HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 40096 of 2026

Omprakash

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Peeyush Kumar Pathak, Prateeyush Kumar Pathak
Counsel for Respondent(s)	:	C.S.C.

Court No. - 37

HON'BLE CHANDRA KUMAR RAI, J.

1. Heard learned counsel for the petitioner, Sri Shridhar Tripathi, learned Standing Counsel for the State and perused the record.

2. Brief facts of the case are that mutation proceedings under Section 34 of the U.P. Revenue Code, 2006 was initiated by respondent no. 3 on the basis of a registered gift deed dated 09.10.2025. The Tehsildar, vide order dated 25.08.2026, directed to record the name of respondent no. 3 in place of Rajendra Prasad on the basis of registered gift deed dated 09.10.2025. The Civil Suit in respect to the gift deed dated 09.10.2025 at the instance of petitioner is stated to be pending before the Civil Court.

3. The instant petition has been filed for the following reliefs:-

> ***" i. Issue a writ, order or direction in the nature of certiorari to set aside the ultra vires order dated 25.08.2026 passed by the Tehsildar Gabhana, Tehsil Gabhana, District Aligarh in Case No. 10894 of 2025 headed as Kamlesh Versus Rajendra Under Section 34 of U.P. Land Revenue Code, 2006. (Annexure No. 9).***
>
> ***ii. Issue a writ, order or direction in the nature of mandamus, commanding and directing the respondent authorities not to disturb the peaceful possession of the petitioner.***
>
> ***iii. Issue an appropriate writ, order or direction as this Hon'ble court may deem fit and proper under the facts and circumstances of the case***

to secure the ends of justice."

4. Learned counsel for the petitioner submitted that the gift deed cannot be executed in favour of respondent no. 3 as Rajendra Prasad had three sons and one daughter. He submitted that mutation proceeding initiated by respondent no. 3 has been allowed in illegal and arbitrary manner without affording proper opportunity of hearing to all the legal heirs of deceased Rajendra Prasad. He further submitted that alternative remedy against the order passed by Tehsildar in the proceeding under Section 34 of the U.P. Revenue Code, 2006 will not bar for petitioner to challenge the same before this Court under Article 226 of the Constitution of India. He next submitted that mutation proceeding should be decided afresh by the Tehsildar as the Civil Suit filed by the petitioner is pending before the Civil Court in respect to the gift deed in question. He further submitted that Rajendra Prasad had died during pendency of the mutation proceeding, as such the Mutation Court can not pass the order in favour of respondent no. 3 on the basis of gift deed in question.

5. On the other hand, learned Standing Counsel for the State submitted that no interference is required against the order passed by Tehsildar in the proceeding under Section 34 of the U.P. Revenue Code, 2006. He submitted that the Civil Suit filed by petitioner is stated to be pending in the Civil Court, as such the petitioner should pursue the remedy before the Civil Court rather contest summary proceeding under Section 34 of the U.P. Revenue Code, 2006.

6. I have considered the arguments advanced by the learned counsel for the petitioner, learned Standing Counsel for State and perused the record.

7. There is no dispute about the fact that the name of respondent no. 3 was ordered to be recorded on the basis of registered gift deed dated 09.10.2025 under the impugned order dated 25.08.2026 passed by the Tehsildar under Section 34 of the U.P. Revenue Code, 2006.

8. The arguments advanced by learned counsel for the petitioner that Rajendra Prasad had died during pendency of the mutation proceeding, as such mutation order cannot be passed is misconceived as mutation proceeding initiated at the instance of respondent no. 3 on the basis of gift

deed was to be examined and same was been examined in proper way by the Tehsildar.

9. In order to appreciate the controversy involved in the matter the perusal of the relevant portion of the order passed by Tehsildar will be necessary which is as under:-

> मेरे द्वारा पत्रावली का अवलोकन किया गया। पत्रावली के अवलोकन से विदित होता है कि आपत्तिकर्ता ओमप्रकाश पुत्र राजेन्द्र मय अधिवक्ता हाजिर। बादी पक्ष मय अधिवक्ता हाजिर। वादी अधिवक्ता की तकंपूण बहस को सुना गया तथा आपत्तिकर्ता को लिखित बहस का अवसर प्रदान किया गया जिसके क्रम में लिखित बहस प्राप्त हुई। जिसमें अपनी पोषणीयता प्रार्थना पत्र की बहस स्वीकार करने की प्रार्थना की गयी। बादी द्वारा प्रस्तुत पोषणीयता प्रार्थना पत्र दिनांक 30.12.2025 की बहस में बल है कि मेरा दानपत्र आज तक किसी सक्षम न्यायालय से शून्य एवं कोई स्थगन आदेश नहीं किया गया। ऐसी दशा में बादी द्वारा प्रस्तुत पोषणीयता प्रार्थना पत्र दिनांक 30.12.2025 स्वीकार किया जाना न्यायोचित प्रतीत होता है। वादिया द्वारा साक्ष्य पूर्ण है। ऐसी दशा में द्वारा प्रस्तुत पोषणीयता प्रार्थना पत्र दिनांक 30.12.2025 स्वीकार कर आपत्तिकर्ता ओमप्रकाश पुत्र राजेन्द्र द्वारा प्रस्तुत आपत्ति दिनांक 18.11.2025 बलहीन होने के कारण निरस्त की जाती है। नामान्तरण एक सररारी प्रक्रिया है जिसके स्यत्व का निर्धारण नहीं किया जाता है।
>
> **<u>आदेश</u>**
>
> अत. उपरोक्त समीक्षा के आधार पर आदेश किया जाता है कि मौजा- ऐलमपुरा परगना चण्डौस तहसील गभाना जिला अलीगढ़ के खाता सं० 180 गाटा सं० 164/2 रकबा 0.5230 है0 लगानी ७०ख के अपने सम्पूर्ण भाग रकवा 0.5230 है0 से दानदाता राजेन्द्र प्रसाद पुत्र निरोत्तम प्रसाद नि० ऐलमपुरा परगना चण्डीस तहसील गभाना जिला अलीगढ़ का नाम खारिज करके दानग्रहीता कमलेश पत्नी धर्मवीर शर्मा नि० अहमदपुर चौरोली तहसील जेवर जिला गौतमबुद्धनगर का नाम बतौर दान पत्र सं० 8546 दिनांक 09.10.2025 के आधार पर दर्ज हो। तदनुसार परवाना अमलदरामद जारी हो। पत्रावली वाद अमलदरामद दाखिल दफ्तर हो।
>
> दिनांक-
>
> 25.08.2026

तहसीलदार

गभाना

10. The perusal to para 16 of the written argument annexed along with the Writ Petition as Aannexure no. 8 to the instant petition will be also necessary which is as under:-

> **"16. यह कि कथित दान पत्र दिनांकित 09/10/2025 को मंसूख व शून्य घोषित किये जाने हेतु एक वाद माननीय सिविल जज (सीनियर डिविजन) अलीगढ मे एक वाद दाखिल किया है जो लंवित है जिसमे सफल होने की पूर्ण आशा है।"**

11. The perusal of the order of Tehsildar, as quoted hereinabove as well as paragraph no. 16 of the written argument as quoted above demonstrates that the civil suit for cancellation of the gift deed in question at the instance of petitioner is pending before the Civil Court and the Tehsildar has passed the mutation order on the basis of the registered gift deed, which requires no interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

12. Since the civil suit filed by petitioner is pending, as such there is no necessity to relegate the petitioner to file appeal or revision against the order passed by the Tehsildar under Section 34 of the U.P. Revenue Code, 2006.

13. No interference is required against the impugned orders passed in summary proceeding.

14. The writ petition is **dismissed**. Needless to say, that the order passed in the mutation proceeding by the Tehsildar shall be subject to the adjudication of dispute by the Civil Court in the pending civil suit for cancellation of the gift deed in question.

(Chandra Kumar Rai,J.)

October 27, 2026
Neetu

Digitally signed by :-
NEETU SINGH
High Court of Judicature at Allahabad