



2026:AHC:132093

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 857 of 2013

A.F.R

Judgement Reserved on 12.06.2026

Judgement Reserved on 03.07.2026.

Sunbeam School

.....Petitioner(s)

Versus

State of U.P. and others

.....Respondent(s)

Along with

Writ - C No. 858 of 2013:

Sunbeam School

.....Petitioner(s)

Versus

State of U.P. and others

.....Respondent(s)

Counsel for Petitioner(s) : Ajay Kumar Singh, Ashish Kumar Singh, Manish Goyal

Counsel for Respondent(s) : Ashish Kr.gupta, Ashok K Pandey, C.S.C.

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Court No. – 5**HON'BLE PRAKASH PADIA, J.**

1. Since the questions of law involved in both the writ petitions are absolutely identical, therefore, they be heard together and decided by this common judgment.

2. Heard Sri Ajay Kumar Singh, learned Senior Advocate assisted by Sri Tejas Singh, Advocate, for petitioner, in both writ petitions, learned Standing Counsel for respondent nos.1 to 3 and Sri Ashok Pandey for proposed respondent- Nagar Nigam, Varanasi, in both Writ-C No. 857 of 2013 and Writ-C No. 858 of 2013 (No-one appeared for respondent no. 4 in Writ-C No. 857 of 2013).

3. *Writ-C No. 857 of 2013 is filed with following prayers :-*

(a) Issue writ, order of direction in the nature of CERTIORARI calling for record and quashing the order dated 15.12.2012 passed by the respondent no.2 (Annexure -1 to the present writ petition) as well as quashing the proceedings of case no. 45/12-13 in already decided proceedings of Suit No. 162 of 1985-86 Lalo Devi Vs, Rai Satyabrat Saheb.

(b) Issue writ, order of direction in the nature of PROHIBITION restraining the respondents from causing any interference in the running of the school by the petitioner situated on Plot No. 145m 146 and 148 in Village Lahartara, Post Dehat Amanat, Tehsil Sadar, District Varanasi.

4. *Writ-C No. 858 of 2013 is filed with following prayers :-*

(a) Issue writ, order of direction in the nature of CERTIORARI calling for record and quashing the order dated 20.12.2012 passed by the respondent no.2 in exercise of powers under section 33/39 of the U.P. Land Revenue Act, 1901 (Annexure-1 to the present writ petition).

(b) issue writ, order of direction in the nature of CERTIORARI calling for record and quashing the order dated 21.11.2012

passed by the respondent no.2 recalling the order dated 10.07.2002 suo motu without drawing any proceedings (Annexure-2 to the present writ petition).

(c) Issue writ, order of direction in the nature of PROHIBITION restraining the respondents from causing any interference in the running of the school by the petitioner situated on Plot No. 145/1 (M) 146/1 (M) and 148/1 (M) in Village Lahartara, Post Dehat Amanat, Tehsil Sadar, District Varanasi.

**FACTS OF THE CASE AS PLEADED BY PETITIONER IN WRIT-C
No. 857 OF 2013**

5. Petitioner is an educational institution and is imparting education upto Intermediate level and is following the C.B.S.E. Course Curriculum and Land in question is situated upon Plot No. 145/1(M), 146/1 (M) and 148/1 (M). It is submitted that upon the aforesaid piece of land, the petitioner is running school and the said school has been constructed after due permission from the District Administration, N.O.C. from Nagar Nigam and in compliance with the provisions under the U.P. Urban Planning and Development Act, 1973 (hereinafter referred as "Act 1973"). A suit being Suit No. 417 of 1979 under Section 229B of U.P.Z.A. & L.R. Act, 1950 (hereinafter referred as "Act 1950") was filed by one Smt. Lalo Devi against Rai Satyabrat Saheb and others inter-alia, seeking declaration of Bhumidhari rights upon Plot No. 145, 146 and 148; in the aforesaid suit one Smt. Dhiraji Devi filed application for being impleaded as defendant which was allowed and she was impleaded as defendant no. 9 and Dhiraji Devi filed her written statement by which she stated to be in possession upon the land in question for the past 40 years and have also stated that she paid Rs. 20,000/- on 08.05.1972 to Rai Satyabrat Saheb and further that Lalo Devi has no right upon the land in question; aforesaid Suit was decreed vide judgment and decree dated 31.01.1986 passed by Additional Sub Divisional Officer, Varanasi, declaring Smt. Lalo Devi and Smt. Dhiraji

Devi as owners to the extent of half share each, against which Mst. Dhiraji Devi filed Appeal No. 67 of 1986 Mst. Dhiraji Devi Vs. Sita Ram and others to challenge part of the judgment and decree dated 31.01.1986 passed by Additional Sub Divisional Officer, Varanasi; Additional Commissioner (Administration), Varanasi Division, Varanasi allowed the appeal, set-aside the judgment and decree dated 31.01.1986 passed by Additional Sub Divisional Officer, Varanasi and held that Smt. Dhiraji Devi is absolute owner having title and possession over the properties in question; against the aforesaid judgment and decree passed by the Additional Commissioner (Administration), Varanasi dated 23.04.1988, the heirs of Lalo Devi namely Sita Ram filed Second Appeal No. 28 of 1987-88 (Sita Ram Vs. Mst. Dhiraji Devi and others) before the Board of Revenue and Board of Revenue dismissed the aforesaid Second Appeal No. 28 of 1987-88 upon application filed by appellant to dismiss the appeal, vide order dated 08.08.1996.

6. Pursuant to the decree dated 23.04.1988 passed by Additional Commissioner (Administration) Varanasi Division, Varanasi, Dhiraj Devi had filed an application for mutation of her name and some other persons also filed applications; Upon such applications, orders were passed for recording the name of Dhiraji Devi by the Additional City Magistrate, by issuing Parwana Amaldaramad and accordingly the said order has been incorporated in the Khatauni.

7. Nagar Nigam, Varanasi gave its 'No Objection Certificate' dated 05.01.2002 in respect of the disputed property, wherein it was stated that Plot No. 145, 146 and 148 of Village Lahartara are not the property of Nagar Nigam. Thereafter Smt. Dhiraji Devi wife of Nandlal initiated proceedings under Section 143 of the U.P.Z.A & L.R. Act, to declare properties in question as Abadi; Under Rule 135 of the U.P.Z.A & L.R. Rules 1952 Naksa along with report was submitted by the Tehsildar/Lekhpal, whereupon Assistant Collector, 1st Class, Sadar, Varanasi declared the disputed land as 'Abadi' Class VI(2) and directed for Amaldaramad in the revenue records, vide order dated 10.07.2002.

Upon declaration of the land as 'Abadi' Smt Dhiraji Devi executed a registered lease deed in favour of the petitioner wherein the three plots of land were conveyed through lease in favour of the petitioner. Thereafter a notice was issued by Varanasi Development Authority for deposit of the amount for sanction of the plan. The aforesaid amount was deposited by the petitioner with the authority and Varanasi Development Authority sanctioned the map for construction of the school upon the land in question and also granted permission to raise construction, vide order dated 16.08.2002

8. Director of the Petitioner is actively contesting an ongoing Public Interest litigation no. 48104 of 2012 Alpna Roy Chaudhary Vs. State of U.P. and others. The said public interest litigation has been filed collectively by the respectable citizens of Varanasi coming from different walks of life including Professors, Practicing Lawyers, Doctors, Poets, Businessmen, Social Workers etc.; Hon'ble Court in the said public interest litigation monitored the civic conditions in the town of Varanasi and passed stringent orders particularly against the Commissioner Varanasi Division, Varanasi who was directed to remain present before the Hon'ble Court personally and in spite of the said order did not appear which was taken seriously by the Hon'ble Court. On information being given to the Hon'ble Court that he has gone abroad for training the Hon'ble Court passed orders directing him to appear on 17.10.2012 with a direction to the State Government to cancel the trip of the Divisional Commissioner abroad and inform him to come back and attend the Court; when the petitioner did not succumb and further exposed Commissioner by highlighting his involvement in multi-crore scam in the said public interest litigation, Commissioner started taking it personally and got it communicated to the petitioner that he will teach petitioner a lesson and petitioner may get ready to face the music; in order to give effect to the aforesaid nefarious design an application dated 10.12.2012 was filed by a third party namely the respondent no.4 who had nothing to do with the matter by the respondent no. 3 himself who

was following the command of the Commissioner and prayer was made in the said application to the effect to recall the Parwana Amaldaramad and to expunge the entry standing in the revenue records. The application filed by the respondent no. 4 was not accompanied by any delay condonation application; not only this notices were not issued on the said application to Dhiraji Devi, Lalo Devi, Rai Satyabrat Saheb and others who were the original parties in the proceedings under Section 229-B of Act, 1950.

9. Attention of the court is also drawn to the paragraph no.1 of aforesaid application, wherein respondent no.4 stated that he lodged first information report dated 06.12.2012 being Case Crime No. 780 of 2012 against the Chairman of the petitioner's school. Pursuant to aforesaid, case has been registered as Criminal Case No. 2545 of 2020 Rakesh Nyayik Vs. Deepak Madhok, wherein respondent no. 4 himself filed an application supported with affidavit dated 12.11.2020, clearly stating that he has been set up by the district administration which itself speaks of illegal and malafide attitude of respondents-authorities for initiating impugned proceedings. In the aforesaid case, final report no. 258 of 2015 dated 23.12.2015 was submitted, same was accepted and record has been consigned to record room, vide order of Chief Judicial Magistrate, Varanasi dated 28.09.2021. Copy of the application and affidavit of respondent no. 4 dated 12.11.2020 filed in Criminal Case No. 2545 of 2020 is also part of the record as Annexure RA-1 filed in response to counter affidavit filed by respondent no.4.

10. Necessary pleadings with regard to malafide of district administration is pleaded in paragraph nos. 18 to 24 of the writ petition.

11. Before moving the application dated 10.12.2012 the respondent no. 4 had filed application on 26.11.2012 whereby he sought prayer for quashing the order dated 31.01.1986 passed in the said suit (though same was already set aside vide order of Additional Commissioner (Administration), Varanasi Division, Varanasi, dated 23.04.1988) and it seems that later it was realized that the order of 31.01.1986 was passed against Dhiraji Devi and would not have served the purpose of the

Administration and hence a fresh application dated 10.12.2012 was invited from respondent no. 4 by respondent no. 3 and upon the said application straightaway the impugned order dated 15.12.2012 has been passed (within five days of application).

12. Without any notice to the original contestants in the suit and after expiry of 24 years and that too on an application of third party, the respondent no. 3 in the capacity of respondent no. 2 has passed the impugned order dated 15.12.2012, himself quashing the order issuing Parwana Amaldaramad dated 13.04.1989 and sitting in judgment over the order of Additional Commissioner (Administration) dated 23.04.1988, stating that order of trial court dated 31.01.1986 is set-aside in compliance of order of Additional Commissioner dated 23.04.1988, vide order dated 15.12.2012.

CONTENTION OF COUNSEL FOR THE PETITIONER IN WRIT-C NO. 857 OF 2013

13. By the impugned order dated 15.12.2012 passed by 3rd Additional City Magistrate, Varanasi-Respondent No. 2/3, judgment and decree dated 23.04.1988 passed by Additional Commissioner (Administration) Varanasi Division, Varanasi has been set at naught by administrative order whereby Parwana Amaldaramad dated 13.04.1989 issued by Additional City Magistrate-3rd, Varanasi was recalled as if 3rd Additional City Magistrate, Varanasi is sitting over the judgment and decree dated 23.04.1988 passed by Additional Commissioner (Administration), Varanasi Division, Varanasi that too without any notice and opportunity of hearing to petitioner or any affected person, within 5 days from the date of application of respondent no. 4 dated 10.12.2012 i.e. after expiry of 24 years of judgment and decree dated 23.04.1988 passed in Appeal by Additional Commissioner (Administration), Varanasi Division, Varanasi.

14. Without any notice to the original contestants in the suit and after expiry of 24 years and that too on an application of third party, the respondent no.3 in the capacity of respondent no. 2 has passed the order dated 15.12.2012 himself quashing the order issuing Parwana

Amaldarmad dated 13.04.1989 and sitting over judgment and decree of Additional Commissioner (Administration) Varanasi dated 23.04.1988.

15. The malafides of the respondent no. 3 is evident from the fact that he twisted the nature of the order passed by the Additional Commissioner (Administration) who had recorded a definite conclusion to the effect that Dhiraji Devi is the owner and in possession upon the land in question. However, the respondent no. 3 twisted the said finding by holding that an interpretation cannot be given to the effect that suit was decreed in favour of Smt. Dhiraji Devi. The respondent no. 3 has given colour to the said order as if the matter is remitted for fresh consideration before the Court of Assistant Collector. From perusal of the judgment and order dated 23.04.1988 it is evident that the suit was not remitted for fresh consideration.

16. The respondent no. 3 abused the powers conferred upon him by ex-parte recording the conclusion that false affidavit was filed and orders were passed by the Additional Commissioner (Administration) and the orders passed by the Additional City Magistrate-III, Varanasi are against the provisions of law and are erroneous. Such conclusion drawn by the respondent no. 3 is without any material and is in breach of principle of natural justice besides being perverse.

17. No proceedings were instituted and there is no reference of the earlier application filed by respondent no.4. It is not evident as to how the respondent no. 4 had any locus to file an application in already decided proceedings under Section 229-B of Act, 1950.

18. The respondent no. 4 is an absolute stranger and had no authority in law to file the application. The respondent no. 4 has been set up by respondent no. 3 to institute the proceedings and the respondent no. 2 seems to have acted on the dictates of the Commissioner and local administration for the reasons mentioned hereinbefore.

19. Once the judgement and decree dated 23.04.1988 has attained finality it had to be executed and recording of the name of Dhiraji Devi pursuant to the judgement and decree dated 23.04.1988 is in accordance

with the provisions contained under Section 39 of the U.P. Land Revenue Act read with the Rules framed under Act, 1950.

20. Mere pendency of the second appeal before the Board of Revenue does not stop the authority to implement the order of 23.04.1988. It has nowhere been mentioned in the impugned order that the order dated 23.04.1988 passed by the Additional Commissioner (Administration), Varanasi was stayed in the said second appeal. It is a settled principle of law that mere pendency of appeal does not amount to stay. Hence there was no irregularity in recording the name of Dhiraji Devi and passing the order dated 12.04.1989 and in any view of the case, Second Appeal was already dismissed by Board of Revenue.

21. Moreover the second appeal having been dismissed judgement and decree dated 23.04.1988 merged in the order dated 08.08.1996 dismissing the appeal and hence the order dated 23.04.1988 attained finality. No justification has been given in the impugned order as to why the order of 23.04.1988 could not have been implemented after 1996. Assuming though not admitting, that the order could not have been implemented in the year 1989, it was surely capable of implementation after dismissal of the second appeal. This clearly establishes mala fides of respondent no.3 in passing the order and the target is to financially damage the petitioner as his school is constructed upon the property in question.

22. Nagar Nigam, Varanasi gave its 'No Objection Certificate' dated 05.01.2002 in respect of the disputed property, wherein it was stated that Plot No. 145, 146 and 148 of Village Lahartara are not the property of Nagar Nigam Nazul. Aforesaid 'No Objection Certificate' dated 05.01.2002, is still intact and never questioned.

23. On 12.06.2002, Smt. Dhiraji Devi wife of Nandlal initiated proceedings under Section 143 of the U.P.Z.A & L.R. Act, to declare properties in question as Abadi, Under Rule 135 of the U.P.Z.A & L.R. Rules 1952 Naksa along with report dated 19.06.2002 was submitted by the Tehsildar/Lekhpal whereupon Assistant Collector, 1st Class, Sadar, Varanasi declared the disputed land as 'Abadi' Class VI (2) and directed for Amaldaramad in the revenue records, vide order dated 10.07.2002. State was party to that case, besides application was duly enquired into by Tehsildar, Sadar, Varanasi who got it enquired into from Regional Revenue Inspector who submitted its report dated 22.06.2002

and on the basis of that 'Abadi' has been declared and said property is not covered by section 132 of the UPZA & LR Act, 1950.

24. Upon declaration of the land as 'Abadi' Smt. Dhiraji Devi executed a registered lease deed dated 11.07.2002 in favour of the petitioner wherein the three plots of land were conveyed through lease in favour of the petitioner. A notice dated 13.08.2002 was issued by Varanasi Development Authority for deposit of the amount for sanction of the plan. The aforesaid amount was deposited by the petitioner with the authority, on 16.08.2002. The Varanasi Development Authority sanctioned the map for construction of the school upon the land in question. Aforesaid sanctioning of Map for construction of School has also become final and also granted permission to raise construction, vide order dated 16.08.2002

25. In view of aforesaid facts, there does not exist any cloud over right, title and interest of Smt. Dhiraji Devi and now petitioner

26. It is not out of way to mention here that an area of 0.56 hectare of plot no. 146 and an area of 1.30 hectare of plot no.148 was acquired by the Railway Administration over which the Abadi of Railway Administration came into existence and is still continuing. In Khatauni of 1381 to 1383 Fasli such an area is recorded in Shreni 6(4) as Abadi Uttar Purab Railway in Khata No.657.

***ADDITIONAL FACTS OF THE CASE AS PLEADED BY PETITIONER
IN WRIT-C 858 OF 2013***

27. It seems that after the school was constructed and was running, suo moto a notice dated 22.02.2010 came to be issued to Smt. Dhiraji Devi. Notice did not disclose the nature of the proceedings and it fixed 16.03.2010 as the date for hearing.

28. It was reported by the process server on 09.03.2010 that Smt. Dhiraji Devi has already expired and hence notice could not be served whereupon Sub Divisional Magistrate, Sadar, Varanasi-respondent no. 2 issued letter dated 31.03.2010 to Tehsildar, Sadar, Varanasi, respondent no. 3 to trace the legal heirs of the deceased Dhiraji Devi and submit his report.

29. However, without disclosure of the heirs of the deceased Dhiraji Devi straightaway impugned order dated 22.11.2012 was passed by the Sub Divisional Magistrate, Varanasi, respondent no. 2 whereby he has recalled the order of 10.07.2002-granting declaration under section 143 of U.P.Z.A. & L.R.

Act, 1950 by Assistant Collector, Ist Class, Sadar, Varanasi without hearing any of the affected parties.

30. Thereafter without notice to the petitioner, proceedings, as alleged, were initiated under Section 33/39 of the U.P. Land Revenue Act. A report was called for by the Sub Divisional Magistrate, Varanasi-respondent no.2 from Tehsildar, Sadar, Varanasi-respondent no.3 for the purpose of registering the land as 'Pond'. This report was also submitted without hearing the petitioner. On the basis of the said report, the impugned order dated 20.12.2012 has been passed whereby the land came to be recorded as "Pond" and directions were issued to make entries in the revenue records in this regard.

CONTENTION OF COUNSEL FOR THE PETITIONER IN WRIT-C NO. 858 OF 2013

31. The impugned orders dated 20.12.2012 and 21.11.2012 passed by respondent no. 2 suffer from grave error of law apparent on the face of the record besides being orders that are without jurisdiction.

32. The petitioner has not been given any opportunity of hearing nor lessor of the petitioner was given any opportunity of hearing. In the absence of hearing the petitioner, an order that was passed on 10.07.2002, more than 10 years ago has been recalled on 21.11.2012, suo-moto and that too without any proceedings under any provisions of the Act inasmuch as judicial orders cannot be set-aside in administrative manner. Hence, the entire action is without jurisdiction.

33. In the absence of the proceeding contemplated under the Act suo-moto the order could not have been recalled and the respondent no. 2 committed grave error of law in recalling the order suo-moto.

34. The petitioner was a necessary party to be heard as after the passing of the order dated 10.07.2002 u/s 143 of U.P.ZA & L.R. Act, the land in question was exempted from the application of Chapter-VIII U.P.ZA & L.R. Act. Valid rights were created in favour of the petitioner by due execution of a registered lease deed dated 11.07.2002. Under such circumstances orders to the prejudice of the petitioner could not have been passed without giving an opportunity of hearing to the petitioner.

35. On merits the respondent has passed the impugned order without application of mind and has failed to notice the fact that the land in question is

a revenue paying land and throughout it has been recorded as Sir. Even in the Khatauni of the year 1359 Fasli that forms the basis of passing the order dated 21.11.2012 the land in question has been shown to be Sir and in the Khasra it has been shown to be Sir Malikan.

36. An entry in Khasra only discloses the crop being cultivated upon the land in question. It is not a record of rights and in the Khatauni where the name of the tenure holder is record, it establishes the nature of the holding. The petitioner in this regard places reliance upon paragraph A-60 of the U.P. Land Record Manual.

37. From Khasra of 1359 Fasli it is evident that the land remained in private cultivation and at no point of time it ever vested in the State Government. It was Sir Malikan and hence stood settled in terms of Section 18 of the U.P.ZA & LR. Act.

38. Judgment of the Hon'ble Apex Court and of this Hon'ble Court relate only to those public lands which were recorded as Ponds. It did not cover at any point of time private land and private ponds. In fact private ponds can never be converted into a public property and no direction can be given to compulsorily maintain such land as ponds.

39. There are judgments of this Hon'ble Court that exempt the land in the nature of pond settled under Section 18 of the U.P.ZA & LR. Act to be not falling within the category of public ponds and to maintain the same in such character.

40. A public purpose is being sub served by running the school and huge constructions exists upon the land in question. The same cannot be demolished by changing the entry from Abadi to Pond and that too without hearing the petitioner.

41. The proceedings under Section 33 & 39 of the U.P. Land Revenue Act are also without jurisdiction as there exists no application for correction of the record filed by any person.

42. In exercise of the powers under Section 39 of the U.P. Land Revenue Act, it was necessary for the respondents to have decided upon the entry on the basis of the possession. For this purpose he was required to hear the parties and in the absence of hearing the parties the order passed by respondent no. 2 is without jurisdiction and is also in breach of the principles of natural justice.

43. It is not out of way to mention here that an area of 0.56 hectare of plot no. 146 and an area of 1.30 hectare of plot no.148 was acquired by the Railway

Administration over which the Abadi of Railway Administration came into existence and is still continuing, In Khatauni of 1381 to 1383 Fasli such an area is recorded in Shreni 6(4) as Abadi Uttar Purab Railway in Khata No.657.

44. No part of the land is covered under the expression Pokhari as it is the revenue paying land since its inception and the portion of land which has been acquired much after the 1359 Fasli and is recorded as Abadi of the Uttar Purab Railway over which the railway colony exists at present.

45. In Writ-C No. 857 of 2013, respondent nos. 1 to 3 filed their counter affidavit stating that properties in question are in nature of Banjar/Sarpat, Pokhari and are falling under section 117/132 of U.P.Z.A. & L.R. Act over which no Bhumadhari rights can be accrued and respondent no. 4 also filed counter affidavit supported impugned orders stating that there is no illegality in impugned orders and there is no jurisdictional error. Petitioner filed rejoinder affidavits stating that nature of the land was never Pokhari rather agricultural activities was being done and property in question is vested/ settled under section 18 of the U.P.Z.A. & L.R. Act. Entries in Khasra 1359 Fasli shows that it was Seer Khudkasht land of Zamindar under his personal cultivation and vested/ settled in him under section 18 of the U.P.Z.A. & L.R. Act and thus he perfected his rights/title, became absolute owner/ Bhumidhar with transferrable rights thereof and State has no concern with it.

46. In Writ-C No. 858 of 2013, respondent nos. 1 to 3 filed their counter affidavit and supported impugned orders stating that there is no jurisdictional error. Petitioner filed rejoinder affidavit.

47. During pendency of present writ petitions, Nagar Nigam, Varanasi filed an application for impleadment alongwith affidavit, after about 12 years, on 15.05.2025 in both the writ petitions and Sri Ashok Pandey, counsel for Nagar Nigam as well as Sri Himanshu Nagpal, Municipal Commissioner, Nagar Nigam, Varanasi have also been heard as intervenors, in the interest of justice, though they were not parties in proceedings initiated by respondents-authorities, giving rise to present writ petitions.

ANALYSIS-Writ-C No. 857 of 2013

48. While entertaining Writ-C No. 857 of 2013, following order was passed by this Court on 08.01.2013 :-

On an application filed by respondent no. 4 alleging that he is a public spirited person, the decree dated 23.4.1998 passed by the Additional Commissioner, Varanasi Division, Varanasi passed in suit under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act has been set aside by the Additional City Magistrate-III, Varanasi on the ground that the land in dispute is a pond and the name of the petitioner and its lessor are wrongly recorded in the revenue record. It is contended that the Additional City Magistrate-III has no authority or jurisdiction to entertain the application as he does not exercise any power to hear and decide the public interest litigation nor a decree of a competent court can be set aside on administrative side. It is further contended that no notice or opportunity was provided and the order is ex-parte.

Prima-facie there appears to be force in the submission and the matter requires scrutiny.

Learned Standing Counsel representing the respondents no. 1 & 2 and Sri Ashis Kumar Gupta, respondent no. 4 on whose complaint the order has been passed, may file counter affidavit within four weeks.

Sri Anil Kumar, Additional City Magistrate-III who has been arrayed by name in the writ petition is directed to appear in person before this Court on 6th February, 2013 to explain his power and jurisdiction to set aside a decree of a competent court on the administrative side.

List on 6th February, 2013.

Considering the facts, until further orders of this Court, effect and operation of the impugned order dated 15.12.2012 passed by the Additional City Magistrate-III, Varanasi shall remain stayed. Respondents are further restrained from interfering in the peaceful possession of the petitioner over the land in dispute.

Learned Standing Counsel undertakes to give information of this order in writing to Sri Anil Kumar, Additional City Magistrate-III.

49. It is not disputed by the respondents-authorities that effect of impugned orders are that judicial and/or quasi-judicial orders have been set aside by in administrative manner by administrative orders and also that no prior notice or opportunity of hearing was afforded to recorded/affected persons.

50. A perusal of record further shows that impugned order dated 15.12.2012, giving rise to Writ-C No. 857 of 2013, was passed on an application dated 10.12.2012 of private respondent no.4, i.e. in five days, by setting aside Parwana Amaldaramad dated 13.04.1989 issued in pursuance of judgement and decree dated 23.04.1988 (passed under section 229-B of U.P. Z.A. and L.R. Act, in favour of predecessor of petitioner). Aforesaid administrative order was passed ex-parte after lapse of about 24 years, on a complaint made

by unconcerned person/ third person, even without issuing any notice to any affected person including petitioner.

51. Record further shows that judgement and decree dated 23.04.1988 (passed under section 229-B of U.P. Z.A. and L.R. Act, in favour of predecessor of petitioner) is still intact/ has never been set aside by any competent court of law but only order issuing Parwana Amaldaramad dated 13.04.1989, giving effect to aforesaid judgement and decree dated 23.04.1988, has been set aside, vide impugned order dated 15.12.2012, which is impermissible and without jurisdiction.

52. A perusal of plaint of suit under section 229-8 of the Act, 1950 shows that Nagar Mahapalika, Varanasi as well as State of Uttar Pradesh were parties to the suit as defendant no. 1 and 2 respectively but they never challenged judgement and decree dated 23.04.1988 passed by Additional Commissioner (Administration) Varanasi passed in Appeal No. 67 of 1986 Mst. Dhiraji vs. Sitaram and others, holding that Smt. Dhiraji Devi is absolute owner having title and possession over properties in question, arising out of judgement and decree passed in aforesaid suit.

53. Stand of petitioner that Rakesh (Nyayik) - respondent no. 4 is an absolute stranger and had no authority in law to file the application and he has been set up by respondent no. 3 to institute the proceedings and the respondent no. 2 seems to have acted on the dictates of the Commissioner and local administration, is also fortified from on the own admission of respondent no.4 in para 3 of affidavit dated 12.11.2020, contained in annexure no. RA-1 to the rejoinder affidavit dated 25.03.2026, filed on behalf of petitioner on 04.04.2026. Para 8 of rejoinder affidavit is as under :-

"8. That in reply to the contents of paragraph nos. 11 and 12 of the counter affidavit, it is submitted that first information report dated 06.12.2012 being Case Crime No. 780 of 2012 was wrongly and illegally registered against the Chairman of the petitioner's school. Pursuant to aforesaid, case has been registered as Criminal Case No. 2545 of 2020 Rakesh Nyayik Vs. Deepak Madhok, wherein respondent no. 4 himself filed an application supported with affidavit dated 12.11.2020, clearly stating that he has been set up by the district administration which itself speaks of illegal and malafide attitude of respondents-authorities for initiating impugned

proceedings. In the aforesaid case, final report no. 258 of 2015 dated 23.12.2015 was submitted, same was accepted and record has been consigned to record room, vide order of Chief Judicial Magistrate, Varanasi dated 28.09.2021. The deponent brings on record copy of the application and affidavit of respondent no. 4 dated 12.11.2020 filed in Criminal Case No. 2545 of 2020 as Annexure RA-1 to this rejoinder affidavit."

54. It is admitted to the parties that the judgement and decree dated 23.04.1988 passed by Additional Commissioner (Administration) Varanasi has attained finality, besides Nagar Nigam, Varanasi also could not dispute said factum aspect. Apart from that Sri Himanshu Nagpal, Municipal Commissioner, Nagar Nigam, Varanasi who himself addressed the court on 30.04.2026, also could not dispute that impugned orders have been passed in administrative manner ex-parte. Once that be so, judgement and decree dated 23.04.1988, passed under section 229-B of the Act, 1950, had to be executed and recording of the name of Dhiraji Devi pursuant to the judgement and decree dated 23.04.1988 is in accordance with the provisions contained under Section 39 of the U.P. Land Revenue Act read with the Rules framed under Act, 1950.

55. Nagar Nigam, Varanasi itself gave its 'No Objection Certificate' dated 05.01.2002 in respect of the disputed property, wherein it was stated that Plot No. 145, 146 and 148 of Village Lahartara are not the property of Nagar Nigam Nazul. Aforesaid 'No Objection Certificate' dated 05.01.2002, is still intact and never questioned. Thus Nagar Nigam, Varanasi is estopped from taking different stand which is barred by Principles of Estoppel.

56. On 12.06.2002, Smt. Dhiraji Devi wife of Nandlal initiated proceedings under Section 143 of the U.P.Z.A & L.R. Act, to declare properties in question as Abadi. Under Rule 135 of the U.P.Z.A & L.R. Rules 1952 Naksa along with report dated 19.06.2002 was submitted by the Tehsildar/Lekhpal whereupon Assistant Collector, 1st Class, Sadar, Varanasi declared the disputed land as 'Abadi' Class VI(2) and directed for Amaldaramad in the revenue records, vide order dated 10.07.2002. State was party to that case, besides application was duly enquired into by Tehsildar, Sadar, Varanasi who got it enquired into from Regional Revenue Inspector who submitted its report dated 22.06.2002 and on

the basis of that 'Abadi' has been declared and said property is not covered by section 132 of the UPZA & LR Act, 1950.

57. Upon declaration of the land as 'Abadi' Smt. Dhiraji Devi executed a registered lease deed in favour of the petitioner wherein the three plots of land were conveyed through lease deed dated 11.07.2002, in favour of the petitioner. A notice dated 13.08.2002 was issued by Varanasi Development Authority for deposit of the amount for sanction of the plan. The aforesaid amount was deposited by the petitioner with the authority, on 16.08.2002. The Varanasi Development Authority sanctioned the map for construction of the school upon the land in question. Aforesaid sanctioning of Map for construction of School has also become final and also granted permission to raise construction, vide order dated 16.08. 2002.

58. In view of aforesaid facts, there does not exist any cloud over right, title and interest of Smt. Dhiraji Devi and now petitioner.

59. There is no material on record before respondent no.3 to come to the conclusion ex-parte, in administrative manner that Additional Commissioner (Administration) Varanasi passed judgement and decree on the basis of false affidavit. Aforesaid conclusion is perverse and in breach of Principles of Natural Justice.

ORDER ON WRIT-C NO. 857 OF 2023

60. In view of the above discussion, entire proceeding including impugned order dated 15.12.2012 (Annexure No.-1 to the writ petition) passed by respondent No.2/IIIrd Additional City, Magistrate, Varanasi is quashed and the respondents are restrained from causing any interference in running of the School by petitioner situated on Plot No. 145M, 146 and 148 in Village Lahartara, Post Dehat Amanat, Tehsil Sadar, District Varanasi. The present writ petition succeeds and is allowed,

ANALYSIS-Writ-C No. 858 of 2013

61. While entertaining Writ-C No. 858 of 2013, order was passed on 08.01.2013 which reads as follows:-

“It is contended by learned counsel for the petitioner that after the decree dated 23.4.1988 passed by the appellate court in a suit under Section 229-B was set aside illegally by the Additional City Magistrate-III, Varanasi which is subject matter of challenge of writ petition no. 857 of 2013, the Sub Divisional Magistrate (Sadar), Varanasi by means of an ex-parte order dated 21.11.2012 recalled the declaration dated 10.7.2002 made under Section 143 of the U.P. Zamindari Abolition & Land Reforms Act and simultaneously by order dated 20.12.2012 directed to expunge the name of the petitioner and to record the land in dispute in the name of the State on the allegation that it was a pond. It is further contended that the order setting aside the decree has been stayed by this Court vide order of date passed in writ petition no. 857 of 2013, orders dated 21.11.2012 and 20.12.2012 impugned in this petition are also liable to be stayed.

Prima-facie there appears to be force in the submission and the matter requires scrutiny.

Learned Standing Counsel representing the respondents no. 1 to 3 may file counter affidavit within four weeks.

List on 6th February, 2013 along with writ petition no. 857 of 2013.

Considering the facts, until further orders of this Court, effect and operation of the impugned order dated 21.11.2012 and 20.12.2012 passed by the Sub Divisional Magistrate (Sadar), Varanasi shall remain stayed. Respondents are further restrained from causing any interference in running the school of the petitioner situated on the land in dispute.”

62. It is contended by learned counsel for the petitioner that after the decree dated 23.4.1988 passed by the appellate court in a suit under Section 229-B was set aside illegally by the Additional City Magistrate-III, Varanasi which is subject matter of challenge of writ petition no. 857 of 2013, the Sub Divisional Magistrate (Sadar), Varanasi by means of an ex-parte order dated 21.11.2012 recalled the declaration dated 10.7.2002 made under Section 143 of the U.P. Zamindari Abolition & Land Reforms Act and simultaneously by order dated 20.12.2012 directed to expunge the name of the petitioner and to record the land in dispute in the name of the State on the allegation that it was

a pond. It is further contended that the order setting aside the decree has been stayed by this Court vide order of date passed in writ petition no. 857 of 2013, orders dated 21.11.2012 and 20.12.2012 impugned in this petition are also liable to be stayed.

63. Record shows that neither petitioner nor its lessor had been given any opportunity of hearing and in the absence of hearing the petitioner an order that was passed on 10.07.2002, more than 10 years ago has been recalled on 21.11.2012, suo-moto and that too without any proceedings under any provisions of the Act.

64. After the passing of the order dated 10.07.2002 the land in question was exempted from the application of Chapter-VIII U.P.ZA & L.R. Act, thus valid rights were created in favour of the petitioner by due execution of a registered lease deed. Land in question is a revenue paying land and throughout it has been recorded as Sir, further counsel for respondents could not dispute that petitioner was a necessary party to be heard.

65. Record further shows that in Khatauni 1359 Fasli that forms the basis of passing the order dated 21.11.2012, the land in question has been shown to be Sir and in the Khasra it has been shown to be Sir Malikan which shows that the land remained in private cultivation and at no point of time it ever vested in the State Government. It was Sir Malikan and hence stood settled in terms of Section 18 of the U.P.ZA & LR. Act.

66. Judgment of the Hon'ble Apex Court and of this Hon'ble Court relate only to those public lands which were recorded as Ponds. It did not cover at any point of time private land and private ponds. In fact private ponds can never be converted into a public property and no direction can be given to compulsorily maintain such land as ponds.

67. Contention of counsel for the petitioner that a public purpose is being subserved by running the school and huge constructions exists upon the land in question, wherein large number of students are studying, the same cannot be demolished by changing the entry from Abadi to Pond and that too without hearing the petitioner, found substance.

68. Long standing entries cannot be disturbed in summary proceedings, thus impugned action under Section 33 & 39 of the U.P. Land Revenue Act are also without jurisdiction as there exists no application for correction of the record filed by any person.

69. In exercise of the powers under Section 39 of the U.P. Land Revenue Act, it was necessary for the respondents to have decided upon the entry on the basis of the possession. For this purpose he was required to hear the parties and in the absence of hearing the parties the order passed by respondent no. 2 is without jurisdiction and is also in breach of the principles of natural justice.

ORDER ON WRIT-C NO. 858 OF 2023

70. In view of the facts as stated above, since order dated 15.12.2012 passed by IIIrd Additional City Magistrate, Varanasi in Writ C- No. 857 of 2013, has already been quashed, thus present impugned ex-parte order dated 20.12.2012 as well as ex-parte order dated 21.11.2012 passed by respondent No.2/Sub-Divisional Magistrate (Sadar) Varanasi, are also liable to be quashed and the same are hereby quashed. The respondents are restrained from causing any interference in running of the School by petitioner situated on Plot No. 145/1 (M) 146/1 (M) and 148/1 (M) in Village Lahartara, Post Dehat Amanat, Tehsil Sadar, District Varanasi. The present writ petition also succeeds and is allowed.

(Prakash Padia,J.)

July 03, 2026

saqlain