



2026:AHC:194675

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - B No. - 653 of 2026

Mohiuddeen And 3 Others

.....Petitioner(s)

Versus

The State Of U.P. And 4 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Adya Prasad Tewari
Counsel for Respondent(s)	:	Ashutosh Mishra, Navnath Pandey, Bhanu Bhushan Jauhari, C.S.C., Rishi Bhushan Jauhari, Sudhanshu Pandey, Sudhir Bharti

Court No. - 51

HON'BLE ARUN KUMAR, J.

1. Heard Sri Adya Prasad Tewari, learned counsel for the petitioners, Sri Bhanu Bhushan Jauhari, learned counsel appearing for respondent nos. 4 and 5, Sri Sudhir Bharti, learned counsel for respondent no.3 and learned Standing Counsel for respondent nos.1 and 2.

2. The present writ petition under Article 226 of the Constitution of India has been filed challenging the order dated 02.02.2026 passed by the learned Member (Judicial), Board of Revenue, U.P., Lucknow in Revision No. 173 of 2026, Abdul Hakeem Vs. Mohiuddeen and others, whereby the revision preferred by respondent no.4 has been allowed and the orders passed by the authorities below have been set aside, with the matter being remanded for fresh adjudication.

3. The dispute has its genesis in proceedings instituted by late Rahman under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act in respect of the land situate at Village Bargo, Tappa and Pargana Haveli, Tehsil Sadar, District Gorakhpur. The original suit was instituted on 18.11.1980. Respondent no.4 is the son of late Akbar, who was arrayed as a defendant in the said proceedings.

4. During the pendency of the original proceedings, a statement attributed to late Akbar was recorded on 25.02.1982. Thereafter, a compromise dated 30.06.1982 was relied upon by the parties and, on the basis thereof,

the suit was decreed by judgment and decree dated 06.12.1982. The writ petitioners have relied upon the said compromise and decree and have placed on record subsequent proceedings arising out of the same litigation.

5. It appears that thereafter the father of respondent no.4 moved an application dated 12.09.1989 under Order IX Rule 13 C.P.C. seeking recall of the judgment and decree dated 06.12.1982. The said application was dismissed by the Assistant Collector, First Class, Gorakhpur by order dated 31.12.1991. A review application was thereafter filed and was dismissed by the Sub-Divisional Officer by order dated 08.01.1993. The record further discloses that respondent no.4, after a considerable lapse of 41 years, moved an application dated 15.02.2023 seeking recall/restoration of the proceedings. The said application was dismissed by the Assistant Collector, First Class/Additional City Magistrate (First), Gorakhpur by order dated 03.10.2025. An appeal preferred against the said order was dismissed by the Additional Commissioner (Administration), First, Gorakhpur Division, Gorakhpur by order dated 06.01.2026.

6. Respondent no.4 thereafter approached the Board of Revenue by filing Revision No. 173 of 2026. The revision was instituted on 13.01.2026 and came to be decided by the impugned order dated 02.02.2026. The petitioners contend that the Board, without summoning the records of the courts below and without adequately advertng to the findings recorded therein, set aside the orders dated 06.12.1982, 31.12.1991, 08.01.1993, 03.10.2025 and 06.01.2026 and remitted the matter for fresh adjudication.

7. Learned counsel for the petitioners submits that the impugned order has been passed in undue haste. According to him, the Board did not summon the complete lower court record and proceeded substantially upon the material placed before it at the revisional stage. It is submitted that the subordinate authorities had already considered the application for restoration and the appeal arising therefrom and had recorded their respective findings, whereas the Board, without undertaking an appropriate examination of the said findings and the record, proceeded to interfere with the orders passed over a long period of time.

8. It is further submitted that respondent no.4's father had himself participated in the original proceedings and a statement was recorded on 25.02.1982. The compromise dated 30.06.1982 was followed by the judgment and decree dated 06.12.1982. It is argued that the subsequent applications under Order IX Rule 13 C.P.C., review proceedings and the proceedings culminating in the orders dated 31.12.1991 and 08.01.1993 constitute an important part of the procedural history, which ought not to have been disturbed without examination of the original record.

9. Learned counsel for the petitioners has also placed reliance upon the fact that the application for restoration was filed after an extraordinary lapse of time, i.e. on 15.02.2023 in respect of a decree dated 06.12.1982. The application was dismissed by the competent authority on the ground of delay and non-maintainability, and the appeal therefrom was also dismissed. It is submitted that the Board ought to have examined the findings of the subordinate authorities instead of mechanically remitting the matter.

10. It is also submitted that the allegations relating to fraud, impersonation, incorrect parentage, defective service and the genuineness of the thumb impression and compromise involve disputed questions of fact, which cannot appropriately be concluded in revisional proceedings without a proper examination of the original record and evidence. The petitioners refer to the reports/opinions concerning the disputed thumb impression and contend that the same had been relied upon by respondent no.4 at a belated stage. The rejoinder affidavit also asserts that the findings of the Assistant Collector dated 31.12.1991 had already dealt with the relevant allegations concerning the thumb impression and the documents attributed to late Akbar.

11. The principal submission, however, is that several objections now being advanced by respondent nos. 4 and 5 concerning the very jurisdiction and maintainability of the original proceedings were not the issues upon which the authorities below had adjudicated the matter. It is urged that these objections have been introduced for the first time in the counter affidavit filed before this Court.

12. Per contra, learned counsel appearing for respondent nos. 4 and 5 has opposed the writ petition. It is submitted that the impugned order does not finally adjudicate the rights of the parties but merely restores the matter to the stage where the foundational issues can be properly examined. According to learned counsel, the Board did not declare respondent no.4 to be the owner of the disputed property, nor did it finally accept the allegations of fraud; rather, it directed that the dispute be tested after the parties are afforded opportunity to lead evidence.

13. It has been argued that the original decree dated 06.12.1982 is itself surrounded by serious circumstances requiring examination. Respondent nos. 4 and 5 allege that late Akbar did not reside at the address mentioned in the plaint and that the description of his parentage and residence was incorrectly recorded. It is contended that the alleged service of summons, appearance, authority of counsel, statement attributed to Akbar and execution of the compromise are all matters requiring proof from the original record. Respondent no. 4 has also questioned the genuineness of the thumb impression attributed to his father and has relied upon expert material in support of his challenge.

14. Learned counsel for respondent nos. 4 and 5 has further submitted that the compromise dated 30.06.1982 cannot be mechanically accepted, particularly when, according to the respondents, the participation and consent of all necessary parties and the State authorities have not been established. It is also contended that the requirements of Order XXIII Rule 3 C.P.C. and other statutory provisions required examination. The respondents contend that the issue whether the compromise was genuinely executed by the person concerned and whether it was acted upon in accordance with law is a matter requiring evidence and cannot be foreclosed at the threshold.

15. A further submission made on behalf of the respondents is that the suit itself was not maintainable for want of compliance with mandatory statutory requirements. In particular, it has been urged that the necessary notice under Section 80 C.P.C., notice under Section 106 of the U.P. Panchayat Raj Act, and the requirements contemplated under Section 34(5) of the U.P. Revenue Act, 1901 were not duly complied with.

Respondent no.5 has specifically pleaded that the suit under Section 229-B of the U.P.Z.A. & L.R. Act was not maintainable in the absence of compliance with the aforesaid provisions.

16. It has also been submitted that the State Government and the Gaon Sabha were necessary parties and that the absence of their proper participation/notice went to the root of the jurisdiction of the court which entertained the original proceedings. The respondents have relied upon the alleged absence of postal receipts or other material evidencing service of the statutory notices.

17. Learned counsel for respondent no. 4 has further contended that the dispute involves allegations of fraud, impersonation and fabricated documents and that the petitioners cannot seek to prevent an adjudication of such allegations merely by invoking the passage of time. It is submitted that the Board was exercising revisional jurisdiction to correct what it considered to be a failure on the part of the subordinate authorities to examine issues going to the root of the original decree. The respondents maintain that the remand order causes no final prejudice to the petitioners, since they will have full opportunity to establish service, appearance, authority, execution of the compromise and the subsequent revenue entries.

18. Learned counsel for the respondents has also argued that the mere fact that the revision was decided within a short period cannot, by itself, establish haste or illegality. It is submitted that the petitioners were represented by counsel and no specific request for summoning any particular record was made before the Board. It is further urged that the Board's order is a remand order and, therefore, the parties retain full opportunity to establish their respective cases before the competent court.

19. Having considered the rival submissions and perused the material placed before this Court, this Court finds that the controversy at this stage need not be adjudicated on the merits of the allegations of fraud, impersonation, validity of the compromise, genuineness of the thumb impression or the ultimate maintainability of the original suit. Those issues are required to be considered by the competent authority upon the

basis of the complete record and after affording proper opportunity to all concerned.

20. There is, however, one aspect which assumes significance. The counter affidavits filed on behalf of respondent nos. 4 and 5 raise certain objections touching the jurisdiction and maintainability of the original proceedings themselves. In particular, objections have been raised regarding compliance with Section 80 C.P.C., Section 106 of the U.P. Panchayat Raj Act and Section 34(5) of the U.P. Revenue Act, 1901, apart from the contention that the suit under Section 229-B of the U.P.Z.A. & L.R. Act was not maintainable. These objections have been specifically pleaded in the counter affidavit and supplementary counter affidavit.

21. The petitioners, in their rejoinder, have disputed the aforesaid assertions and have relied upon the alleged notice issued to the State Government and the notice said to have been issued to the Gaon Sabha. The petitioners contend that the requirement of notice under Section 80 C.P.C. was complied with and that notice under Section 106 of the U.P. Panchayat Raj Act was also issued. Thus, there is a direct contest between the parties on these jurisdictional questions.

22. What is material for the purposes of the present writ petition is that these objections, as now placed before this Court, have not been considered by the authorities below in the orders which have culminated in the impugned order. The Assistant Collector, the appellate authority and, on the material presently available, the Board of Revenue have not returned a finding upon these specific objections after examination of the original record and after hearing the parties on the same.

23. Once an objection goes to the very jurisdiction or maintainability of the original proceedings, it would not be appropriate for this Court, in exercise of its writ jurisdiction, to record a final finding thereon for the first time, particularly when the necessary factual foundation, the original proceedings and the relevant statutory notices are matters requiring examination by the competent authority.

24. At the same time, the manner in which the impugned order came to be

passed also warrants consideration. The revision was instituted on 13.01.2026 and the impugned order was passed on 02.02.2026. The petitioners have specifically complained that the Board proceeded without summoning the complete record of the courts below. The Board's order itself resulted in setting aside a decree and several consequential orders extending over a period of more than four decades.

25. This Court is conscious that mere expedition in disposal of a revision cannot, by itself, be treated as proof of illegality. Equally, however, when a revisional authority is called upon to examine a long-standing decree and subsequent orders, and the controversy involves allegations concerning service of summons, appearance, authority of counsel, execution of a compromise, fraud and the very maintainability of the original proceedings, the matter ought to be considered upon the complete record and with due regard to all objections which materially affect jurisdiction.

26. The respondents are justified to the extent that the allegations raised by them cannot simply be brushed aside on the ground of their being belated. If an objection truly goes to the jurisdiction of the court which passed the original decree, its legal effect has to be determined in accordance with law. At the same time, the petitioners are equally entitled to an opportunity to establish their assertion that the requisite notices were in fact issued and that the original proceedings were otherwise maintainable.

27. The respondents themselves submit that the remand was intended to provide an opportunity to both sides to establish their respective cases. Their counter affidavit specifically states that the petitioners would be free to prove service, appearance, authority of counsel, execution of the alleged compromise and the revenue entries, while respondent no.4 would be free to establish his allegations concerning non-service, residence, absence of authority, impersonation and expert evidence.

28. In the considered opinion of this Court, therefore, the appropriate course is not to finally adjudicate any of the aforesaid disputed questions in the present writ petition, but to remit the matter to the Board of

Revenue so that all the objections, including the objections newly raised before this Court touching the jurisdiction and maintainability of the original proceedings, may be considered by the revisional authority after examination of the complete record and after affording effective opportunity of hearing to all concerned parties.

29. Such a course would also meet the principal grievance of the petitioners regarding the manner in which the impugned order has been passed. The Board of Revenue is the revisional authority which had before it the challenge arising from the orders of the subordinate authorities. It would, therefore, be appropriate that the Board itself considers the entire matter afresh rather than this Court undertaking an examination of factual and jurisdictional questions for the first time in writ jurisdiction.

30. It is clarified that this Court has not expressed any opinion on the merits of the allegations of fraud or impersonation, the validity or otherwise of the compromise dated 30.06.1982, the genuineness of the signatures or thumb impressions, the question of limitation, the applicability or compliance with Section 80 C.P.C., Section 106 of the U.P. Panchayat Raj Act or Section 34(5) of the U.P. Revenue Act, 1901, or the maintainability of the original suit under Section 229-B of the U.P.Z.A. & L.R. Act. All these questions are left open for consideration by the Board of Revenue in accordance with law.

31. The Board shall summon and examine the complete record of the proceedings before the subordinate authorities. The Board shall also take into consideration the pleadings and documents placed before this Court by the parties, to the extent permissible in law. The respondents' allegations concerning non-service, impersonation and the alleged defects in the original proceedings, as well as the petitioners' reply thereto, shall be considered on their own merits. The relevant procedural history, including the effect of earlier applications filed by the father of the respondent no.4 and orders dated 31.12.1991 and 08.01.1993, as borne out from the material placed on record.

32. Since the objections regarding statutory notices and jurisdiction have

been raised before this Court and have been specifically disputed by the petitioners, the Board shall give both sides a reasonable opportunity to produce and prove the relevant notices, acknowledgments, postal records, orders and other documents relied upon by them. The Board shall thereafter record appropriate findings on each objection before deciding the revision.

33. For the reasons aforesaid, the writ petition succeeds and is allowed.

34. The order dated 02.02.2026 passed by the learned Member (Judicial), Board of Revenue, U.P., Lucknow in Revision No. 173 of 2026, Abdul Hakeem Vs. Mohiuddeen and others, is hereby quashed and set aside.

35. The matter is remanded to respondent no.2, the Board of Revenue, U.P., Lucknow, for fresh consideration of the revision in accordance with law. The Board shall summon and consider the complete record of the proceedings before the courts/authorities below and shall afford full and effective opportunity of hearing to the petitioners as well as respondent nos. 3 to 5.

36. The Board shall specifically consider all objections raised by respondent nos. 4 and 5 before this Court concerning the jurisdiction and maintainability of the original proceedings, including the objections relating to compliance with Section 80 C.P.C., Section 106 of the U.P. Panchayat Raj Act and Section 34(5) of the U.P. Revenue Act, 1901, as well as the objection regarding maintainability of the proceedings under Section 229-B of the U.P.Z.A. & L.R. Act. It shall also consider the petitioners' response to each of the said objections. None of these issues shall be treated as having been concluded by this Court.

37. It is made clear that this Court has not expressed any opinion on the merits of any of the aforesaid issues. The Board shall decide the revision independently, uninfluenced by any observation contained in this judgment, after considering the complete record and the submissions of all parties.

38. Having regard to the fact that the proceedings arise out of a very old dispute, the Board of Revenue is requested to endeavour to decide the

matter expeditiously, preferably within a period of six months from the date of production of a certified copy of this order, subject to the parties extending full cooperation.

39. There shall be no order as to costs.

(Arun Kumar,J.)

September 16, 2026
Ranjeet Sahu