

Neutral Citation No. **2023:AHC:231685**

Reserved on: 28.11.2023

Delivered on: 07.12.2023

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. 48

Case :- WRIT - B No. - 911 of 1976

Smt. Chameli Petitioner
Through :- Sri S.A.N. Shah,

Advocate

Vs.

D.D.C. And Others Respondents
Through :- S.C.

Hon'ble Saurabh Shyam Shamschery, J.

1. Heard Sri S.A.N. Shah, learned counsel for petitioner and learned Standing Counsel for State.

2. This petition is pending since 1976. The original petitioner has challenged order dated 10.7.1973 passed by Settlement Officer Consolidation as well as order dated 20.1.1976 passed by Revisional Authority.

3. This court has passed following order on 11.5.1976 :-

“The petitioner is granted 10 days' time to file a supplementary affidavit stating whether the question of applicability of personal law or otherwise to the facts of the case was raised before the Director of Consolidation. She shall also file a copy of Grounds of Appeal to substantiate her allegation.”

4. I have carefully perused the record, however, it appears that aforesaid order has not been complied with, even counsel appearing on behalf of petitioner has not been able to show that it was complied with.

5. In present case, claim of original petitioner was rejected by the Appellate Authority during consolidation proceedings mainly on the grounds that according to personal law, name of Mst. Rizola was mutated as Kuranic heir and Chhitey Khan as residue heir and same was in position of others sons and grandsons of Nathey Khan, Jahan Khan and Mam Khan, however, their names could not be mutated only due to clerical error.

6. It was further held by the Appellate Authority that it makes little difference, if land was acquired by Tahar Khan or Jabit Khan because status of appellants' forefathers in 1901 was same as that of Chhitey Khan, father of Akal Khan, therefore, there was no reason why appellants forefathers were not residue heirs of Tahar Khan(deceased).

7. The aforesaid findings were confirmed by Revisional Authority in following words:-

“In 1901 the disputed Khata was recorded in the name of Mst. Rajola Begum daughter of Tahar Khan and Chitey Khan. Chitey Khan was son of Nathey Khan. Chitey Khan were four brothers, Sipedar Khan, Ranmast Khan, Chitey Khan and Imam Ali Khan. None of the others brothers were recorded along with Chitey Khan in the dispute land in 1901. “

8. It is not under dispute that original petitioner Smt. Chameli after death of his previous husband Mass Khan remarried with Akil Khan, a person belonging to different pedigree.

9. The only question before this Court is whether provisions of personal law were applicable in a mutation proceedings or not and as referred above, petitioner and after her death, her legal heirs does not remain diligent even to file a memo of appeal or revision and that a question in regard to applicability of personal law was raised before authorities or not.

10. Heard argument of learned counsel for petitioner, however, he has not able to point out any legal premises that provisions of personal law were not applicable during relevant period, even on mutation proceedings. In absence of such submission as well as order passed way back in the year 1976 by this Court has not been complied with as well as that by an order dated 28.11.2023, the writ petition has already been declared abated qua to respondent Nos. 7 / 1, 9/2, 11/1, and 11/2 and above all the concurrent findings on above issue of Appellate Authority as well as Revisional Authority could not be interfered since counsel for petitioner has not able to show any perversity in above referred findings, therefore, I do not find any ground to interfere with impugned orders. This writ petition is accordingly, **dismissed**.

Order Date :- 07.12.2023

P. Pandey

[Saurabh Shyam Shamschery, J.]