

---

**(2005) 10 AHC CK 0134**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 29294 of 2004

Daya Ram Upadhaya

APPELLANT

Vs

Up Zila Adhikari and Others

RESPONDENT

---

**Date of Decision :** 06-10-2005

**Acts Referred:**

Uttar Pradesh Panchayat Raj Act, 1947 — Section 110

Uttar Pradesh Panchayati Raj (Maintenance of Family Registers) Rules, 1970 — Rule 5, 6, 6A

**Citation :** (2006) 1 AWC 1046

**Hon'ble Judges :** D.P. Singh, J

**Bench :** Single Bench

**Advocate :** Triveni Shanker and Brijesh Chandra Naik, for the Appellant;  
Sachchida Nand Srivastava and Madhur Prakash and S.C., for the Respondent

**Final Decision :** Allowed

---

## **Judgement**

D.P. Singh, J.—Pleadings are complete and the learned counsel for the parties agree that the petition may be finally disposed off under the Rules of the Court.

2. Heard learned counsel for the parties.

3. This petition is directed against an order dated 9.7.2004 by which a review application filed by the respondent No. 5 has been allowed.

4. Bhagwan Deen, Ram Deen, Ram Taul and Vidya Deen were brothers. Kashi Ram was the son of Bhagwan Deen and Smt. Sonara Devi. Ram Deen died first followed by Ram Taul who died in 1990. It is alleged that Bhagwan Deen, also died followed by his wife, Kashi Ram and Vidya Deen were the only heir and legal representative of their property. It is alleged that Onkar Nath Upadhya, father of the respondent No. 5 and Pradhan of the village, taking advantage of the fact that Kashi Ram had died a bachelor on 11.5.1993, forged entries in the Family Register showing his daughter Prem Lata as daughter of Kashi Ram and thereby got a mutation in the revenue records made in her name as his heir. When Vidya

Deen came to know about the fraudulent entry in the Family Register, he being the sole heir of Kashi Ram filed an application before the Mukhya Vikas Adhikari on 7.10.1993 seeking correction in the Family Register and for expunging the entries made therein showing Prem Lata as daughter of Kashi Ram. The Mukhya Vikas Adhikari directed the Khand Vikas Adhikari for making an enquiry, where after the A.D.O. (Panchayat) was directed to enquire into it. However, it is alleged, no action was taken on his application even after expiry of three months, forcing Vidya Deen to file an appeal u/s 6-A of the U.P. Panchayat Raj (Maintenance of Family Register) Rules, 1976 (hereinafter referred to as the Rules) for expunging the forged entry in the family register, Objections were filed by the respondent No. 5 and the original record was summoned by the appellate court. After the parties had filed their detailed written submissions, the appellate authority after detailed discussions allowed the appeal vide order dated 2.9.3.1997 and directed deletion of the name of respondent No. 5 from the family register. During the pendency of the appeal, Vidya Deen executed a registered will in favour of the petitioner on 17.4.1996. However, the respondent No. 5 filed a review application dated 31.3.1997 on the ground that the maintainability of the appeal had not been decided. A detailed objection was filed by Vidya Deen challenging the maintainability of the review application. In the meantime the order of the appellate court was given effect to and the entries in favour of respondent No. 5 was deleted from the family register. During the pendency of the review petition Vidya Deen died on 11.9.1998 and the petitioner, on the basis of the aforesaid registered will was substituted. By the impugned cryptic order the review application has been allowed holding that the appellate order appeared to be ex parte and recalled the order dated 29.3.1997 which is impugned in the present petition.

5. Learned counsel for the petitioner has firstly urged that there is no provision of review under the 1970 Rules and, therefore, the review application and the order passed therein are non est. He has further urged that assuming there was power of review, no case for review was made out.

6. However, learned counsel for the respondent has urged that; the appeal itself was not maintainable and thus this court should not exercise its discretion of quashing the impugned order as it would result into enforcement of another illegal order.

7. Before proceeding further, it would be appropriate to examine the scheme of the Rules. The 1970 Rules were framed u/s 110 of the U.P. Panchayat Raj Act, 1947. It stipulates preparation and maintenance of a family register in Form "A" prescribed therein containing family wise names and other particulars of persons constituting the family and residing in the village pertaining to the Gaon Sabha. The Secretary of the Gaon Sabha is to make necessary changes in the register at the beginning of each quarter and such changes are to be placed before the next meeting of the Gram Panchayat Rule 5 empowers the Assistant Development Officer (Panchayat) for correction of any entry in the family register and on his

passing an order the secretary is obliged to correct the register accordingly. Under Rule 6 any person whose name is not included in the family register may apply to the Assistant Development Officer (Panchayat) and who after such enquiry, as he thinks proper, may direct the name to be included therein. Any person aggrieved by an order under Rules 5 or 6 is entitled to file an appeal within 30 days before the Sub Divisional Officer u/s 6-A and which decision is deemed final. It is, thus evident that on an application made for correction of an existing entry under Rule 5 or for inclusion of a name under Rule 6 in the family register the Assistant Development Officer (Panchayat) is obliged to pass an order therein for such correction or inclusion as prayed. Though, no limitation is prescribed under any of the aforesaid two rules, the Assistant Development Officer (Panchayat) is obliged to act within a reasonable time.

8. In the present case, the petitioner had alleged forgery by the Gram Pradhan, who entered the name of his daughter in the family register of Kashi Ram as his daughter and that is why even though the Assistant Development Officer (Panchayat) was directed to make an enquiry he took no action even after expiry of three months. In the scheme of rules, the only other higher authority is the Sub Divisional Officer, who is also the appellate authority and the petitioner had no other alternative than to approach him when his, application for correction/inclusion evoked no action within a reasonable time. In the scheme of rules, the only time limit provided is for an appeal within 30 days from an order under Rules 5 or 6. Thus, the petitioner was well within his rights to have filed the appeal after expiry of 30 days which under the scheme of rules appears to be a reasonable time and if no orders are passed within such time, it would give a right to the petitioner to file the appeal deeming his application to have been rejected. Therefore, in my opinion, it cannot be said on the facts of this case, that the appeal was incompetent.

9. A perusal of the appellate order shows that the original file was summoned and examined. The parties were heard at length even on the question of maintainability and after holding that a naked eye perusal of the records showed interpolation, the appellate authority after holding that the appeal was maintainable allowed the appeal by a reasoned order. This appellate order 29.3.1997 was never challenged by the respondent No. 5, thus, even otherwise also the respondent no. 5 is estopped from raising the question of maintainability of the appeal.

10. It is not denied that there is no power of review under the Rules. The detailed replies filed by the contesting respondents in the appeals are available on the record wherein all questions of maintainability, limitation were taken. It is also evident that he was also heard at length. In fact the petitioner had relied upon decisions of this court and the apex court to contend that no review lay in the present facts but the authority did not even consider those decisions and passed the order in a mechanical and cryptic manner on the ground that it appeared to the authority that the appellate order was ex parte. The contesting

respondent has not denied that he took part in the proceedings and also filed detail objections and written arguments but he says that certain documents were not considered. This is no ground for a review. Therefore, in my opinion, the impugned order cannot be sustained.

11. For the reasons stated above, this petition succeeds and is allowed and the impugned order dated 9.7.2004 is hereby quashed. No order as to costs.