

## **Board of Revenue Uttarakhand, Dehradun**

**Revision No. 110 of 2010-2011** under Section 219 of the UP Land  
Revenue Act as applicable to the State of Uttarakhand

1. Kuldeep Singh Singh s/o Late Jogendra Singh, R/O 1650-B/15 Govindpuri, New Delhi-19
2. Lakhbir Singh s/o Late Jogendra Singh, R/O 1650-B/15 Govindpuri, New Delhi-19 through his general representative Kuldeep Singh s/o Late Jogendra Singh, R/O 1650-B/15 Govindpuri, New Delhi-19
3. Shilki Grewal s/o Late Jogendra Singh, R/O 1650-B/15 Govindpuri, New Delhi-19 through his general representative Kuldeep Singh s/o Late Jogendra Singh, R/O 1650-B/15 Govindpuri, New Delhi-19
4. Smt. Harjit Kaur w/o Late Jogendra Singh, R/O 1650-B/15 Govindpuri, New Delhi-19 through her general representative Kuldeep Singh s/o Late Jogendra Singh, R/O 1650-B/15 Govindpuri, New Delhi-19

**Revisionists**

**Vs**

M.E.S. through Lt. Col. Sameer Bhatnagar, 22 Establishment C/O 56 APO  
(Ordinance Company)

**Respondent**

**Present: Shri P.S. Jangpangi Member (Judicial)**

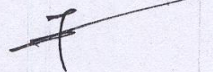
Advocate for Revisionists : Sri Arun Saxena

Advocate for Respondent : Sri M.S. Panwar and Sri Sandeep Singh

### **Judgment**

This revision is directed against the order of Sub Divisional Officer Kalsi Distt Dehra Dun passed on 31.5. 2011 in a Correction Proceeding numbered as 1/2004-2005 and titled as M.E.S. vs Jogendra Singh- under Section 33/39 of the UP Land revenue Act (referred to as the Act hereinafter). The impugned order was passed on the application of the applicant presented for the recall of the order dated 13.6.2006, whereby the proceeding had been dropped, and, decision of the case on merits.

Briefly stated, the backdrop of the revision is as follows:

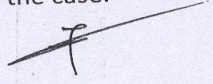




Major Jewel Antony Commanding Officer 22 Establishment c/o 56 APO moved an application to Tehsildar Kalsi Distt Dehra Dun on 13.08.2004 under Section 33/39 of the Act for the correction of the relevant entry of the Annual Register pertaining to land bearing khasra numbers 33,34 and 36kha ( corresponding to old khasra number 158 ) measuring 6.20 acres in area, situate in village, Tilwadi, khat, Haripur Vyas Tehsil, Kalsi, Distt, Dehra Dun stating that the land belonged to and was in occupation of the MES department with bungalows, sundry other houses, out houses and one orchard existing thereon. One Harnam Singh s/o Atma Singh, father of the opposite party Jogendra Singh and grandfather of the revisionists 1 to 3 and father in law of revisionist no. 4 conspired to have his name recorded under Category (varga) IV in the khatauni over one portion of the land, in question, after getting it split into two parts, playing fraud and deception on the employees of the Revenue Department although he had no rights whatsoever over it nor did he ever have its possession. It was further stated that the Category IV entry could not have been legally made in respect of the land belonging to the Government, and, accordingly, the applicant prayed for the deletion of the name of the said Harnam Singh from the relevant Annual Register. The Tehsildar inquired into the matter and found merit in the application and recommended to the Sub Divisional Officer (SDO) Kalsi for the deletion of the name of Harnam Singh from the category IV in the Annual Register ( khatauni) vide his report dated 14.09.2004, paper nos 5/2 and 5/3 of the trial court file.

The SDO, at first, dropped the proceedings, on 13.06.2006, on the ground that a parallel civil case was going on between the parties but later, on the application of the respondent, reopened the case and, eventually, allowed the case after hearing the parties vide his order 31.05.11, challenged through this revision.

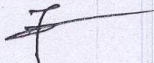
I have heard the learned Counsels for the contesting parties and gone through the written argument filed by the learned Counsel for the respondent and the files of the case.





The sum and substance of the argument advanced by the learned Counsel for the revisionists is; the proceeding and the impugned order under challenge are beyond the scope of Section 33/39 of the Land Revenue Act in as much as the alleged entry does not owe its existence to any clerical mistake and the possession over the land in dispute is with the revisionist who was given back the same by the civil court in 1984, and, a case is still pending in the civil court as there are constructions over the said land; the learned lower court had no jurisdiction to review its own order dated 13.06.2006 in violation of Section 220 of the Act as it lacked the power to do so; deletion of Varga IV entry is not covered under the Sections *ibid*.

The thrust of the oral and written arguments of the learned Counsels for the respondent is; Harnam Singh, grandfather of the revisionists 1 to 3 & father in law of revisionist no. 4, was the chowkidar/watchman of the MES and the land in dispute is admittedly owned by the revisionist; in year 1973, corresponding to 1381 fasli, Tehsildar Chakrata ordered the name of the said Harnam Singh to be recorded in the Category IV (Varga IV) of the khatauni of the land in dispute illegally and without jurisdiction which on being pointed out, later, through an application, was found to be a wrong entry for which the Tehsildar concerned did not have power nor did he follow the due process prescribed under the Land Revenue Manual for his order; the civil court taking cognizance of the parallel proceedings has stayed the case pending before it; the order dated 13.06.2006 of the learned SDO dropping the proceeding was initially passed in view of the pendency of the civil case which was, however, recalled later and the proceeding was decided after affording opportunity to both parties; the substantial question of law involved in the instant revision is no bhumidhari rights accrue on the land covered under Section 132(C) of the UP ZALR Act and the land in dispute falls under the said section: the Varga-IV entry is made in favour of person/persons encroaching the Gram Sabha land and the entry dated 09-07-1973 was made collusively on the misrepresentation by, and mischievous conduct of, Harnam Singh: the land is in possession of the respondent: the lower court's order dated 13-06-2006 was not a final order and the impugned order dated 31-05-2011 is based on the merits of the case



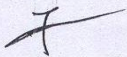


based on the recall application dated 30-07-2010 made by the respondent: the impugned order has been passed after the recall the order dated 30-06-2006 and thus it does not amount to the review of lower court's own order. The learned Counsel has cited a number of authorities to buttress his argument which are being discussed at appropriate stages.

The learned Counsel for the revisionist has argued that the proceeding in the lower court was beyond the scope of Section 33/39 of the Act as (1) the alleged entry does not exist because of a clerical mistake and (2) a civil case is pending between the parties with respect to the same land.

The order giving rise to the entry in question was admittedly made by Tehsildar, Chakrata on 09-07-1973 without drawing up any proceedings in that behalf and without following the process laid down in the Land Records Manual. The order ex facie is not referable to any proceeding or adjudication. It is no body's case that the said entry was within the competence of the Tehsildar. Hence, the challenged entry clearly falls under Section 33/39 of the Act. The proceeding under Section 33/39 of the Act is for correction of Annual Register and is summary in nature. Pendency of any suit in Revenue or Civil Court does not bar a proceeding under Section 33/39 as the Revenue authorities are under a bounden and statutory duty to keep the Revenue records updated and correct. The orders and decrees passed by competent courts, no doubt, prevail over such updations and corrections. I, therefore, disagree with the contention of the learned Counsel for the revisionists.

The extract of the khewat of Village Tilwadi for fasli year 1358 shows khasra no. 158 as 'Banjar' measuring 6.20 acres in area belonging to M.E.S. which is supported by the relevant entries of khatauni of fasli years 1375-1377 and 1378-80. The extract of page no.545 of the Mutation Register of Village Tilwadi shows the order of the Tehsildar dated 9.10.73 directing recording of the name of Harnam Singh under Category IV (varga 4) over khasra no. 158 measuring 3.35 acres in area, as well as directing submission of a report for his ejection. This order is not based on any proceeding or adjudication. Even the ejection proceedings do not appear to have ever been initiated against the illegal occupant. Consequently, the entry under

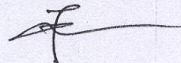




Category IV continued undisturbed as is evidenced by the entries of the khataunis of subsequent years. The mention of ejection report to be submitted is perhaps a defensive ploy against any possible disciplinary action that might have been taken against the Tehsildar later on the discovery of the wrongdoing.

Harnam Singh, a watchman of the MES, factually and legally had the responsibility and duty to protect the land in question from trespass and encroachment. His possession over the land in dispute and other lands or properties entrusted to his care and custody was vicarious i.e. for and on behalf of the MES. The order of Tehsildar, Chakrata dated 09-10-1973 must have been passed at the instance of Harnam Singh. If the latter had been discharging his duties faithfully and honestly he would have reported the said order of Tehsildar to his superiors immediately if he had no role in the wrongdoing but that did not happen which proves his complicity and dishonesty in the matter. The MES authorities ought to have initiated disciplinary proceedings against delinquent Harnam Singh in addition to proceeding against him for civil and criminal breach of trust as his conduct was similar to 'the fence eating the crop it is supposed to protect.' May be, the respondent took cognizance in this regard and proceeded against the delinquent employee ?

Section 132(c)(i) and (iii) of the UP ZALR Act, as applicable to the state of Uttarakhand, clearly forbids accrual of any bhumidhari rights in lands set apart for military encamping grounds and lands situate within the limits of any cantonment and recording of a person's name under category IV over any land is the first step in the direction of acquiring bhumidhari rights over it which runs counter to the prohibition mandated in Section 132 ibid. In the instant case the land under dispute admittedly belongs to an organization/department of the Indian Army. The Tehsildar committed a patent illegality in ordering the land under dispute to be recorded in favour of the revisionists 1 to 3's grandfather under Category IV for which he had no powers nor any jurisdiction and therefore the order itself was non est which could be wiped off even administratively on a finding to that effect in a summary inquiry. The apparent wrong entry ought to not have been allowed

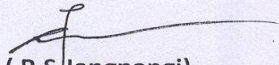





to continue immediately after its discovery and the person conspiring to have his name entered in the Annual Register should have been the aggrieved not the respondent as the case has been. The array of the authorities cited by the learned Counsel for the respondent, namely, Bachan & another vs Kankar & ors RD 1972 p219 SC, Mohd Raza vs DDC and another RD 1990 p5 HC, Kamal Kumar Jain and another vs Hari Chand Gupta and ors 2007 ALR p5 HC, Chhedi Singh vs DDC Banda and ors 2011 (3) RD ( SH) p69 HC ALL, Ghasite vs DDC Gonda & ors 2012 RDC p597 HC-LB and Raj Singh vs State of UP & another throw ample light on the applicability and scope of the Section 33/39 of the Act and errors and mistakes that can be corrected. The authorities cited thoroughly cover the instant case. Thus, the order dated 9.10.13 is mala fide, illegal and conspiratorial ex facie as the Tehsildar concerned had no power and the mandatory provisions of the Land Records Manual for recording of possession were not adhered to in the case under scrutiny. The role of power, pelf or pressure cannot be ruled out in the making of such order. The official concerned could have been proceeded against but for the fact the he may no longer be in service. The learned SDO has rightly and properly allowed the correction as has been sought for. I do not see any illegality, impropriety, material irregularity or lack or excess of jurisdiction in ordering the deletion of the name of Harnam Singh from the relevant Annual Register. The revision is, therefore, devoid of merit and liable to be dismissed.

### **ORDER**

The revision is dismissed. The file of the court below be sent back and that of this court consigned.

  
( P.S.Jangpangi)  
Member (Judicial)

Pronounced, signed and dated in the open Court today i.e. 19 .09. 2016

  
( P.S.Jangpangi)  
Member (Judicial)