

## Mannanul Haq vs Board Of Revenue And Ors. on 3 March, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

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Neutral Citation No. - 2025:AHC:29925

Court No. - 50

Case :- WRIT - B No. - 19649 of 1997

Petitioner :- Mannanul Haq

Respondent :- Board Of Revenue And Ors.

Counsel for Petitioner :- ,Mohammad Hisham Qadeer,Mohammed Iftekhhar,Mohd. Waris,Shamim A

Counsel for Respondent :- Arun Kumar Pandey,K.R. Sirohi,S.C.

Hon'ble Chandra Kumar Rai,J.

1.Heard Mr. Shamim Ahmad, learned Counsel for the petitioner, Mr. Tarun Gaur, learned Standing Counsel for the State-respondent and Mr. Arun Kumar Pandey, learned counsel for respondent No.4-Gaon Sabha.

2. Nobody has put in appearance on behalf of respondent No.5 after issuance of notice to engage another counsel due to death of earlier counsel of respondent No.5.

3. Brief facts of the case are that suit under Section 229-B of Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950 (hereinafter referred as to the U.P.Z.A.& L.R. Act) has been filed by petitioner in respect to the plot No.143 (New No.52) area 2.73 acres situated in village-Burhpur, Pargana-Amroha, District-Moradabad with the allegation that land in dispute was recorded in the name of Ehsanul Haq and Ziaul Haq. It is further stated in the plaint that after partition between India and Pakistan Ziaul Haq went to Pakistan and his half share in the plot in dispute became

Evacuee property. Petitioner's father Ehsanul Haq continued to be recorded over plot in dispute and after death of Ehsanul Haq petitioner remained recorded over the plot in question. The share of the Ziaul Haq was put to auction by the custodian on 11.09.2006 and respondent No.5 Naseem Ahmad claimed right on the basis of the auction held by the custodian in respect to the share of Ziaul Haq. In the aforementioned suit under Section 229-B of U.P.Z.A. & L.R. Act 12 issues were framed before the trial court and trial court after considering the evidence adduced by the parties on the basis of issues framed in the suit recorded finding of fact that plaintiff/ petitioner Mannanul Haq son of Ehsanul Haq will be entitled to be recorded over 1/2 share over plot No.143 area 2.73 acers, accordingly, the trial court has decreed the suit vide judgment and decree dated 01.10.1991 for 1/2 share of plot No.143. Against the judgment and decree of trial court dated 01.10.1991 appeal was filed by respondent no.5- Naseem Ahmad before Commissioner, which was registered as Appeal No.3/1992-93. The aforementioned appeal was allowed vide judgement and decree dated 26.11.1992 setting aside the judgment and decree passed by trial court. Against the judgment and decree of Additional Commissioner dated 26.11.1992 second appeal was filed on behalf of petitioner which was registered as Second Appeal No.15 of 1992-93. The aforementioned appeal was also dismissed by learned Board of Revenue by judgment dated 12.06.1995. Review application filed on behalf of the petitioner has also been dismissed by Board of Revenue vide order dated 21.03.1997 hence this writ petition for the following relief:

" It is therefore, most respectfully prayed that a suitable writ, order or direction be issued in the nature of certiorari quashing the impugned judgments dated 21.03.1997 and 12.08.1995 passed by respondent No. 1 (Annexure No.1 and 2) and the judgment dated 11.06.1992 passed by respondent no.2 (Annexure No.3) and any other or further order which the Court may deem fit and proper in the interest of justice be passed in favour of the petitioner."

4. Respondent No.5 has filed his counter affidavit. Petitioner has also filed his rejoinder affidavit.

5. Learned counsel for the petitioner submitted that trial court has considered the issue relating to the evacuee property as well as bar of section 49 of U.P.C.H. Act and recorded finding of fact that petitioner is entitled to be recorded over the plot in question in respect to 1/2 share but Additional Commissioner has set aside the judgment and decree passed by trial court in arbitrary manner without framing any point of determination as well as without reversing the finding of fact recorded by trial court with respect to the issues framed in the suit. He further submitted that Board of Revenue has also dismissed the second appeal without considering the ground as set up in the second appeal. He submitted that Ehsanul Haq and Ziaul Haq were real brother as such auction took place by the custodian in respect to the share of Ziaul Haq cannot deprive the petitioner to be recorded over 1/2 share of the plot in question. He submitted that trial court has considered this aspect of the matter and recorded finding of fact that petitioner is entitled to be recorded over 1/2 share of the plot in question, as such the judgment and decree passed by the trial court should be maintained and the judgment and decree passed by Court of Commissioner as well as Board of Revenue should be set aside.

6. Mr. Tarun Gaur, learned Standing Counsel for the State-respondents submitted that Additional Commissioner has recorded finding that property in question was auctioned by the custodian and no objection was filed by the petitioner as such there is no illegality in the judgment/ decree passed by the court of Commissioner allowing the appeal and setting aside the judgment and decree of the trial court. He further submitted that second appeal as well as review application filed by the petitioner has been dismissed and no interim order is operating in the matter since 1997, as such no interference is required in the matter and writ petition is liable to be dismissed.

7. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

8. There is no dispute about the fact that suit under Section 229-B of U.P.Z.A.& L.R. Act filed by the petitioner was decreed by the trial court over 1/2 share in the plot in question and the appeal filed by contesting respondent No.5 has been allowed and the decree of the trial court has been set aside. There is also no dispute about the fact that second appeal as well as review application filed on behalf of petitioner has been dismissed.

9. In order to appreciate the controversy involved in the writ petition issues framed before the trial court will be relevant for perusal which is as under:

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10. Perusal of finding of fact recorded by trial court on Issue Nos.1, 2 and 3 will be also relevant which is as under:

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11. The trial court while deciding the every issues framed in the suit including issue relating to the auction took place by the custodian under the administration of Evacuee property Act as well as issue relating to bar of Section 49 of U .P.C.H. Act as quoted above recorded finding of fact that Maqbool Ahmad was ordered to be recorded over 1/2 share of plot No.143 are 2.73 acers, as such the claim of the petitioner to be recorded over remaining 1/2 share of plot No.143 are 2.73 acers as bhumidhar with transferable right cannot be refused on the ground that Consolidation Court has passed the order for recording the name of Maqbool Ahmad over 1/2 share of plot in question. The trial court has properly exercised the jurisdiction while decreeing the plaintiff suit regarding 1/2 share of plot in question.

12. The finding of fact recorded by trial court has not been reversed in proper manner by Commissioner, while allowing the appeal filed by respondent No.5. No point of determination has

been framed by the Court of Commissioner and judgment/ decree passed by trial court has been set aside on the ground that auction has been taken place by Custodian and no objection was filed by petitioner with respect to recording the name of Maqbool Ahmad over 1/2 share. The finding of fact recorded by the Court of Commissioner cannot be sustained as plaintiff/ petitioner is not disputing the claim of 1/2 share of Ziaul Haq which was auctioned by custodian under the administration of the evacuee property. Plaintiff/ petitioner is not claiming the 1/2 share of Maqbool Hasan as such judgment and decree passed by first appellate court cannot be sustained in the eye of law. Board of Revenue has also dismissed the petitioner's second appeal as well as review application filed by the petitioner in arbitrary manner.

13. Considering the entire facts and circumstances of the case, the impugned judgment dated 12.06.1995 and 21.03.1997 passed by respondent No.1/ Board of Revenue U.P. Allahabad as well as judgment dated 11.06.1992 passed by respondent No.2 /Additional Commissioner Moradabad Division Moradabad are liable to be set aside and the same are hereby set aside. The writ petition stands allowed and judgment / decree passed by trial court dated 01.10.1999 is hereby affirmed.

14. No order as to costs.

Order Date :- 3.3.2025 PS\*