

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No.1235 of 2014

29th December, 2025

Smt. Bharti Singh

--Petitioner

Versus

Pawan Kumar and Ors.

--Respondents

Presence:-

Mr. Amanjot Singh Chaddha, learned counsel i/b Mr. Aditya Singh, learned counsel for the petitioner.

Mr. Kirti Sharan Aggarwal, learned counsel i/b Mr. Sudhir Kumar, learned counsel for respondent nos.1 to 3.

Mr. Devendra Pant, learned S.C. for the State.

Hon'ble Pankaj Purohit, J. (Oral)

- 1) This writ petition has been filed under Articles 226 and 227 of the Constitution of India by the petitioner, assailing the order dated 29.04.2014 passed by the Chief Revenue Commissioner/Board of Revenue, Uttarakhand, whereby Revision No.105/2013-2014 and Revision No.124/2013-14 preferred by the petitioner were dismissed. The said order affirms the earlier revisional order dated 26.12.2013 passed by the Commissioner, Kumaon Division, and the subsequent amendment order dated 29.01.2014, which had the effect of unsettling the declaration of change of user granted in favour of the petitioner under Section 143 of the U.P. Zamindari Abolition and Land Reforms Act. The petitioner challenges the impugned orders on the grounds of lack of jurisdiction, violation of principles of natural justice, non-maintainability of recall proceedings at the instance of private respondents, and patent non-application of mind by the revisional authorities.

- 2) The facts, in brief, are that the petitioner purchased the land in question by means of a registered sale deed dated 03.11.2004 from its predecessor-in-interest. At the relevant time, the village was under consolidation operations and, therefore, the petitioner moved an application under Section 12 of the U.P. Consolidation of Holdings Act for recording her name in the revenue records on the basis of the sale deed. The said application was registered as Case No.136 and was allowed by the Consolidation Officer by order dated 16.02.2005, whereupon the petitioner was recorded as tenure holder and the names of the erstwhile recorded holders were deleted from the revenue records. After her name stood duly recorded, the petitioner sought change of user of the land for purposes other than agriculture and accordingly moved an application under Section 143 of the U.P. Zamindari Abolition and Land Reforms Act before the Assistant Collector, 1st Class. The application was registered as Case No.22/2010-11. Upon calling for reports from the Consolidation Officer and the Tehsildar concerned, and after being satisfied that the petitioner was the recorded tenure holder and that the land was not hit by any statutory bar, the Assistant Collector allowed the application by order dated 19.01.2011, declaring the change of user.
- 3) Subsequently, respondent nos.1 to 3, moved an application dated 21.09.2011 invoking Section 151 of the Code of Civil Procedure, seeking recall of the order dated 19.01.2011. The said recall application was contested by the petitioner and was rejected by the Assistant Collector, 1st Class by order dated 01.03.2013. Aggrieved by the rejection of the recall application, respondent nos.1 and 2 preferred Revision No.119/2012-13 before the Commissioner, Kumaon Division. The Commissioner, by

order dated 26.12.2013, allowed the revision and set aside the order dated 01.03.2013, without issuing notice to or affording an opportunity of hearing to the petitioner. During the pendency of further proceedings, respondent nos.1 to 3 also moved an application for amendment of the order dated 26.12.2013, seeking incorporation of a finding affecting the original order dated 19.01.2011. The said amendment application was allowed by the Commissioner by order dated 29.01.2014, again without notice to the petitioner. The petitioner, being aggrieved, preferred Revision No.124/2013-14 before the Chief Revenue Commissioner (now Board of Revenue) against the order dated 26.12.2013, as well as Revision No.105/2013-14 against the amendment order dated 29.01.2014. Both revisions were heard together and decided by a common order dated 29.04.2014, whereby the revisions preferred by the petitioner were dismissed and the revisions of the private respondents were allowed, giving rise to the present writ petition.

- 4) The learned counsel for the petitioner argues that she is the recorded tenure holder of the land in question, having purchased the same by a registered sale deed dated 03.11.2004. Since the village was under consolidation at the relevant time, she moved an application under Section 12 of the U.P. Consolidation of Holdings Act, which was duly allowed by the Consolidation Officer on 16.02.2005, whereupon her name was recorded in the revenue records and the names of the erstwhile recorded tenure holders were deleted. It is further pleaded that after her name was duly entered in the revenue records, the petitioner sought change of user of the land under Section 143 of the U.P. Zamindari Abolition and Land Reforms Act. The application was considered by the Assistant Collector, 1st Class, who, after calling for reports from the Consolidation

Officer and Tehsildar, and upon being satisfied that the petitioner was the recorded tenure holder and that the land was not hit by any consolidation impediment, allowed the application by order dated 19.01.2011.

- 5) The learned counsel for the petitioner also contends that the proceedings under Section 143 are proceedings inter se between the State authorities and the tenure holder, and a third party has no locus to intervene or seek recall of an order passed therein. It is argued that the declaration of change of user neither creates nor extinguishes title and only governs the nature of land use, and therefore, the private respondents could not claim to be aggrieved parties. It is further pleaded that the private respondents, without any cause of action and despite not being parties to the proceedings under Section 143, moved an application under Section 151 of the Code of Civil Procedure seeking recall of the order dated 19.01.2011. According to the petitioner, such an application was wholly not maintainable, being barred by limitation, beyond the scope of inherent powers, and contrary to settled principles that a person who is not a party to proceedings cannot seek recall of an order passed therein.
- 6) The learned counsel for the petitioner emphasizes that the recall application was rightly rejected by the Assistant Collector on 01.03.2013. However, the respondents thereafter preferred a revision before the Commissioner, which was allowed by order dated 26.12.2013 without issuing notice to the petitioner, thereby violating the principles of natural justice. It is further alleged that during the pendency of the revision preferred by the petitioner before the Chief Revenue Commissioner/Board of Revenue, the Commissioner, Kumaon Division passed a subsequent amendment order dated 29.01.2014, again

without notice or hearing, effectively nullifying the change of user granted in favour of the petitioner which was also challenged by the petitioner before Board of Revenue in revision.

- 7) The learned counsel for the petitioner further assails the final order dated 29.04.2014 passed by the Board of Revenue dismissing her revision as being cryptic, non-speaking, and devoid of any independent reasoning. It is urged that the revisional authority failed to consider the statutory scheme, the bar on entertaining recall applications by third parties, the settled law on limitation, and the binding effect of orders passed under Section 143 once acted upon.
- 8) The learned counsel for the respondents, in their counter affidavit, disputed the legality of the proceedings initiated by the petitioner under Section 143 of the Act. It is contended that the village was under consolidation at all material times, and therefore, no application for change of user could have been entertained during the continuation of consolidation operations. According to the respondents, the Assistant Collector lacked jurisdiction to pass any order altering the nature of land during consolidation proceedings.
- 9) It is further submitted by the learned counsel for the respondent that the petitioner had allegedly misused the land for non-agricultural purposes in violation of Section 5(1)(c) of the U.P. Consolidation of Holdings Act, and therefore, could not derive any benefit from her own illegal acts. The learned counsel asserted that since their chak and access were adversely affected by the illegal declaration of change of user, they had every right to seek recall of the order dated 19.01.2011. The respondents justify the invocation of Section 151 CPC by contending that inherent powers could be exercised to recall an order which was without jurisdiction. He further submit that

since the order under Section 143 was void ab initio, no notice was required to be issued to the petitioner before recalling the same. It is also asserted that correction or amendment of an order can be carried out even during pendency of revision proceedings and that such amendment does not amount to review.

- 10) In rejoinder, the learned counsel for the petitioner denies the allegations made in the counter affidavit and reiterates that the order dated 19.01.2011 was passed after due inquiry and within jurisdiction. It is clarified that Section 143 does not contemplate any prior permission and that a declaration can even be made after the land has been put to non-agricultural use, which is duly recognized under the statutory scheme. The learned counsel further asserts that neither the Consolidation Act nor the Zamindari Abolition Act creates any bar on entertaining an application under Section 143 merely because consolidation proceedings are pending. It is emphasized that consolidation abatement applies only to proceedings concerning rights and title and not to a declaration of change of user. It is reiterated that the respondents never availed any statutory remedy at the appropriate time and are now estopped from questioning the declaration after it had been acted upon. The petitioner denies that any chak road or access of the respondents was affected and submits that such issues, if any, fall within the domain of civil or revenue adjudication and cannot be used to unsettle a concluded declaration under Section 143. The petitioner thus maintains that the recall application, the revisional interference, and the subsequent amendment orders are all vitiated by lack of jurisdiction, violation of natural justice, and non-application of mind, and deserve to be set aside. A supplementary affidavit dated 21.08.2015 is also filed by

the petitioner stating that the predecessors of the respondent also got declaration of their/his land under Section 143 of UP Z.A. & L.R. Act as non-agriculture during the pendency of the consolidation proceedings in vogue in the village; the respondents, therefore, are estopped to take such a plea against the petitioner.

- 11) Having heard learned counsel for the parties and upon a careful perusal of the pleadings and the record, this Court finds that the controversy in the present writ petition essentially revolves around the validity of the declaration of change of user granted under Section 143 of the U.P. Zamindari Abolition and Land Reforms Act during the pendency of consolidation operations and the subsequent interference made by the revisional authorities. The Board of Revenue, while exercising revisional jurisdiction, has affirmed the view that the order dated 19.01.2011 was passed in disregard of the statutory scheme governing consolidation proceedings and that the Assistant Collector lacked jurisdiction to entertain and decide the application under Section 143 at the relevant time. This Court does not find any patent illegality or jurisdictional error in the approach adopted by the revisional authorities in view of the provisions of Section 5(1)(c) of U.P. Consolidation of Land Holdings Act. The interpretation placed upon the interplay between the provisions of the U.P. Zamindari Abolition and Land Reforms Act and the U.P. Consolidation of Holdings Act by the revenue authorities is a plausible view, based on the object of maintaining status quo during consolidation operations. Merely because another interpretation may also be possible, this Court would not substitute its own view in exercise of writ jurisdiction. The contention of the petitioner that the recall proceedings were not maintainable at the instance of the private respondents

and that the revisional orders suffer from violation of principles of natural justice has also been considered. From the record, it is evident that the petitioner availed successive statutory remedies before the higher revenue authorities and was afforded opportunity to place her case. The final order passed by the Board of Revenue cannot be said to be vitiated on account of denial of hearing or non-application of mind. No estoppel operates against the private-respondent. The submission is totally bereft of merit in the given facts.

- 12) This Court is also of the view that a declaration under Section 143 does not create any indefeasible or vested right in favour of the tenure holder and, therefore, if such declaration is found to be contrary to the statutory framework, the same does not attain finality merely because consequential entries were made in the revenue records or the land was put to a particular use. The issues raised by the petitioner involve examination of statutory provisions and factual aspects already considered by the competent authorities and do not disclose any exceptional circumstance warranting interference under Articles 226 or 227 of the Constitution of India.
- 13) Accordingly, the writ petition is dismissed.

(Pankaj Purohit, J.)
29.12.2025

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