

---

**(2002) 05 AHC CK 0072**  
**In the Allahabad High Court**  
**Case No : Revision No. 177 (LR) of 1997-98**

Sohit Kumar

APPELLANT

Vs

Mool Chandra

RESPONDENT

---

**Date of Decision :** 06-05-2002

**Acts Referred:**

Uttar Pradesh Land Revenue Act, 1901 — Section 218

**Citation :** (2002) 05 AHC CK 0072

**Hon'ble Judges :** S.N.Shukla, J

**Final Decision :** Dismissed

---

## Judgement

S.N. Shukla, Member.

1. The revision has been filed by Sohit Kumar under Section 219 of the U.P. Land Revenue Act (hereinafter referred to as the Act) against the order dated 18998 passed by the Additional Commissioner, Meerut in Revision No. 63/96 originally filed under Section 218 but disposed of under Section 219 of the Act. My learned predecessor passed the following order on 13112000 ?Heard. Admit. Issue notice. Stay meanwhile. Fixed in turn for final hearing.?

2. Aggrieved by this order the opposite party Mool Chandra filed the Writ Petition No. 54387 of 2000 before the Hon''ble Allahabad High Court challenging the admission and stay on the ground that second revision is not maintainable before this Court. The Hon''ble Court disposed of the Writ Petition with the observation that this objection should be taken by the petitioner before the Board of Revenue and such application is made, because it is pure question of law, the Board of Revenue will decide preliminary objection after hearing both the sides. Accordingly, the opposite party has made an application for deciding this issue regarding the maintainability of this revision.

3. I have heard the learned counsels for both the parties. It has been contended on behalf of the revisionist that the revision was filed before the Commissioner under the old Section 218 of the Act which was subsequently deleted by the U.P.

Land Laws (Amendment Act) 1997 which came into force with effect from 18897. Since the revision was filed before the amendment it will be deemed to have been disposed of under Section 218 as it existed then and there could be no automatic disposal of such cases under Section 219 of the Act after the amendment. The learned Counsel for the revisionist has contended that it was not open to the lower Court to change the section under which the revision was filed originally and the cases filed under Section 218 before the amendment will not be hit by its deletion by the amending Act, 1997 in view of the provisions of clause (e) of Section 6 of the U.P. General Clauses Act, 1904. Since the original case the revision was under Section 218 of the Act the bar regarding the second revision by the same person under Section 219 (2) of the Act does not apply to the present case. In this connection, the learned counsel for the revisionist has relied on the decision of the Hon''ble Allahabad High Court (Lucknow Bench) in Kali Shankar Dwivedi v. Board of Revenue and others, (2000(18) LCD 1401). In that case the revision filed before the Additional Collector under Section 218 before its deletion was actually disposed of by the Additional Collector under Section 219 of the Act and was partly allowed by the order dated 14998. The second revision filed by the same revisionist before the Board of Revenue was allowed by the Board vide order dated 12799. This order was challenged before the Hon''ble High Court on the ground, inter alia, that the second revision was not maintainable in view of the new Section 219 of the Act. However, it was held that the substituted Section 219 of the Act has prospective effect and it does not affect the cases pending in revision on the coming into force of the amendment act. Therefore, the old law applies. The argument that the previous law applies to pending proceedings under Section 6 of the General Clauses Act was accepted and it was held that the revision pending before the Court below (the Board of Revenue, was not hit by the newly substituted Section 219 of the Act.

4. On the other hand the learned counsel for the opposite party has contended that since the revision filed by the revisionist before the Commissioner was rejected by the Commissioner under Section 219 of the amended Act, this second revision filed by him before this Court is not maintainable in view of the bar imposed by subsection (2) of Section 219 of the Act. In support of this argument the learned counsel of the opposite party has relied on the judgment of the Hon''ble Allahabad High Court in Sri Ram v. Board of Revenue, 1999 R.D. Page 467. In that case the revision filed before the amendment in the Act was decided by the Additional Commissioner under the substituted Section 219. The Board of Revenue remanded the matter/case to the Additional Commissioner for deciding it afresh as per the old Section 218 of the Act. This view of the Board was held to be incorrect by the Hon''ble High Court. It was held that the amending Act saved only the references pending before the Board and the revision pending before the Commissioner or the Additional Commissioner will not be saved. As such the Commissioner or the Additional Commissioner ought to have decided the revision pending before him no 18897 under Section 219. As a result the writ petition was allowed and the order of the Board of Revenue was

setaside.

5. The learned Counsel for the opposite party has also cited the decision of this Court in Revision No. 31/8899 (Munna Lal v. Hira Lal) where in a similar case the second revision filed before the Board was held to be not maintainable in view of the amendment in Section 333 of the U.P.Z.A. & L.R. Act by the Land laws (amended) Act, 1997. In that case also the revision filed before the Additional Commissioner before the amendment was rejected after the amendments and the second revision before the Board of Revenue was held to be in admissible. However, the decision of this Court in two other cases (Revision No. 13/LR200001 and Revision No. 1/LR/200102) cited by the learned counsel for the opposite party are not relevant as in those two cases the revision was filed before the lower Court after the amendment in the Act and hence the second revision before the Board of Revenue was obviously not maintainable in view of the clear provision in subsubsection (2) of Section 219 of the Act. The present case relates to a situation where the revision in the lower Court was filed u/s 218 but was decided under Section 219 after the deletion of Section 218.

6. In reply the learned Counsel for the revisionist has relied upon the full bench decision of Punjab High Court in M/s. Indo Swiss Time Limited v. Umrao and others, AIR 1981 P & H 213 wherein it was laid down that in case of the conflict between two decisions of the equal benches which possible can not be reconciled the judgment which appears to lay down the law more accurately and elaborately must be followed. In the present case since there is apparent difference in the two decisions of the Allahabad High Court referred to above the issue has to be decided keeping in view of the principle laid down in the full bench decision of the P & H High Court cited above.

7. In order to decide the issue as to whether the present revision is barred by subsection (2) of Section 219 of the Act, it is necessary to first decide as to whether the first revision filed before the amendment of Act under Section 218 off the Act will be deemed to have been decided under Section 219 after the deletion of Section 218. In this connection it is significant to note that Section 6 of the General Clause Act is not applicable to cases where to different intention appears from the repealing, or on the same analogy amending Act. U.P. Land Laws (Amendment) Act, 1997 deleting Section 218 of the Act, while saving the references already made to the Board of Revenue under Section 218, did not save the revisions pending in the other Courts under that section. On the other hand while the old Section 218 only empowered then to reject a revision and did not empower them to allow a revision, the amending Act while deleting Section 218, also substituted a new Section 219 which, empowered the Courts mentioned therein to allow a revision. Clearly, since the amending Act expressed a different intention, it is difficult to accept the contention of the learned counsel for the revisionist that the revisions pending in the lower Courts on 18897 would continue to be governed by the deleted Section 218. Since the substituted Section 219 simultaneously empowered the other Courts to allow a revision at

their own level, the revisions pending with them under Section 218 could certainly be decided by them under the new Section 219 after the deletion of Section 218. To say that the old cases under Section 218 will continue to be governed by the deleted Section 218 will negate the authority given to other Courts to allow a revision at their level. Even if the substituted Section 219 has only prospective effect, it certainly applies to revisions pending in the other Courts on the date it came into force.

8. Moreover, revisions allowed by the lower Courts after the amending Act can not be deemed to be decided under the old Section 218 as it did not empower them to do so. Hence, all the revisions pending under Section 218 on 18897 will be governed by Section 219 of the Act, as rightly held by the Hon"ble High Court Sri Ram v. Board of Revenue, cited above, even though the order disposing it of does not say so or wrongly mentions the Section as 218.

9. Having said so the question now to be answered is as to whether a second revision barred by the person who had earlier filed a revision under Section 218 which was a rejected or only partly allowed by another Court under the substituted Section 219 of the Act. To get an answer this question one has to see the wording of subsection (2) of Section 219 which runs as follows:

?If an application under this section has been moved by any person either to the Board, or to the Commissioner, or to the Additional Commissioner, or to the Collector, or to the Record Officer, or to the Settlement Officer, no further applications by the same person shall be entertained by any of them.?

10. Clearly, the bar in this subsection does not apply to the cases wherein the first revision was disposed of under Section 218 before its deletion irrespective of the fact as to whether the second revision under Section 219 has been filed either before or after its substitution. If the first revision in another Court was already decided under Section 218 before its deletion, the second revision before the Board under the new Section 219 by the same person would also not be barred as the bar in question is applicable only to cases where the earlier application for Revision was moved by the same person before another Court under this very section.

11. The ruling in the case of Kali Shanker Dwivedi v. Board of Revenue, relied upon by the learned counsel for the Revisionist, seems to have been given under the mistaken impression that the second revision before the Board of Revenue was filed before the amending Act, and is applicable to the revisions pending in the Board on the date of coming into force of the amendment Act. Such revisions obviously will not be hit by the newly substituted Section 219 as they would continue to be governed by Section 219 as it stood on the date of the filing of the revision. However, it needs to be pointed out that in Kali Shankar Dwivedi's case the revision filed before the Addl. Collector under Section 218 was actually, decided on 14998 under the new Section 219 or else it could not be partly allowed if it were deemed to have been governed by the old Section 218. The

said ruling actually did not discuss the import of the new Section 219 on the revisions against the orders passed in matters pending before the other Courts on the date of amendment & but decidedly subsequently under the powers given to them by the new Section 219.

12. The real point for consideration in this case, therefore, is as to whether the application made by the Revisionist under Section 218 but disposed of, after its deletion, under Section 219 of the Act can be treated as his application under Section 219. The reply to this has to be in the negative for two reasons. In the first place, the substituted Section 219, particularly the bar in its subsection (2), can have only prospective effect. If the legislature so desired they could expressly provide for a similar bar in respect of applications pending under the old Section 218. Since this was not been done it would be incorrect to read in this sub section something which the legislature themselves have not said so.

13. Secondly, it would be unfair to the revisionists because if their revision under Section 218 was rejected or only partly allowed they could approach the Board in second revision under Section 219. Since earlier they did not have to make a choice of the Court, to make subsection (2) of Section 219 applicable to cases filed under Section 218 would amount to giving it retrospective effect. If the litigant would have known that filing a revision under Section 218 would take away his right to approach the board under Section 218 in another Court. Therefore, even though his revision u/s 218 would be deemed to have been disposed of under Section 219 after the amendment, the bar of Section (2) will not apply to his second revision in the Board as his earlier application under Section 218 cannot be said to have been moved under the newly substituted Section 219 which was nonexistent then.

14. The bar in subsection (2) of Section 219, therefore, applies only to cases where the first application for revision was moved under the newly substituted Section 219 and it does not apply to the cases where the first revision was filed under Section 218 but was decided under Section 219 after the amendment in 1997. I am, therefore, unable to agree with the view expressed by my learned colleague in Munna Lal v. Hira Lal, referred to earlier in this order. It will also be seen that the rulings of the Hon"ble High Court referred to earlier in this order are not quite divergent. They relate to different points and do not really directly address the real issue for consideration in the present case.

15. In the result, this revision is held to be maintainable and the objection of the opposite party in this regard is rejected. Fix for 1572002 for final hearing.