no dispute about the fact that the Board of Revenue has set aside the order of the Additional Commissioner and remitted the matter again to the Commissioner to decide the revision afresh.

9. In order to appreciate the controversy involved in the matter, the perusal of the finding recorded by the Additional Commissioner will be relevant which is as under:-

न्यायालय अपर आयुक्त आजमगढ़ मण्डल
आजमगढ़।

निगरानी संख्या 465/ए सन् 1997 जनपद
आजमगढ़।

अन्तर्गत धारा 219 भू-राजस्व अधिनियम।

लालता आदि बनाम गाँव सभा।

निर्णय

प्रस्तुत निगरानी अवर न्यायालय के आदेश दिनांक 24/7/97 के विरुद्ध दिनांक 3/11/97 को दायर की गयी है। संक्षेप में विवाद के तथ्य इस प्रकार हैं।

उभय पक्ष के विद्वान अधिवक्ता की बहस सुनी गयी। निगरानीकर्ता के विद्वान अधिवक्ता ने कहा कि निगरानीकर्ता के पक्ष में आराजियातनेजाई का पट्टा दिनांक 15/5/64 को हुआ था। परगनाधिकारी के द्वारा दाखिल खारिज का आदेश दिनांक 30/9/64 को हुआ था। एक पट्टे के कुछ नम्बरान पर जंगी का नाम अंकित होने से छूट गया था। जिसके लिए जंगी ने धारा 33/39 एल०आर०एक्ट के अन्तर्गत कागजात दुरुस्तगी का प्रार्थनापत्र परगनाधिकारी के समक्ष दिया जिस पर दिनांक 21/1/81 को आदेश पारित हो गया। इसके विरुद्ध राममूरत ने निगरानी किया जो चकबन्दी के कारण दिनांक 10/12/81 को अवेट हो गयी। फिर चकबन्दी अधिकारी के द्वारा दिनांक 25/9/8/86 को जंगी के पक्ष में आदेश पारित हुआ। साहबदीन ने धारा 52 के प्रकाशन के बाद मुख्य राजस्व अधिकारी के समक्ष दिनांक 26/6/97 को एक प्रार्थनापत्र दिया। मुख्य राजस्व अधिकारी ने गलत तरीके से जंगी के पक्ष में चला आ रहा इन्द्राज दिनांक 24/7/97 को निरस्त कर दिया। जबकि चकबन्दी अधिकारी द्वारा उनके पक्ष में जो आदेश

पारित हुआ था उसकी कोई अपील या निगरानी किसी न्यायालय में नहीं की गयी थी। साहबदीन के प्रार्थनापत्र दिनांक 26/6/97 के सम्बन्ध में कोई नोटिस जंगी अथवा उनके वारिसान को नहीं दी गयी। उक्त आधार पर विद्वान अधिवक्ता ने कहा कि मुख्य राजस्व अधिकारी का आदेश दिनांक 24/7/97 क्षेत्राधिकारी के बाहर पारित किया गया आदेश है। जो निरस्त किये जाने योग्य है।

इसके प्रतिउत्तर में उत्तरवादी के विद्वान अधिवक्ता ने कहा कि अवर न्यायालय का आदेश दिनांक 24/7/97 बिल्कुल सही है। निगरानीकर्ता को सुनने की आवश्यकता नहीं थी। क्योंकि अराजीनेजाई से सम्बन्धित वाद पहले अवेट हो गया था। विद्वान अधिवक्ता ने यह भी कहा कि पट्टे के आधार पर जंगी का नाम दर्ज करने का आदेश हुआ था। जिसके विरुद्ध निगरानी लम्बित होने के ही दौरान चकबन्दी अधिकारी की धारा 4 के अन्तर्गत अधिसूचना जारी हुई अतः विवादित आराजी से जंगी का नाम खारिज करने का आदेश दिया जाना आवश्यक था। जिसे अवर न्यायालय ने दिनांक 24/7/97 को पारित किया है।

उभय पक्ष को सुनने के बाद अवर न्यायालय की वाद पत्रावली के अवलोकन से स्पष्ट है कि पट्टे के आधार पर निगरानीकर्ता के पिता जंगी ने धारा 33/39 के अन्तर्गत छूटे नम्बरान पर अपना नाम

अंकित करने का प्रार्थनापत्र दिया और कहा कि परगनाधिकारी द्वारा पारित आदेश दिनांक 30/9/64 के संदर्भ में आराजी नेजाई पर भूमिधर अंकित किया जाय। अवर न्यायालय ने दिनांक 21/1/81 को उक्त प्रार्थनापत्र के संदर्भ में कागजात दुरुस्तगी का आदेश पारित किया। जिसके विरुद्ध आयुक्त न्यायालय गोरखपुर में निगरानी संख्या 252/192/ए 1981 राममूरत बनाम जंगी दायर हुई जो धारा 4(2) जोत चकबन्दी अधिनियम के अन्तर्गत प्रकाशन के कारण दिनांक 10/12/81 को अवेट हो गयी। इसके बाद जंगी ने चकबन्दी न्यायालय में चकबन्दी अधिनियम की धारा 9क(2) के अन्तर्गत आपत्ति दाखिल किया। जिसमें दिनांक 25/9/86 को यह आदेश पारित हुआ कि जंगी का नाम उक्त आराजियात पर पट्टे के आधार पर दर्ज किया गया था अतः नायब तहसीलदार की रिपोर्ट दिनांक 28/1/80 तथा उसके आधार पर पारित परगनाधिकारी के आदेश दिनांक 21/1/81 को सत्य मानते हुए भू-अभिलेखों में समन्वय करने का आदेश दिया तथा तदनुसार अमलदरामद का आदेश भी दिया। इस आदेश के विरुद्ध कोई भी अपील अथवा निगरानी किसी के द्वारा दाखिल नहीं की गयी। धारा 52 के प्रकाशन के बाद जिलाधिकारी के न्यायालय में साहबदीन ने दिनांक 26/6/97 को प्रार्थनापत्र देकर जंगी के नाम दर्ज इन्द्राज को निरस्त करने का निवेदन किया। जिलाधिकारी ने मुख्य

राजस्व अधिकारी की जाँच करके आवश्यक कार्यवाही करने के लिए दिनांक 27/6/97 को लिखा। मुख्य राजस्व अधिकारी ने प्रश्नगत आदेश दिनांक 24/7/97 को पारित करके जंगी के नाम इन्द्राज निरस्त कर दिया। जबकि चकबन्दी अधिकारी के आदेश दिनांक 25/9/86 की कोई अपील अथवा निगरानी नहीं की गयी थी। मुख्य राजस्व अधिकारी उप-संचालक चकबन्दी नहीं होते हैं। चकबन्दी अधिकारी का आदेश दिनांक 25/9/86 फर्जी होना साबित नहीं है। उक्त आदेश को निरस्त करने का अधिकार मुख्य राजस्व अधिकारी को नहीं था। चकबन्दी अधिकारी का आदेश दिनांक 25/9/86 कायम रहने के दौरान आराजीनेजाई पर जंगी अथवा उनके वारिसान का नाम निरस्त करने का आदेश दिया जाना उचित नहीं है। साहबदीन के प्रार्थनापत्र दिनांक 26/6/97 के सम्बन्ध में जंगी अथवा उनके वारिसान को नोटिस भी नहीं भेजी गयी है। उपरोक्त आधार पर अवर न्यायालय का आदेश दिनांक 24/7/97 निरस्त किये जाने योग्य है।

आदेश

निगरानी स्वीकार की जाती है। अवर न्यायालय द्वारा पारित आदेश दिनांक 24/7/97 निरस्त किया जाता है। आदेश की प्रति के साथ अवर न्यायालय की पत्रावली वापस भेजी जाय। यहाँ की पत्रावली दाखिल दफ्तर हो।

आज यह निर्णय मेरे द्वारा खुले न्यायालय में हस्ताक्षरित दिनांकित कर उद्घोषित किया गया।

(सत्य-प्रतिलिपि)

ह० अपठनीय

12/5/98

अपर आयुक्त

ह० अपठनीय

12/5/98

अपर आयुक्त।

10. The perusal of the finding of fact recorded by the Additional Commissioner fully demonstrates that the petitioner's father was ordered to be recorded over the plot in question in the title proceeding, as such, initiation of summary proceeding in respect to the plot in question is abuse of process of law. The Additional Commissioner has entertained the revision filed by the petitioner and allowed the revision, setting aside the order of the Chief Revenue Officer. The exercise of jurisdiction of the Additional Commissioner is in accordance with law, as such, there was no occasion to remit the matter again before the Additional Commissioner to decide the revision afresh.

11. So far as amendment made in U.P. Land Revenue Act by U.P. Act No.XX of 1997 is concerned, the date of enforcement of amendment is 18.8.1997 and revision in the instant matter has been filed on 3.11.1997 before Commissioner, as such, there was no illegality to decide the revision on merit rather to make reference before the Board of Revenue. The date of filing of revision before the Commissioner is mentioned in the first paragraph of revisional order dated 12.5.1998 which demonstrate that revision was filed after the amendment by U.P. Act No.XX of 1997.

12. This Court in the case reported in **2002(93) RD 236, Ram Kailash Yadav vs. State of U.P. and Others** has considered the scope of amendment made by U.P. Act No.XX of 1997 and has held that Commissioner can decide the revision on merit even if the reference / revision was filed before 18.8.1997 but reference was not made upto 18.8.1997. Paragraph no.6 of the judgment rendered in **Ram Kailash Yadav (supra)** will be relevant for perusal which is as under:-

“6. From the aforesaid provision, it is clear that earlier no power of revision was exercised by the Board of Revenue under Section 219 and under Section 218 the Additional Commissioner, Collector, the Record Officer or the Settlement Officer has jurisdiction to call for and examine the record of any case decided or proceedings held by any officer subordinate to him for the purpose of satisfying himself as to the legality or propriety of the order passed and as to the regularity of proceedings, and, if it were of opinion that the proceeding taken or order passed by such subordinate officer should be varied, cancelled or reversed, the reference was required to be made to the Board of Revenue. By deletion of provision of reference by the U. P. Act No. XX of 1997, now Section 219 has been substituted which gives power of revision both to Board of Revenue and the Commissioner or Additional Commissioner or Collector or Record Officer or Settlement Officer. The earlier power of reference has also been deleted and the revisional power has been given. Now the Additional Commissioner, if he is satisfied that any order passed by subordinate authority is

required to be reversed it can exercise the revisional power and there is no need for reference to the Board of Revenue. At the time when the revision was filed in the year 1992, the said revision was under Section 218 of the U. P. Land Revenue Act claiming exercise of power of reference. Section 10 of the U. P. Act No. XX of 1997 has only saved the reference which were already referred to the Board of Revenue on 18.8.1997. Thus, even if the reference was filed under Section 218 prior to 18.8.1997 in which no reference was made to the Board of Revenue, the same could not have been continued as the reference under Section 218. Now the Commissioner himself has been vested with the power of revisional jurisdiction under Section 219. In Revision No. 41 of 1992 which is pending before the Commissioner, there is no lack of Jurisdiction in the Commissioner to exercise his revisional jurisdiction. The exercise of jurisdiction now has to be made under Section 219 instead of Section 218. Merely because in the memo of revision Section 218 was mentioned earlier, it will not Inhibit the Commissioner in exercising his jurisdiction under Section 219 of the U. P. Land Revenue Act.”

13. It is also material to mention that no counter affidavit has been filed by State for the last more than 25 years, as such, there is no option except to decide the instant petition on the basis of averment made in the writ petition as mentioned above.

14. Considering the facts and circumstances, especially, the order dated 25.9.1986 passed by the Consolidation Officer in the title proceeding which has

attained finality, there is no illegality in the order passed by the Additional Commissioner dated 12.5.1998, accordingly, the impugned order dated 17.8.1998, passed by the respondent no.1/Board of Revenue is liable to be set aside and the same is hereby set aside.

15. The writ petition stands allowed and the order passed by the Additional Commissioner dated 12.5.1998 is hereby affirmed.

16. No order as to costs.

(2025) 2 ILRA 524
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.02.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE VIPIN CHANDRA DIXIT, J.

Writ C No. 3948 of 2025

Rajneeta		...Petitioner
	Versus	
U.O.I. & Ors.		...Respondents

Counsel for the Petitioner:
 Sri Mohammad Danish, Mohammad Iliyas

Counsel for the Respondents:
 A.S.G.I., C.S.C., Sri Vivek Kumar Singh

(A) Constitutional Law – Victim Compensation – Non-payment of additional compensation to acid attack victim – Prime Minister National Relief Fund – Executive Directions – Authorities required to fulfill their primary duty to serve the people, especially ones who have been disabled by egregious acts of violence – State Government directed to issue a circular to all the District Magistrates to ensure that delay of such nature is not repeated in future –