

(2012) 01 AHC CK 0235
In the Allahabad High Court
Case No : Writ B No. 39808 of 2004

Pdam Lochan and Others

APPELLANT

Vs

Gaon Sabha and Others

RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176

Citation : (2012) 01 AHC CK 0235

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Pankaj Mithal, J.—Heard Sri A.K. Srivastava, Learned Counsel for the petitioner. Learned Standing Counsel has appeared for respondent No. 3 and Sri Anuj Kumar for respondent No. 1 and 2. No counter affidavit has been filed despite the matter pending since 2004.

2. The petitioner has filed the writ petition challenging the order dated 2.4.2002 passed by the Terhsildar and the revisional order thereto dated 12.12.2004, passed by the Board of Revenue. By the aforesaid order dated 2.4.2002 the Tehsildar has recalled its earlier order dated 4.8.1998, passed in Mutation Case No. 343/344/345/98 directing for recording the names of the petitioners as per the decree passed in a partition suit No. 54/1999-99. The aforesaid order has been upheld in revision.

3. It appears that the petitioner had instituted a suit u/s 176 of UP ZA & LR Act for partition. The said suit was decreed and a final decree was prepared on 21.6.99, whereby the Kuras made by the Lekhpal were accepted. On the basis of the said decree by the order dated 4.8.1998, the Tehsildar directed for entering the names in the revenue records of the petitioner.

4. On behalf of the Gaon Sabha an application was filed on 19.1.2002 for recall of the mutation order only on the ground that the said has been obtained on the

basis of family settlement so as to deceive the Bank. On the said application the order was recalled by the Tehsildar on 2.4.2002 and the same has been upheld in the revision.

5. The contention of counsel for the petitioner is that the mutation was not ordered on the basis of any family settlement. It was directed in view of the decree passed in the partition suit. The said decree is intact and, therefore, the order of the mutation was not liable to be recalled. Secondly, the dues of the Bank have been cleared as is evident from the certificate of the Bank, dated 24.4.2006, which is filed as Annexure-1 to the supplementary affidavit. Thus it is contended that the very basis for recall of the mutation order has vanished.

6. The averments made in the writ petition and the counter affidavit have not been controverted as no party has filed counter affidavit.

7. It is admitted position that the decree passed in the partition suit on 21.6.99 is intact and stands as it is even today. The aforesaid decree declared the rights of the parties over the respective Kuras. Accordingly, the entries in the revenue record have to be made on its basis. The order in the mutation case was passed on 4.8.98 on the basis of the aforesaid decree. Once it has been found that the decree is intact, there is no justification for recalling the order dated 4.8.1998 on any ground much less the grounds mentioned in the application of the Gaon Sabha. Apart from the above the ground on which the recall order was sought is no longer in existence.

8. In view of the above, I am of the opinion that the Tehsildar manifestly erred in law in recalling the earlier order dated 4.8.1998 and passing the order dated 2.4.2002.

9. Accordingly, the order dated 4.8.98, Annexure-10 to the writ petition and so is the revisional order thereto dated 12.12.2004 Annexure-12 to the writ petition are quashed.

The writ petition succeeds and is allowed accordingly.