

**(1976) 10 AHC CK 0032**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 2039 of 1973 Connected with  
Civil Miscellaneous Writ Petitions Nos. 3967 to 3972 of 1973

Phool Chand

APPELLANT

Vs

Board of Revenue, U.P., Allahabad and others

RESPONDENT

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**Date of Decision :** 12-10-1976

**Acts Referred:**

Constitution of India, 1950 — Article 226

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 195, 196, 197, 198(2), 333

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 178(a)(2)

**Citation :** (1976) 10 AHC CK 0032

**Hon'ble Judges :** H.N.Seth, J

**Final Decision :** Dismissed

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**Judgement**

H.N. Seth, J.

These seven writ petitions under Article 226 of the Constitution, are directed against the order of the Board of Revenue dated November 30, 1972, dismissing the six second appeals that had been filed by one Bhagelu before the Board of Revenue. By the same order the Board of Revenue also rejected the application of Phool Chand for being transposed as an appellant in those appeals and further dropped the revisional proceedings initiated suo motu, on August 31, 1970, for examining the validity of appellate order dated October 24, 1968, passed by Additional Commissioner, Varanasi. Whereas, writ petition No. 2039 of 1973 is by Phool Chand, writ petitions Nos 3967 of 1973 to 3972 of 1973 are by Gaon Sabha of village Sarai Bhao Singh.

The facts giving rise to the present writ petitions, briefly stated, are that on March 10, 1965, the Land Management Committee of Gaon Sabha village Sarai Bhao Singh granted leases of vacant land to 22 persons under the provisions of Sections 195 to 197 of the U.P. Zamindari Abolition and Land Reforms Act. Phool Chand, Bhagelu and ether moved an application before the SubDivisional Officer, bringing certain irregularities said to have been committed by Land Management

Committee in granting aforementioned leases to, his notice "and praying that the same may be cancelled. Admittedly this application by Phool Chand and Bhagelu was moved after over an year of the grant of leases by the Land Management Committee and the barred by time. However, the SubDivisional Officer concerned decided to act suomotu. He issued notices to all the 22 lessees to show cause why their leases be not cancelled. He classified all the leases into six different groups and by his order dated July 6, 1968 cancelled them all. Being aggrieved thelessees filed 22 appeal before the Additional Commissioner which, according to a Division Bench decision of this Court in the case of State of U. P. v. Pyare Lal 1972 A.W.R. 548, were maintainable under the provisions of the Act. The Additional Commissioner by his order dated October 24, 1968, allowed all these appeals on the ground that the SubDivisional Officer had cancelled all the leases in contravention of the rule 178 (a) (2) of the rules framed under the U.P. Zamindari Abolition and Land Reforms Act Being aggrieved, by the judgment of the Additional Commissioner, Varanasi, Phool Chand went up in revision before the Board of Revenue and his revision application was numbered as 87 of 196869. Bhagelu, who also had moved the Assistant Collector for cancellation of the leases, filed six different second appeals before the Board of Revenue which were numbered as 603 to 608 of 19681969. Revision application filed by Phool Chand was, however, dismissed by the Board of Revenue on October 17, 1969 on the ground that Gaon Sabha had not been impleaded as a party. Thereafter, Phool Chand filed an application praying that the order dated October 17, 1969 be reviewed. While his review application was pending, Bhagelu moved an application on July 29, 1970 saying that he may be permitted to withdraw six appeals filed by him. The review application filed by Phool Chand was dismissed on July 31, 1970. Thereafter, on August 28, 1970, Phool Chand made an application to the Board of Revenue praying that he should be impleaded as an appellant in the appeals mea by Bhagelu. The application of Bhagelu, for permission to withdraw the appeals and that of Phool Chand for being impleaded in those appeals, came up for hearing before the Board of Revenue on August 31, 1970 when it made an order summoning the original file in order to enable it to dispose of those two applications. However, on July 26, 1671, the Board of Revenue with a view to examine the legality of the proceedings under Section 333 of the U.P. Zamindari Abolition and Land Reforms Act suo motu, issued notices to Land Management Committee, Gaon Sabha and the State of U.P. Ultimately, the matter came up for final hearing before it on November 30, 1972. It held that neither Bhagelu nor Phool Chand had any right to maintain the appeals (appeal Nos. 603 to 608 of 196869). Accordingly, there was no question of transposing or impleading Phool Chand as appellant in those appeal. So far as the action taken for the suo motu in exercise of powers under Section 333 of the U.P. Zamindari Abolition and Land Reforms Act was concerned, it thought that in view of certain orders passed at earlier stage, it was not a case where the Board of Revenue can exercise its power under Section 333 of the U.P. Zamindari Abolition and Land Reforms Act suomotu. In the result, it dismissed the six appeals filed by Bhagelu and dropped the revisional proceedings initiated by it

suo motu.

Being aggrieved, Phool Chand and Gaon Sabha have presented these petitions before this Court. Learned counsel for the petitioner submitted that the Board of Revenue erred in not transposing Phool Chand as appellant in the six appeals filed by Bhagelu and in not deciding them on merit. According to him, the Board also erred in dropping the proceedings under Section 333 of the U.P. Zamindari Abolition and Land Reforms Act initiated by it suomotu, more so alter it had issued notices to the Land Management Committee and the State of U.P.

Learned counsel for the respondent urged that the impugned order passed by the Board of Revenue does not effect any legal right either of Phool Chand or of Gaon Sabha and that these petitions are extremely belated. One of the lessees, i.e., Sita Ram is dead and his heirs have not been impleaded in these proceedings. In the circumstances, all these petitions are liable to be dismissed.

I have heard counsel for the parties and am of opinion that the first objection raised by the learned counsel for the respondents must prevail and all these writ petitions should be dismissed on that ground. It is clear from the facts stated above that the proceedings for cancellation of the leases of 22 allottees, though initiated on the information given by Phool Chand and others, were nevertheless initiated suo motu by the Assistant Collector. Since neither Phool Chand nor Bhagelu took any action for getting the leases cancelled within time, they lost their right to get them cancelled. It is a different thing that even though they lost their rights, the Assistant collector could on his own, on the basis of information received by him, consider the question whether those leases should be cancelled or not. Exercise of such jurisdiction by the Assistant Collector, however, did not clothe either Bhagelu or Phool Chand with any legal right to claim cancellation of those leases. Subsequent cancellation of the leases by the Assistant Collector also, did not confer any legal right on Phool Chand and Bhagelu. Order of the Additional Commissioner allowing the appeals filed by the 22 lessees did not result in affecting any right of Bhagelu and Phool Chand so as to entitle them to file a second appeal. Merely because the Assistant Collector decided to act under Section 198(2) on the basis of information given by Bhagelu and Phool Chand, it did not mean that either of them acquired any right or interest which entitled them to file second appeals before the Board of Revenue. In my opinion, the Board of Revenue was right in thinking that in the circumstances of the present case, neither Bhagelu nor Phool Chand had any interest to maintain appeal Nos. 603 to 608 of 1968/69 filed by them.

So far as the question of exercise of revisional power by the Board of Revenue suo motu is concerned, no one can claim it as of right that the Board must exercise that power. In my opinion, even if the Board could in the exercise of its powers, has acted otherwise, if so liked, it cannot be forced to exercise that power. No one can maintain a writ petition and pray that the Board of Revenue be compelled to exercise its discretionary power. In any case, a petition under Article 226 of the Constitution should not be entertained at the instance of Gaon

Sabha which wants to claim relief against its own action on the ground that it was mala fide and irregular.

Learned counsel for the Gaon Sabha, also urged that in view of the certain amendments made in Section 198 of the U.P. Z.A. and Land Reforms Act, in the year 1975, it is still open to it to move an application before the Assistant Collector concerned to cancel the leases in question and that this Court should declare that it has such a right. In these petitions, we are not at all concerned as to what the Gaon Sabha proposes to do in future and what action the Assistant Collector would take if he is so moved by the Gaon Sabha. If any such application is moved by the Gaon Sabha, the Assistant Collector will be free to deal with it in accordance with law.

In the result, the petitions fail and are dismissed with costs.