

# **Gujjar Mal Modi Charitable Trust vs State Of Up And Another on 27 March, 2025**

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Neutral Citation No. - 2025:AHC:43970

Reserved On: 20.12.2024

Delivered On: 27.03.2025

Court No. - 35

Case :- WRIT - C No. - 13825 of 2024

Petitioner :- Gujjar Mal Modi Charitable Trust

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Prashant Mishra,Tarun Agrawal

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar Nigam,J.

1. Heard learned counsel for the parties and perused the records.
2. Instructions have been submitted by Sri Abhishek Shukla, learned Additional Chief Standing Counsel, which are taken on record and since there is no factual controversy involved in the matter, the petition is being decided with the consent of parties, at the admission stage itself.
3. This writ petition has been filed for the following reliefs:-

"i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 11.03.2024 passed by the respondent no. 2 (Annexure No. 1);

ii) Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 2 to allow the application dated 28.08.2023 moved by the petitioner trust under Section 34 of the Uttar Pradesh Revenue Code, 2006 and enter the name of the petitioner trust against the land in question situated at Village Mukarrabpur, Pallera, Pargana Daurala, Tehsil Sardhana, District Meerut."

4. By the order impugned dated 11.03.2024 passed by respondent No. 2, the application of the petitioner for recording petitioner's name in the revenue records has been rejected by respondent No. 2.

5. Brief facts of the case are that petitioner- Trust purchased land bearing Khasra No. 85/A (85/1) measuring 0.5750 hectares and 85/B (85/2) measuring 7-11-7 Bighas situated at village Mukarrabpur Pallera, Pargana Daurala, Tehsil Sardhana, District Meerut from its recorded tenure holder- Zulfikar and others by means of a registered sale deed dated 23.12.1978. After the purchase, land was mutated in the revenue records in the name of the petitioner-Trust. The petitioner-Trust constructed a building for establishing school in the name of Dayawati Modi Academy and the school started in the year 1981 and is being run on the said land by the Trust. An order dated 30.03.1998 was passed by the competent authority- Urban Land Ceiling, Meerut under Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976 against the vendors of the petitioner and the land was declared surplus and in view of Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred as Act of 1976), the land stood vested with the State Government. Though, the petitioner was recorded tenure holder but the order dated 30.03.1998 was not served upon the petitioner. After the order dated 30.03.1998 passed by Urban Land Ceiling, Meerut, the land was recorded in the name of State Government after expunging the entry, which was in the name of the petitioner. On 12.10.1999, a notice was issued by the Revenue Inspector for taking the possession of the land in dispute fixing 27.10.1999 the date for delivery of possession. The petitioner-Trust challenged the order dated 30.03.1998 passed by the Urban Land Ceiling, Meerut and the consequential notice dated 12.10.1999 issued by the Revenue Inspector by means of Writ C No. 45403 of 1999 (Gujjar Mal Modi Charitable Trust Vs. State of U.P. and others). The aforementioned writ petition was allowed by this Court vide order dated 24.01.2023 holding inter alia that the notice dated 12.10.1999 was issued after the commencement of Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred as Act of 1999) (Repeal Act came enforce with effect from 18.03.1999). It was held by this Court that notice issued by the State under Section 10(5) of the Act of 1976 was void ab initio and therefore, the notice dated 12.10.1999 was quashed. Against the judgment dated 24.01.2023 passed by this Court in Writ C No. 45403 of 1999, Special Leave Petition being S.L.P. No. 35345 of 2024 (State of U.P. and others Vs. Gujjar Mal Modi Charitable Trust) was filed by the State of U.P. before the Supreme Court, which was also dismissed by the Supreme Court. After the judgment of this Court dated 24.01.2023 passed in Writ C No. 45403 of 1999, on 24.08.2023, an application was moved by the petitioner under Section 34 of the U.P. Revenue Code, 2006 for entering its name in the revenue records after deleting the name of the State Government. The said application has been rejected by respondent no. 2 by its order dated

11.03.2024. Hence, the present writ petition.

6. It has been contended by learned counsel for the petitioner that application of the petitioner has been rejected only on the ground that since the order dated 30.03.1998 was passed by the competent authority-Urban Land Ceiling, Meerut, therefore, the petitioner can approach the competent authority for the relief claimed and there is no requirement of interference by respondent no. 2. Learned counsel for the petitioner further contended that admittedly, the notice dated 12.10.1999 issued under Section 10(5) of the Act of 1976 was quashed by this Court in view of provisions of Act of 1999 and the entire proceedings stood abated as the possession was not taken by the State Government under Section 10(5) of the Act of 1976 before commencement of the Act of 1999. Once the proceedings abated, the order dated 30.03.1998 passed by the competent authority -Urban Land Ceiling, Meerut under Section 10(3) of the Act of 1976 also abated as the entire proceedings abated. It has been further submitted by learned counsel for the petitioner that in view of the statutory provisions of the Act of 1999, when the entire ceiling proceedings abated, there was no impediment in mutating the name of the petitioner in the revenue records after deleting the name of the State Government which was entered into on the basis of an order passed under Section 10(3) of the Act 1976 and respondent no. 2 has erroneously dismissed the application filed by the petitioner and relegated it to approach the competent authority -Urban Land Ceiling, Meerut for redressal of its grievances.

7. It has also been submitted by counsel for the petitioner that under Section 31 of the U.P. Revenue Code, 2006, Collector has been assigned the duty to maintain the record of rights (khatauni) for each village. It has been further contended by counsel for the petitioner that in view of Section 32 of the U.P. Revenue Code, 2006, it is the statutory duty of the revenue authorities (Collector, Tehsildar and Revenue Inspector) to record all changes in the record of rights (Khatauni) the field book (Khasra) and the map that may take place, and all transactions that may affect any of the rights or interests recorded and correct therein any errors proved to have been made in the records previously prepared. It has been submitted by counsel for the petitioner that though the application was filed by the petitioner under Section 34 of the U.P. Revenue Code, 2006 and there was no impediment in deciding the same or otherwise treating the application to be under Section 32 of the U.P. Revenue Code, 2006 to correct the revenue entry in view of the judgment passed by this Court in Writ C No. 45403 of 1999, which was a transaction affecting the rights of the parties. Since the name of the State Government was recorded only on the basis of an order passed under Section 10(3) of the Act of 1976, once the entire proceedings abated, there was no justification for keeping the entry in the name of the State Government by the respondents and they ought to have corrected the entry by themselves even without any application being moved by the petitioner, as they had knowledge of the order which is clear from the fact that the State Government has preferred a Special Leave Petition before the Supreme Court, which was admittedly dismissed. Even otherwise, when the matter was brought to the knowledge of the respondents by the petitioner itself by moving an application, there was no occasion for rejecting the same and directing the petitioner to approach the competent authority- Urban Land Ceiling, Meerut. The order of the competent authority also stood abated in view of provisions of Act of 1999, as the entire proceedings abated.

8. Learned Additional Chief Standing Counsel on the other hand submitted that since the entry of the State Government was made only on the basis of an order dated 30.03.1998 passed by the competent authority- Urban Land Ceiling, Merut, the application of the petitioner has been rightly rejected by respondent No. 2 and petitioner has been rightly relegated to move an appropriate application before the competent authority -Urban Land Ceiling, Meerut for redressal of its grievances. It has been further contended by learned Standing Counsel that the applications filed by the petitioner was under Section 34 of the U.P. Revenue Code, 2006. Section 34 of the U.P. Revenue Code, 2006 provides that every person obtaining possession of any land by transfer, other than transfer referred to in sub-section (3) of Section 33 shall report such transfer, in the manner prescribed, to the Tahsildar of the Tahsil in which the land as situate and therefore, on an application made under Section 34 of the U.P. Revenue Code, 2006 revenue entry in the name of State Government cannot be corrected.

9. Before considering the rival submissions, it would be appropriate to consider the relevant statutory provisions in this regard.

10. Section 31 of U.P. Revenue Code, 2006 is quoted as under:-

"31. Record of Rights. [(1)] The Collector shall maintain, in the form and manner prescribed, a record of rights (Khatauni) for each village, which shall contain the following particulars, namely -

(a)the names of all tenure-holders together with survey numbers or plot numbers held by them and their areas;

(b)the nature or extent of the [respective interests including shares] of such persons and the conditions or liabilities, if any, attaching thereto;

(c)the rent or revenue, if any, payable by or to any such person;

(d)particulars of all land (other than holdings) belonging to or vested in the [State Government, Central Government, Gram Panchayat] or a local authority.

(e)such other particulars as may be prescribed.

(2)[ Shares of the co-tenureholders shall be determined in the manner prescribed.]"

11. Rule 27 of U.P. Revenue Code Rules, 2016 provides for the procedure. Rule 27 of the U.P. Revenue Code Rules, 2016, is quoted as under:-

"R. 27. Record-of-Rights (Khatauni) [Section 31(1)].--(1) For every village, the Collector shall cause to be prepared and maintained a Record-of-Rights (Khatauni) in R.C. Form 7 which shall contain -

- (a) the particulars specified in clauses (a) to (d) of the said section;
- (b) details of the declaration and cancellation referred to in Section 83;
- (c) such other particulars as may from time to time be directed by the Board.

(2) Subject to the provisions of the Code and the rules framed thereunder, the provisions of Uttar Pradesh Record-of-Rights (Computerisation) Rules, 2005 as amended from time to time shall, mutatis mutandis, apply to the Record-of-Rights to be maintained under the Code and the rules framed thereunder."

12. Section 32 of the U.P. Revenue Code, 2006 provides for correction of revenue records. Section 32 of the U.P. Revenue Code, 2006 is quoted as under:-

"32. Correction of records. -- (1) Subject to the control of the Collector, the [Sub-Divisional Officer], the Tahsildar, or the Revenue Inspector shall record, in the manner hereinafter provided in this chapter, all changes in the record of rights (Khatauni), the field book (Khasra) and the map that may take place, and all transactions that may affect any of the rights or interests recorded, and correct therein any errors proved to have been made in the records previously prepared [Provided that order for correction in map shall be passed by the Collector.] (2) No application for correction of error under sub-section (1) [where the claim] is based solely on possession as well as involving intricate question of title shall be maintainable"

13. Section 33 of the U.P. Revenue Code, 2006 is quoted as under:

"33. Mutation in cases of succession.- (1) Every person obtaining possession of any land by succession shall submit report of such succession to the Revenue Inspector of the circle in which the land is situate in such form as may be prescribed.

(2) On receipt of a report under sub-section (1) or on facts otherwise coming to his knowledge, the Revenue Inspector shall-

(a) if the case is not disputed, record such succession in the record of rights (Khatauni);

(b) in any other case, make such inquiry as may appear to him to be necessary and submit his report to the Tahsildar;

(3) Any person whose name has not been recorded by Revenue Inspector or who is aggrieved by the order passed by the Revenue Inspector under clause (a) or (b) of sub-section (2) may move an application before Tahsildar.

(4) The provisions of this section shall mutatis mutandis apply to every person admitted as a Bhumidhar with non-transferable rights or as an asami by the Bhumi Prabandhak Samiti in accordance with the provisions of this Code or any enactment repealed by it."

14. Section 34 of the U.P. Revenue Code, 2006 is reproduced as under:

"34. Duty to report in cases of transfer.-(1) Every person obtaining possession of any land by transfer, other than a transfer referred to in sub-section (3) of section 33 shall report such transfer, in the manner prescribed, to the Tahsildar of the Tahsil in which the land is situate.

(2) State Government may fix a scale of fees for getting entry recorded in the record of rights on the basis of transfer. A fee in respect of any such entry shall be payable by the person in whose favour the entry is to be made."

15. Section 38 of the U.P. Revenue Code, 2006 is quoted as under:

"38. Correction of error and omission.- (1) An application for correction of any error or omission in the map, filed-book (Khasra) or record of rights (Khatauni) shall be made to the Tahsildar in the manner prescribed.

(2) On receiving an application under sub-section (1) or on any error or omission otherwise coming to his knowledge, the Tahsildar shall make such inquiry as may appear to him to be necessary, and refer the case along with his report to the Collector in the case of map correction and the Sub-Divisional Officer in matter of other correction.

(3) The case shall be decided by the Collector or the Sub-Divisional Officer, as the case may be, after considering any objection filed and evidence produced before him or before the Tahsildar.

(4) Any person aggrieved by an order of the Collector or the Sub-Divisional Officer, as the case may be, under sub-section (3), may prefer an appeal to the Commissioner within a period of thirty days from the date of such order, and the decision of the Commissioner shall be final.

(5) Any forged or manipulated entry in the map, the khasra or the record of rights (khatauni) may be expunged under this section.

(6) Notwithstanding anything contained in other provisions of this Code, the Revenue Inspector may correct any undisputed error or omission in the record of rights (khatauni) or khasra in such manner and after making such inquiry, as may be prescribed."

16. After considering the rival submissions, I am of the view that the stand taken by the learned Standing Counsel is wholly erroneous and cannot be sustained. Once the ceiling proceedings, which were initiated under the Act of 1976 stood repealed by the enforcement of Act of 1999 as the possession was never taken by the Government under Section 10(5) or Section 10(6) of the Act of 1976, all the orders passed previously in the aforesaid proceedings also stood abated and therefore, a revenue entry made in the name of the State Government on the basis of an order dated 30.03.1998 passed by the competent authority stood abated by the commencement of the Act of 1999, has to be corrected by the revenue authorities and as the Collector is the person, who has been entrusted with the duty of maintenance of revenue records, khasra, khatauni etc. under Section 31 read with Section 32 of the U.P. Revenue Code, 2006. Once the basis on which the revenue entry in favour of the State has vanished, there was no occasion for the Collector or the revenue authorities to have continued with the entry. They should by themselves have corrected the entry and recorded the name of the petitioner as it was recorded prior to the aforesaid order.

17. When an Officer is under duty to maintain a particular record or register, he is under further obligation to maintain it correctly, incorporating all the changes that might take place. In this context, Section 32(1) of the U.P. Revenue Code 2006 provides that subject to the control of Collector, the Sub Divisional Officer, the Tehsildar or the Revenue Inspector shall record in the manner hereinafter provided in this chapter:-

- a. all changes in the record of rights (Khatauni), the field book (Khasra) and the map that may take place;
- b. all transactions that may affect any of the rights or interests already recorded;
- c. Such Officer shall also correct therein any errors proved to have been made in the records previously prepared.

18. The fore-runners of Section 32 of the U.P. Revenue Code, 2006 are Section 33 and Section 39 of the U.P. Land Revenue Act, 1901. Section 33 and Section 39 of the U.P. Land Revenue Act, 1901 are quoted as under:-

"33. The annual registers. - (1)The Collector shall maintain the record-of-rights, and for that purpose shall annually, or at such longer intervals as the State Government may prescribe, cause to be prepared an amended in Section 32.

The register so prepared shall be called the annual register.

(2) The Collector shall cause to be recorded in the annual register.

(a) all successions and transfers in accordance with the provisions of Section 35; or

(b) other changes that may take place in respect of any land ; and shall also correct all errors and omissions in accordance with the provisions of Section 39 :

Provided that the power to record a change under clause (b) shall not be construed to include the power to decide a dispute involving any question of title.

(3) No such change or transaction shall be recorded without the order of the Collector or as hereinafter provided, of the Tahsildar or the Kanungo.

39. Correction of mistakes in the annual register. - (1) An application for correction of any error or omission in the annual register shall be made to the Tahsildar.

(2) On receiving an application under sub-section (1) or any error or omission in the annual register coming to his knowledge otherwise, the Tahsildar shall make such inquiry as appears necessary and then refer the case to the Collector, who shall dispose it of, after deciding the dispute in accordance with the provisions of Section 40.

Provided that nothing in this sub-section shall be construed to empower the Collector to decide a dispute involving any question of title.

(3) The provisions of sub-sections (1) and (2) shall prevail, notwithstanding anything contained in the U.P. Panchayat Raj Act, 1947."

19. This Court in case of Mohammad Anis Vs. The Additional Commissioner Allahabad Division and others, reported in 2001 (92) R.D. 761 has considered the provisions of Section 33/39 of the U.P. Land Revenue Act, 1901. Paragraph Nos. 13, 14 and 15 of the judgment is quoted as under:

"13. It is to be noticed that the Collector of a district is charged under Section 33 of Act of 1901 to maintain the record of rights, and for that purpose is annually, or at such longer intervals as the State Government may prescribe, cause to be prepared an amended register mentioned in Section 32. The register so prepared is to be called the annual register. The Collector is expected to cause to record in the annual register all successions and transfers in accordance with the provisions of Section 35 and other changes that may take place in respect of any land and is also to correct all errors and omissions in accordance with the provisions of Section 39 provided that the power to record a change under clause (b) shall not be construed to include the power to decide a dispute involving any question of title.

14. A close scrutiny of Section 39 of the Act of 1901 reveals that when an application for correction of any error or omission in the annual register is made to the Tahsildar, then on receiving such application under subsection (1) or any error or omission in the annual register coming to his knowledge otherwise, the Tahsildar shall make such inquiry as appears necessary and refer the case to the Collector, who shall dispose it of, after deciding the dispute in accordance with the provisions of Section 40 provided that nothing in this sub-section shall be construed to empower the Collector to decide the dispute involving any question of title.



15. Conjoint reading of Sections 33, 39 and 40 of the Act of 1901 reveal that either on application or otherwise coming to the knowledge of the Tahsildar, if any change takes place in respect of any land or error or omission is found in the record of rights, which requires correction, then he is to refer to the Collector after making such enquiry as appears necessary to him and after receiving reference Collector is required to dispose it of in accordance with the provisions of Section 40 of the Act of 1901, provided that correction in the record of rights does not involve any question of title. In the instant case dispute is squarely covered with expression "other changes that may take place in respect of any land" used under clause (b) of sub-section (2) of Section 33 of the U.P Act of 1901."

20. The facts in case of Mohammad Anis Vs. The Additional Commissioner Allahabad Division (supra) were that one Hakimuddin got his name mutated on the basis of sale deeds dated 07.05.1960 and 04.06.1960 in the revenue records which were declared void ab initio by the first appellate court, by the second appellate court and also by the Supreme Court in a suit filed by Mhd. Anis. Thus, the question relating to title between the petitioner Mhd. Anis and Hakimuddin was already decided which attained finality. In view of these facts, this Court in paragraph No. 19 of the judgment has observed as under:-

"19. It is held that whenever and wherever on the basis of a sale deed a person got his name recorded in Khatauni and such sale deed is cancelled by competent civil court, then in such a situation, the Collector or Sub-Divisional Officer, as the case may be, has no option except to correct the Khatauni in pursuant to judgment and decree passed by civil court provided such judgment and decree has attained finality, instead of relegating the parties to initiate proceeding under Section 34 of the Act of 1901 wasting public time of courts and causing unnecessary financial burden on the parties. It is to be imbibed by all Revenue Courts exercising powers under Section 33/39 of the Act of 1901 that if technicalities are pitted against substantial justice then substantial justice should not be allowed either to escape or slide on mere technicalities as has been done in the present case. It is well to remember that courts of law are not respected by the public in general and litigant public in particular because courts are capable to legalize injustice but courts of law are respected because the courts are expected to advance justice between the parties in accordance with law after ironing out the creases of law in correct perspective bringing it to the side of truth, justice and fair play. In the present case the lis between the petitioner. Mohammad Anis and Hakimuddin has attained finality up to Supreme Court even then with close mind, the respondents No. 1 and 2 are shirking their responsibilities to correct the Khatauni which they are required to correct immediately either on the basis of an application moved by the petitioner, Mohammad Anis under Section 33/39 of Act of 1901 or otherwise coming to their knowledge after giving notice to Hakimuddin and providing him also an opportunity of hearing."

21. Coming to the facts of the case, it is not in dispute that after an order was passed under Section 10(3) of Act of 1976 by the competent authority-Urban Land Ceiling, the name of the petitioner was

expunged from the revenue records and the revenue entry in the name of the State was made. Once this Court in Writ C No. 45403 of 1999 (Gujjar Mal Modi Charitable Trust Vs. State of U.P. and others) has held that the entire ceiling proceedings abated as the possession was not taken by the State before the date of commencement of Urban Land (Ceiling and Regulation) Repeal Act, 1999 and has quashed the notice dated 12.10.1999 under sub-Section 5 of Section 10 of Act of 1976, the effect of abatement of proceedings under the Repeal Act of 1999 would be that all the previous orders passed under the Act of 1976 also stood abated and therefore, the order dated 30.03.1998 passed under Section 10(3) of Act of 1976 also abated. The basis of entering the name of State by expunging the name of the petitioner was the order dated 30.03.1998 passed by the prescribed authority under sub-Section 3 of Section 10 of Act of 1976. Once the order on the basis of which the revenue entry in favour of the petitioner was expunged, goes itself, there is no justification for maintaining the revenue entry made in pursuance of the order passed under sub-Section 3 of Section 10 of the Act of 1976.

22. In my considered opinion, respondent No. 2 has erred in law in relegating the petitioner to competent authority-Urban Land Ceiling, Meerut for redressal of its grievances. Once because of the provisions of Repeal Act of 1999, the ceiling proceedings including the orders passed therein stood abated by the statutory force, there was no occasion for relegating the petitioner to the competent authority for redressal of its grievances.

23. So far as contention of learned Standing Counsel that the application filed by the petitioner under Section 34 of the U.P. Revenue Code, 2006 was misconceived as under Section 34 of the U.P. Revenue Code, 2006, the revenue entry cannot be corrected is concerned, even if the contention is accepted at best it can be said that the petitioner has approached the respondent authority by means of an application given under a wrong section. Mere mentioning of a wrong section in the application will not deprive the petitioner to the relief which he otherwise is entitled. It was open for the respondent authorities to have considered application to be under Section 32 of the U.P. Revenue Code, 2006 and have passed order therein.

24. In view of the discussions made above, the order dated 11.03.2024 passed by respondent No. 2 is quashed. The writ petition is allowed.

25. Respondent No. 2- Tehsildar, Tehsil-Sardan, District Meerut is directed to correct the revenue entry in view of the discussions made above within a period of four weeks from the date of production of certified copy of this order before him provided there is no other legal impediment.

Order Date: 27.03.2025 Nitika Sri. (Manish Kumar Nigam, J.)