



2026:AHC:191903

Reserved on 02.09.2026

Delivered on 14.09.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - B No. - 13260 of 2006

Smt. Rasool Bano

.....Petitioner(s)

Versus

Board of Revenue and others

.....Respondent(s)

Counsel for Petitioner(s)	: Arvind Srivastava, M.Y. Khan, Mohammad Yunus Khan
Counsel for Respondent(s)	: C.S.C., Shahroze Khan

HON'BLE ARUN KUMAR, J.

1. Heard Mr. Mohd. Yunus Khan, learned counsel for the petitioner, learned Standing Counsel for respondent no.1, and Mr. Mohd. Jafar Yab Khan, holding brief for Sri Shahroze Khan, learned counsel for respondent nos. 2 to 4.

2. The present writ petition has been filed challenging the order of respondent no.1 dated 31.10.2005, insofar as it set aside the orders dated 30.5.1994 and 6.4.1995 passed by the Naib Tehsildar, Tehsil Naugarh, District Siddharth Nagar.

3. The facts giving rise to the present writ petition are that Plot No.387, measuring 1 bigha 12 biswa 18 biswansi, comprised in Khata No.273, was recorded in the names of Rahmatullah and Riyasat. After the death of Riyasat on 2.1.1992, respondent nos. 2 to 4 claimed his 1/2 share on the basis of an unregistered Will executed by him. The names of

respondent nos. 2 to 4 were recorded on the basis of the Will in the relevant revenue records.

4. Rahmatullah, who had a share of 16 biswa 9 biswansi in Plot No.387, executed a sale deed dated 4.7.1992 in favour of Smt. Mariyam, the widow of Riyasat. Smt. Mariyam also challenged the succession claimed by respondent nos. 2 to 4 on the basis of the Will, which was stayed by the order of the Tehsildar dated 4.1.1994. Smt. Mariyam sold the area of 16 biswa 9 biswansi purchased from Rahmatullah through a registered sale deed dated 16.2.1994 in favour of Smt. Rasool Bano, the original petitioner in the present writ petition. Subsequently, Smt. Mariyam executed a sale deed dated 6.3.1997 in favour of the sons of Smt. Rasool Bano (now arrayed as petitioner nos. 1/1, 1/2 and 1/3 in the present writ petition) in respect of the 1/2 share of Riyasat inherited by her in Plot No.387. Smt. Rasool Bano moved an application for getting her name recorded over Plot No.387 in pursuance of the sale deed dated 16.2.1994 executed in her favour by Smt. Mariyam. The Naib Tehsildar, by his order dated 30.5.1994, allowed the application. Subsequently, Rahmatullah moved an application for recalling the order dated 30.5.1994. The said application was rejected by the order of the Naib Tehsildar dated 6.4.1995.

5. Aggrieved by the aforesaid orders of the Naib Tehsildar, Rahmatullah filed an appeal before the Deputy District Magistrate, Naugarh, District Siddharth Nagar, which was allowed by the order dated 31.3.1997, setting aside the orders dated 30.5.1994 and 6.4.1995. A further direction was issued that Plot No.387M, area 13 biswa, transferred by the sale deed dated 16.2.1994, was hit by the provisions of Section 168-A of the U.P. Zamindari Abolition and Land Reforms Act, 1950, rendering the transfer void and, consequently, the land vested in the State Government.

6. Aggrieved by the order of the Deputy District Magistrate dated 31.3.1997, Smt. Rasool Bano, the original petitioner in the writ petition, filed a revision before the Commissioner, Gorakhpur Region,

Gorakhpur. The Additional Commissioner (Judicial), Gorakhpur Division, Gorakhpur, by his order dated 11.9.1997, made a reference to the Board of Revenue, U.P., Allahabad, respondent no.1, with the recommendation that the order of the Deputy District Magistrate was liable to be set aside. The Board of Revenue, by its order dated 31.10.2005, partly approved the reference by setting aside the order dated 31.3.1997, along with the orders of the Naib Tehsildar dated 6.4.1995 and 30.5.1994, and relegating the matter for being decided afresh.

7. Learned counsel for the petitioner contended that, by the amending U.P. Act No.20 of 1997, which was notified on 18.8.1997, the provision of Section 218 of the U.P. Land Revenue Act, 1901, was deleted. Therefore, the Additional Commissioner himself had the jurisdiction to decide the revision in view of the newly substituted provision of Section 219 of the Act of 1901. Accordingly, the reference made by the Additional Commissioner by the order dated 11.9.1997 was uncalled for. In support of his contention, learned counsel for the petitioner has relied upon a Coordinate Bench decision of this Court in the case of *Ramesh Chandra Sharma Vs. Board of Revenue, U.P., Lucknow and others, 2006(1) CRC 37*.

8. It is further contended by learned counsel for the petitioner that the Board of Revenue exceeded its jurisdiction in accepting the reference and setting aside the orders of the Naib Tehsildar along with the order of the Deputy District Magistrate dated 31.3.1997, even though the said orders were not the subject matter of challenge in the revision filed before the Additional Commissioner. The observation of respondent no.1 that the orders of the Naib Tehsildar were unsustainable on the ground that there was no evidence on record to show that Rahmatullah and, thereafter, Smt. Mariyam had executed registered sale deeds in respect of the plot in question, is contrary to the record. The order dated 6.4.1995 specifically records the fact that both the sale deeds were on record. The aforesaid finding of respondent no.1, which is contrary to the record, and

the consequent decision to set aside the orders passed by the Naib Tehsildar on that basis, are arbitrary and manifestly illegal.

9. Learned counsel for the petitioner further contended that the provision of Section 168-A of the Act of 1950 has wrongly been applied to the sale deeds dated 4.7.1992 executed by Rahmatullah and 16.2.1994 executed by Smt. Mariyam. It is contended that, on the date of execution of the sale deed dated 4.7.1992, Smt. Mariyam was a co-tenure-holder of Plot No.387, as Riyasat, the brother of Rahmatullah, had died, and the sale deed of a fragment of the share of the vendor in the plot was not hit by the provisions of Section 168-A if it was sold in favour of a co-tenure-holder. It has further been contended that the 1/2 share inherited by Smt. Mariyam as the widow of Riyasat had been transferred in favour of petitioner nos. 1/1 to 1/3 by the sale deed dated 6.3.1997. The challenge to the said sale deeds by respondent nos. 2 to 4 has been rejected by the dismissal of the suit filed by them.

10. Per contra, learned counsel appearing on behalf of respondent nos. 2 to 4 has contended that the order of the Board of Revenue dated 31.5.2005 is a remand order; therefore, no interference is warranted by this Court against the same. It is further contended that late Rahmatullah had never executed any sale deed in favour of Smt. Mariyam, as her name was not recorded in the revenue records on that basis. Therefore, the sale deed executed by Smt. Mariyam in favour of Smt. Rasool Bano was void and did not transfer any right in her favour. It is further contended that the appeal filed by Rahmatullah was rightly allowed by the Deputy District Magistrate by the order dated 31.3.1997. Learned counsel for respondent nos. 2 to 4 contended that, as the reference made by the Additional Commissioner to the Board of Revenue accepted the claim of the petitioner, which was also accepted by the Board of Revenue, she was not aggrieved by the order dated 31.10.2005. As the matter has been remanded for being decided afresh, the petitioners still have an opportunity to raise their claim before the Tehsildar for getting

their names recorded over the plot in question on the basis of the respective sale deeds.

11. I have considered the submissions made by learned counsel for the parties and perused the records.

12. From the pleadings and the orders impugned in the present writ petition, the controversy, insofar as it requires determination in the present proceedings, principally relates to the competence of the Additional Commissioner to make the reference dated 11.9.1997 to the Board of Revenue and, consequently, the competence of the Board of Revenue to entertain and decide the said reference by the impugned order dated 31.10.2005.

13. It is not in dispute that the U.P. Land Laws (Amendment) Act, 1997 (U.P. Act No.20 of 1997) came into force with effect from 18.8.1997. By the said amendment, Section 218 of the U.P. Land Revenue Act, 1901 was omitted and Section 219 was substituted. Prior to the amendment, Section 218 empowered the Commissioner, Additional Commissioner, Collector, Record Officer or Settlement Officer, upon examining the record of a case decided by a subordinate officer, to refer the case, along with his opinion, to the Board of Revenue if he considered that the order or proceeding required to be varied, cancelled or reversed. The Board was thereafter empowered to pass such order as it thought fit. After the amendment, however, the power of revision was conferred directly upon the Board, Commissioner, Additional Commissioner, Collector, Record Officer and Settlement Officer under the substituted Section 219, subject to the conditions contained therein. The statutory scheme was, therefore, materially altered with effect from 18.8.1997. The amended provisions and the transitory provision contained in Section 10 of the Amendment Act have been noticed and considered in detail by the Division Bench in **Ravi Shanker Tripathi v. Board of Revenue, U.P., Lucknow through its Chairman and others**, 2007 (1) ADJ 23.

14. The question is no longer *res integra*. The precise controversy arising from the amendment of Sections 218 and 219 was considered by this Court in **Shri Ram v. Board of Revenue, U.P., Lucknow and others, 1999 (2) AWC 1718**. In that case also, the revision had originally been instituted under the unamended Section 218, but during its pendency Section 218 was omitted and Section 219 was substituted with effect from 18.8.1997. This Court examined Section 10 of the U.P. Land Laws (Amendment) Act, 1997, which expressly saved only those cases which had already been referred to the Board under the erstwhile Section 218 and were pending before the Board on the date of commencement of the Amendment Act. It was consequently held that revisions which were pending before the Commissioner or Additional Commissioner on 18.8.1997 were not saved by the transitory provision and were required to be decided under the substituted Section 219.

15. A contrary view had subsequently been expressed in **Kali Shanker Dwivedi v. Board of Revenue and others, 2000 (18) LCD 1401**, where reliance was placed upon Section 6 of the General Clauses Act and it was held that a revision pending on the date of the amendment would continue to be governed by the old provision. The conflict between *Kali Shanker Dwivedi (supra)* and *Shri Ram (supra)* was thereafter specifically referred for consideration by a Division Bench in *Ravi Shanker Tripathi (supra)*. The Division Bench examined the unamended and amended provisions of Sections 218 and 219, the transitory provision contained in Section 10 of the Amendment Act, the applicability of Section 6 of the General Clauses Act and the nature of the revisional jurisdiction conferred by the amended Section 219.

16. The Division Bench, after considering the aforesaid provisions and the authorities cited before it, expressly declined to subscribe to the view taken in *Kali Shanker Dwivedi (supra)* and agreed with the view taken in *Shri Ram (supra)*. The Division Bench held that Section 10 of the Amendment Act saved only those proceedings which had already been referred to the Board and were pending before the Board on

18.8.1997. Consequently, a proceeding which was pending before the Additional Commissioner on that date was required to be dealt with under the substituted Section 219 and the Additional Commissioner himself had jurisdiction to decide the revision. The Division Bench further observed that merely because the proceeding had originally been instituted under Section 218, that circumstance would not prevent the competent revisional authority from exercising jurisdiction under the substituted Section 219.

17. The aforesaid principle squarely applies to the facts of the present case. The revision/proceedings in question were admittedly pending before the Additional Commissioner when U.P. Act No.20 of 1997 came into force on 18.8.1997. It is further an admitted position that the Additional Commissioner made the reference to the Board only on 11.9.1997, i.e. after Section 218 had already been omitted from the statute book. Thus, on the date on which the reference was made, the Additional Commissioner could not derive authority for making such reference from the erstwhile Section 218. His jurisdiction was thereafter governed by the substituted Section 219.

18. Section 10 of the Amendment Act does not assist the respondents. Its language is specific. It saves cases which had been referred to the Board under Section 218 as it stood immediately before commencement of the Amendment Act and were pending before the Board on the date of commencement. The present case does not fall within that description. On 18.8.1997, the proceedings were not pending before the Board; they were pending before the Additional Commissioner. The reference itself was made thereafter on 11.9.1997. The statutory condition necessary for attracting the saving provision was, therefore, absent.

19. The same legal position has subsequently been followed by this Court in *Kamlesh Kumar v. Board of Revenue, Lucknow and others*, 2023 (41) LCD 1125. In that case also, after considering *Shri Ram, Kali Shanker Dwivedi* and, in particular, the Division Bench judgment in *Ravi Shanker Tripathi*, this Court held that, in view of the transitory

provision contained in Section 10 of the 1997 Amendment Act, only proceedings pending before the Board were saved and proceedings pending before the Commissioner or Additional Commissioner on 18.8.1997 were required to be decided under the amended Section 219. The order of the Board of Revenue passed on the basis of the contrary legal position was consequently set aside.

20. In view of the aforesaid settled position, the order dated 11.9.1997 passed by the Additional Commissioner making a reference to the Board under the erstwhile Section 218 cannot be sustained. Consequently, the Board of Revenue could not have proceeded to adjudicate the matter on the basis of such reference. The impugned order dated 31.10.2005 is, therefore, liable to be quashed on this ground alone.

21. Once the impugned order is found unsustainable on the aforesaid jurisdictional ground, it is neither necessary nor appropriate for this Court to enter into the other disputed questions raised by the parties.

22. For the reasons recorded above, this Court is of the considered opinion that the Additional Commissioner, on 11.9.1997, could not have made a reference under Section 218 of the U.P. Land Revenue Act, 1901, since the said provision had already been omitted with effect from 18.8.1997. The proceedings pending before him were required to be dealt with under the substituted Section 219. Section 10 of the U.P. Land Laws (Amendment) Act, 1997 saved only those references which had already been made to and were pending before the Board on 18.8.1997. The present case does not fall within that saving provision.

23. Accordingly, the writ petition succeeds and is allowed. The order dated 31.10.2005 passed by respondent no.1, the Board of Revenue, U.P., is hereby quashed.

24. The reference dated 11.9.1997 made by the Additional Commissioner (Judicial), Gorakhpur Division, Gorakhpur, to the Board of Revenue under Section 218 of the U.P. Land Revenue Act, 1901, shall

not be treated as a valid reference under the said provision. The revision filed by the petitioner shall be dealt with by the Additional Commissioner (Judicial), Gorakhpur Division, Gorakhpur, in accordance with the law applicable to the proceedings under the substituted Section 219 of the Act of 1901.

25. It is clarified that this Court has not expressed any opinion on the genuineness or legal effect of the alleged Will executed by late Riyasat, the succession to his share, the rights acquired by Smt. Mariyam, the validity or legal effect of the sale deeds dated 4.7.1992, 16.2.1994 and 6.3.1997, the applicability or effect of Section 168-A of the U.P. Zamindari Abolition and Land Reforms Act, 1950, or the title and substantive rights of any of the parties over the land in dispute. All such questions are left open to be considered by the competent forum in accordance with law.

26. Considering that the proceedings have remained pending for a considerable period, the Additional Commissioner (Judicial), Gorakhpur Division, Gorakhpur, shall endeavour to hear and decide the revision filed by the petitioner expeditiously, subject to the applicable statutory provisions, and without being influenced by any observation made in this judgment touching upon the merits of the rival claims. The entire exercise shall be completed within a period of six months from the date of production of a certified copy of this order.

27. Till the disposal of the revision, the parties shall maintain status quo with regard to the nature and possession of the land in dispute as it exists today.

28. There shall be no order as to costs.

(Arun Kumar,J.)

September 14, 2026

Anil