

Neutral Citation No. - 2023:AHC:197946

Judgment Reserved on 26.9.2023

Delivered on 13.10.2023.

High Court of Judicature at Allahabad.

Court No. - 48

Case :- WRIT - B No. - 2439 of 1976

Moti Lal

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Petitioner

Through: Sri Anand Prakash Srivastava

Vs.

D.D.C. And Others

Respondents

Through: Sri Anil Kumar Aditya

CORAM : HON'BLE SAURABH SHYAM SHAMSHERY, J.

1. Heard Sri Anand Prakash Srivastava, learned counsel for the petitioner and Sri Anil Kumar Aditya, learned counsel for the respondents.

2. Facts of present case

(a) Land in dispute is Khata No. 485, Plot No.895 area 74 acres, situated in village-Thana, Pargana- Kolasta, District-Varanasi.

(b) Petitioner (Motilal) has filed objection under Section 9 of Uttar Pradesh Consolidation of Holdings Act, 1953 (hereinafter referred to as "Act of 1953") that plot in dispute was an ancestral property and he was in possession thereof even before commencement of The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950. Alternatively it was claimed that he has perfected his rights by adverse possession.

(c) Original respondent no.2 (Smt. Gangajali) has contested

above referred claims and made counter-claim of her *Bhumidhari* rights on plot in dispute, on basis of a sale deed dated 11.12.1970, stating that recorded tenure holder- Somdutt had executed said sale deed in her favour.

(d) The Consolidation Officer, Pindara, Varanasi by order dated 30.9.1974 allowed objections of petitioner and directed that his name be recorded as Sirdar and name of original respondent no.2 be expunged from revenue records. Relevant part of said order is reproduced hereinafter:

"इत्तखव खतौनी स्म् १३७८ फ० के खता संख्या ४८५ पर अमल दशमद है कि जरिये अदेश मु० न० १०४२ दिनांक १७-२-७०।२०-४-७१ सोमदत्त आ० नि० के सीखर के बजाय भूमिधर दर्ज किया जावे। दस्तावेज बैनामा दिनांक ११-१२-७० नाकिस्ता सोमदत्त वहक गंगाजली दाखिल किया जिसके अनुसार भूमि विवादित का बैनामा गंगाजली के हक में किया गया। नक्का खसरा स्म् १३७२ फ० के अनुसार भूमि विवादित पर सोमदत्त का असल कास्तकार दर्ज है। खना कैफियत में व कब्जा हीरा व मोती फुगण रज्जू रो० नं० ८६ दिनांक १२-९-६४ प० क० १० के दर्ज है। स्म् १३७३ फ० के नक्का खसरा के अनुसार सोमदत्त आ० नि० पर असल कास्तकार शिकमी में हीरा मोती दर्ज है। यही इन्द्रज स्म् १३७४, १३७५, १३७६, १३७७, १३७८ फसली में भी है। नक्का खतौनी स्म् १३७२ से १३७४ फ० के अनुसार खता १२४।४७६ पर अमल दशमद है कि वर्ग ९ से रामसमन का नाम वर्ग ९ से खरिज करके मोती हीरा का नाम वर्ग ९ में खरिज करके मोती हीरा का नाम वर्ग ९ में दर्ज किया जावे। इसमें प०क० १० का भी हवाला है। वादी के विद्वान अधिस्त इस बात पर कल दिया कि भूमि विवादित पर मोती का कब्जा है और बैनामा जो गंगाजली के एक में किया गया उसके अनुसार गंगाजली की आ० नि० पर कब्जा नहीं मिला। बैनामा दिनांक ११-१२-७० ई० के आधार पर मु० गंगाजली का नाम कागजत में दर्ज हो गया वादी श्रीराम की ओर से प्रश्नोत्तरी इस अशय से दाखिल की गयी कि 'क्या अराजी नम्बर ८९५/१४ मौजा थाना फराना कोल असला जिला वाराणसी में प० क० १० स्म् १३७२ फ० में जरी हुआ इस प्रश्न पर जवाब दिया गया कि खसरे में प०क० १० चरपा नहीं किया गया फस्तु भूमि नम्बर ८९५ हीरा मोती पिरान रज्जू सं० नं० ८९ दिनांक १२-९-६४ प० क० १० क्रमांक ७० अंकित है। इस प्रश्नोत्तरी से स्पष्ट है कि खसरा स्म् १३७२ में प० क० १० की सूची संलग्न नहीं है। प० क० १० का इन्द्रज होना ही काफी नहीं है। बल्कि वादी को यह साबित करना चाहिये कि प०क० १० का उद्घरण फरिक्न व चेक्समैन लैण्ड मैनेजमेन्ट कमेटी को दिया गया था। उनके हस्ताक्षर भी कराये गये वादी मोती स्वयं गवाही में नहीं आये है। मोती की ओर से मोती के बहोई श्रीराम ने वहलफ कयान किया है। श्रीराम के एक में कोई मुख्तार नामा नहीं है। एक

दखस्त दी गयी जिसके अनुसार श्रीराम को मुख्तार बनाया गया। यह श्रीराम ही मोती की ओर से बहलफ बयान किया है। प्रतिवादिनी की ओर से रामराज व गवाह राम कर्न ने बहलफ बयान किया है। रामकर्न ने दस्तावेज बैनामा को साबित किया है। रामराज ने स्वयं ही स्वीकार किया है कि आ० नि० मोतीलाल को मोती अदि जबरदस्ती जेतते है। इस तरह दख्तान फरीकन यह स्वीकार है कि आ० नि० पर मोती का कब्जा है। मोती स्वयं गवाही में नहीं अये और रामराज ने यह स्वीकार किया है कि आ० नि० पर गंगाजली का कब्जा नहीं है बल्कि वादी मोती का है। बैनामा के आधार पर गंगाजली को कब्जा नहीं मिला। बिना कब्जा के गंगाजली को बैनामा के आधार पर कोई हक प्राप्त नहीं हो सकते है। वादी मोती अराजी निजई के सीखर है। गंगाजली के नाम बैनामा तस्मीम हो गया है इससे मु० गंगाजली को कोई हक प्राप्त नहीं होता है। क्योंकि बैनामा के समय सोमदत्त का कब्जा आ० नि० पर नहीं था। और उन्हें बिना मोती को आ० नि० से वेस्कुल किये हस्तांतरण का हक नहीं था खते पर गंगाजली का नाम गलत दर्ज है।

उपरोक्त तथ्यों के अनुसार अराजी निजई से गंगाजली का नाम खरिज करके मोती पुत्र रज्जू का नाम बतौर सीखर सन् १३७६ फ० से दर्ज किया जाये। इन तन्की ही का निर्णय इस प्रकार से किया जाता है। उपरोक्त विवरण के अनुसार अदेश हुआ कि:-

अदेश

गाट संख्या ८९५/१४ पर से गंगाजली का नाम खरिज करके मोती पुत्र रज्जू का नाम बतौर सीखर दर्ज किया जावे। लगान आधार दफ्तर ७ के अनुसार दर्ज किया जावे। बकया लगान सन् १३७६ फ० से कसूल किया।

वाद अमल दशमद मिस्लि दाखिल दफ्तर की जावे।”

(Emphasis Supplied)

(e) The original respondent no.2 referred an appeal before Assistant Settlement Officer of Consolidation, Varanasi however, it was dismissed by order dated 1.3.1976. Relevant part of said order is mentioned hereinafter:

“अब प्रश्न यह उठता है कि क्या प्रेक्षागण का मौक पर बैनामा के द्वारा कब्जा हो गया। अपीलकर्ता ने सर्व प्रथम यही प्रश्न रख कि हीरा मोती का नाम १३७३ फ० में अंकित नहीं हुवा दिखया गया उनका यह तर्क सर्व प्रथम सही नहीं है। १३७३ फ० का खरसा प्रस्तुत है जिसमें हीरा मोती का नाम अंकित है। ऐसी स्थिति में हीरा मोती का कब्जा १३७२ फ० से माना जाय तो चक्कंदी प्रकाशन से पहले ही उनको सीखरी हक हो जाते है। वि० अभिभाषक के इस तर्क से मैं सहमत नहीं हूँ कि १३७३ फ० में हीरामोती का कब्जा अंकित नहीं है सोमदत्त की तरफ से ऐसा कोई कागज प्रस्तुत नहीं है जिसे यह सिद्ध हो सके

कि उन्होंने बैनामा के लेने के पश्चात् कब्जा किया हो क्योंकि उनके बैनामा दि० ११-१२-७० से लगभा १३७७ फ० अती है उससे पूर्व ही हीरा मोती का कब्जा खसरे में अंकित है । सोमदत्त ने अपने आप को इस गाटे को बचाने का सबसे अच्छा तरीका यही रख कि उन्होंने इस गाटे का बैनामा कर दिया यदि वे काबिज होते तो शायद इसका बैनामा न करते । वि० च० अ० पिण्डरा श्री भावान कस सिंह का निर्णय इस तथ्य को खोजने में भली भांति तथा स्पष्टता है। खसरा मे प० क० १० चरपा नहीं किया गया इससे यह सिद्ध नहीं हो सकता कि प० क० १० की तामीली है या नहीं। यदि प० क० १० खसरे पर चरपा होता तब इस प्रश्न का भार हीरा मोती पर होता कि वे सिद्ध करते कि प० क० १० की तामीली असल कश्तकारों पर नहीं है । अब यह भार कर्मचारियों पर पहुंच गया और उनकी लापस्वाही से हम प्रतिपक्षान को नहीं बांध सकते । केवल खसरा में रोजनामचा नं० प० क० १० का क्रमांक देना पर्याप्त है । चक्कंदी पड़ताल के समय भी मोती हीरा का कब्जा मिला। अपीलकर्ता की ओर से रामराज उपस्थित हुए । उनका कहना केवल यह है कि इस भूमि पर मोती हीरा का कोई वास्ता नहीं है । उन्होंने स्वीकार किया कि वाराजी निजई को मोती हीरा जबरदस्ती जोते हैं। एक गवाह रामकृष्ण बैनामा हासिया गवाह प्रस्तुत किया जिनका कब्जे के बारे में कोई विशेष साक्ष्य नहीं है । बैनामे का अमलदरामद हो जाने से स्वतः पर कोई कुप्रभाव नहीं पड़ता है । असल कश्तकार चाहे अपने हाथ बदलते रहे मगर कब्जेदार का स्वतः वाद अपने समय की पूर्ति करने पर परिपक्व हो जाते हैं। उपरोक्त स्थिति में मैं समझता हूं कि अपीलकर्ता का कोई वाद आधार नहीं है । अतः यह अपील खरिज की जाती है।”

(Emphasis Supplied)

(f) Original respondent no.2 thereafter preferred a revision before Deputy Director of Consolidation, Varanasi, which was allowed by order dated 30.8.1976 and orders passed by the Consolidation Officer and the Assistant Settlement Officer of Consolidation were set aside. Relevant part of order is mentioned hereinafter:-

“यह निरानी श्रीमती गंगाजली ने धारा 4811। जे०च०अ० के अर्तगत विद्वान स० व० अ० च० के अपेश दिनांक १-३-७६ के विरुद्ध प्रस्तुत की है जिसमें उन्होंने उसकी अपील खरिज की है।

निरानी कर्ता का कहना है कि कब्जे का अंजन भूलेख नियमावली के प्राविधानों के विरुद्ध है और कोई फ० क० 10 अस्सल कास्तकार को जारी नहीं हुआ और न ही उसकी तामीली उस पर हुई। यह भी कहना गया कि रामराज ने कभी भी हीरा व मोती को कब्जे का बयान नहीं दिया। निम्न न्यायालयों ने इसे सही तरीके से पढ़ा नहीं।

मैंने पक्षों के विद्वान अधिवक्ताओं की बहस सुनी तथा फावली का अफलेकन किया। विवाद खता नं० ४८५ के गाट सं० ८९५-१४ के बारे में है जिस पर मु० गंगाजली का नाम बतौर सीस्वर अंकित है। और विपक्षी का नाम का ९ में अंकित है। श्रीमती गंगाजली ने एक अप्रति धारा ९ क।२। जे० च० अ० के अर्तगत की थी और यह कहा कि विवादित भूमि की वह वास्तविक स्वामिनी है। सोमदत्त पुत्र प्रसिद्ध उसके वास्तविक स्वामी थे और उन्होंने दस गुना जमा करके उसके हक में दिनांक ११-१२-७० का एक पंजीकृत बैनामा तहरीर किया और बैनामे के आधार पर उसका नाम कागजात में अंकित हुआ और तभी से वह बराबर काबिज चली आ रही है। विपक्षी के नाम अभिलेख में अंजन है वह फर्जी है। विपक्षी मोती ने एक अप्रति प्रस्तुत की थी कि विवादित भूमि उसकी मौरूसी है और उस पर वह काबिज दखील चला आ रहा है। सोमदत्त कभी विवादित भूमि पर काबिज नहीं हुआ परन्तु उन्होंने गलत अंजन का लाभ उठाकर मु० गंगाजली के हक में बैनामा कर दिया। इस बैनामे के आधार पर जो अंजन है वह गलत है। उन्होंने यह आधार लिया कि वह विवादित भूमि के अस्सल कास्तकार है इसलिये उसका नाम अंकित किया जाना चाहिए। विकल्प में उन्होंने यह कहा कि वह अनाधिकार कब्जे के आधार पर सीस्वर है।

नकल खतौनी १३५६ फ० मे० टिम्मल अदि का नाम मुख्य स्तम्भ में अंकित है और मु० मरजदी का नाम सिकिमी स्तम्भ में अंकित है। १३५९ फ० खतौनी में मु० मरजदी का नाम मुद्दा ९ साल से जमान २० में अंकित है। खरसा १३५६ फ० मे० मु० मरजदी का नाम बतौर अक्यूफेन्ट दर्ज है और खरसा १३५६ फ० में भी उसका नाम अंकित है। उपरोक्त अंजनों से यह बात निश्चित हो जाती है कि विपक्ष मोती का विवादित भूमि पर कोई स्वत्व नहीं रह गया और यदि कोई स्वत्व रहा भी तो प्रतिकर रोल के अंतिमीकरण के फलस्वरूप समाप्त हो गया विपक्षी की ओर से कोई ऐसा साक्ष्य नहीं दिया गया जिससे सिद्ध हो कि उन्होंने प्रतिकर प्राप्त नहीं किया और न ही उन्होंने यह भी कहा कि उनका प्रतिकर अंतिम रह गया। इसलिये व यह आधार नहीं ले सकते कि विवादित भूमि में बतौर भूस्वामी उसका कोई अधिकार रह गया और दिनांक १-७-५२ के बाद सिकिमी अधिकारी राज्य सरकार में निहित हो गया। मु० मरजदी की मृत्यु हो गयी और राजस्व अभिलेख में सोमदत्त का नाम बतौर वारिस दर्ज रहा। गवाह श्रीराम के बयान से स्पष्ट है कि मु० मरजदी और सोमदत्त दोनों मां और बेटे थे। श्रीराम ने अपनी जिह्म में यह बात स्वीकार किया कि सोमदत्त व उसकी मां की जमीन पर उसने जबरदस्ती कब्जा किया। इस बयान से यह निष्कर्ष निकलता है कि विवादित भूमि पहले मु० मरजदी की थी और उसके बाद सोमदत्त की हुयी। इस प्रकार भी विपक्षी का यह वाद कि विवादित गाटे पर उसका कब्जा उसके मूरिसों के समय से चला आ रहा है। १३७८ फ० में खता

नं० ४८५ पर अमलशमद है कि जरिये अदेश मु० नं० १०४२ दिनांक १७-२-७० २०-४-७१ सोमदत्त अराजी निजई के सीस्वर के बजाय भूमिधर दर्ज किये जाये। वैनामा असल दिनांक ११-१२-७० फावली पर उपलब्ध है जो मु० गंगाजली के हक में सोमदत्त के द्वारा तहरीर किया गया है। नक्कल खसरा १३७२ फ० में भी सोमदत्त बतौर असल कास्तकार अंकित है और सिक्की खने में राम सजन का नाम अंकित है। तथा विवरण स्तम्भ में विपक्षी का नाम रोजनामचा सं० ८९ दिनांक १२.०९.६४ प० क० १० के अंकित है। खसरा १३७३ फ० के अनुसार सोमदत्त का नाम बतौर असल कास्तकार और सिक्की खने में विपक्षी का नाम अंकित है। यही अंकन खसरा १३७४ फ० से १३७८ फ० में भी है। नक्कल खसरा १३७२ फ०-७४ फ० के अनुसार खता नं० १२४।४७९ पर एक अमलशमद अंकित है कि राम सजन का र्का ९ से नाम खरिज करके मोती अदि का नाम र्का ९ में अंकित किया जाय। इस पर प० क० १० का भी उल्लेख है। इसी अंकन पर विपक्षी की ओर से अधिक बल दिया गया है और उसका कहना है कि मु० गंगाजली को वास्तविक कब्जा नहीं मिला। विपक्षी की ओर से एक प्रश्नोत्तर भी दखित किया गया है कि खसरा में प०क० १० चरपा नहीं किया गया है परन्तु भूमि नं० ८९५।०-१४ पर हीरा मोती पुत्राण रज्जू का नाम रोजनामचा सं० ८६ दिनांक १२-९-६४ प० क० १० ब्रमांक ७० के साथ अंकित है। नियमानुसार केवल प० क० १० का उल्लेख होना ही पर्याप्त नहीं है क्योंकि यह सिद्ध होना चाहिये कि असल कास्तकार एवं अन्य संबंधित व्यक्ति को उसकी तामीली भी हुई है जैसा कि माननीय उच्च न्यायालय का लगातार स्थापित मत है। विपक्षी की ओर से यह कहा गया कि प्रश्नोत्तर में जब प० क० १० का हवाला है तो इससे यह परिपक्व की जायेगी कि प० क० १० जारी हुआ। परन्तु उसका यह तर्क सही नहीं है जैसा कि मैंने पूर्व कहा है। विपक्षी स्वयं साक्ष्य में उपस्थित नहीं हुये। उसकी ओर से श्रीराम ने बयान दिया है। निरानीकर्तागण की ओर से रामराज और रामकरन ने क्लफ बयान दिया है। रामकरन बैनामा का गवाह है और उसे सिद्ध किया है। इस वैनामे में कब्जा दखल देने की बात सोमदत्त ने की है। मैंने रामराज के बयान को पढ़ा। उसने जिरह में यह कही नहीं स्वीकार किया है कि विपक्षी ने निरानी कर्ता के खेत को जबरजस्ती जोत लिया जैसा कि विद्वान सं० व० अ० च० और च० अ० ने अपने निर्णय में लिख है। ऐसा लगता है कि उन्होंने गवाह का बयान गलत तरीके से पढ़ा है। मेरे समक्ष विपक्षी के विद्वान अधिवक्ता ने यह इस बात को स्वीकार भी किया। वैसे भी निरानीकर्ता ने स्वयं कही भी विपक्षी के जबरजस्ती जोतने या कब्जे के बारे में स्वीकारेक्ति नहीं की है। जब निरानीकर्ता के गवाह द्वारा जबरजस्ती कब्जा स्वीकार करने की बात नहीं रह जाती है तब यही देखा है कि क्या कब्जे का अंकन भू-लेख नियमावली के प्राविधानों के अनुसार है या नहीं। जैसा पूर्व कहा गया है विपक्षी प्रश्नोत्तर द्वारा खसरे में प० क० १० के अंकन पर बल दिया है परन्तु उसकी ओर से यह नहीं सिद्ध किया गया है कि असल कास्तकार एवं अन्य सम्बन्धित व्यक्तियों को प० क० १० जारी हुआ और उन पर उसकी तामीली हुई। प्रश्नोत्तर से यह बात भी स्पष्ट है कि खसरा में प०क० १० का अंकन नहीं है। इससे इस बात का संकेत मिलता है कि वास्तव में प० क० १० जारी नहीं हुआ वरन् विपक्षी उसका जारी होना अग्रथ सिद्ध करते।

चूंकि विवाद में उन्होंने अनाधिकार कब्जे के आधार पर सीस्वारी अधिकार मांगा है इसलिए उसे सबित करने का भार उस पर था जिसका उसने निर्वाह नहीं किया।

इस प्रकार माननीय उच्च न्यायालय की स्थापित व्यवस्था के अनुसार कब्जे का अंमल नियमानुसार नहीं कहा जा सकता। दिनांक १८-१०-६४ का एस०के० द्वारा जो अदेश खतौनी १३७२ फ० ०-७४ फ० पर पारित किया गया है वह भी उचित नहीं प्रतीत होता क्योंकि एस० के० को किसी का र्क ९ खरिज करके किसी अन्य व्यक्ति का र्क ९ अंकिता करने का अधिकार नहीं था। यह अधिकार परगनाधिकारी को ही था। क्योंकि यह कगजात दुरुस्ती की परिधि में आता है। वैसे राम सज्ज का इस मुकद्दमें से कोई सम्बन्ध नहीं है।

उपरोक्त विवेचना से यह स्पष्ट है कि विपक्षी के पक्ष में जो कब्जे का अंमल है वह नियमानुसार नहीं है इसलिए उसे इनके आधार पर कोई अधिकार प्राप्त नहीं हो सकता। जहां तक बतौर भू स्वामी के अधिकार का प्रश्न है इसके बारे में पूर्व विवेचना की जा चुकी है। उनका यदि कोई अधिकार विवादित भूमि में था भी तो वह समाप्त हो चुका है। मौखिक साक्ष्य से विपक्षी को कोई लाभ नहीं मिलता।

बैनामा के आधार पर निरासीकर्ता का नाम राजस्व अभिलेखों में अंकिता हो चुका है। फस्तु उसका नाम गलती से बतौर भूमिधर के सीस्वार अंकिता हुआ है। असल बैनामा फावली पर उपलब्ध है और उसमें कब्जा दखल का उल्लेख है। ऐसी स्थिति में निरासीकर्ता बैनामे के आधार पर विवादित भूमि की भूमिधर होगी।

फावली पर उपलब्ध साक्ष्यों के अवलोकन से मैं इस निष्कर्ष पर पहुंचता हूँ कि निम्न न्यायालयों ने विपक्षी को अनाधिकार कब्जे के आधार पर सीस्वारी अधिकार देकर त्रुटि की है निरासी स्वीकार करने योग्य है।

फलस्वरूप निरासी स्वीकार की जाती है और विद्वान स०व०अ०च० के अदेश दिनांक १-३-७६ तथा च० ० अ० के अदेश दिनांक ३०-९-७४ को निस्त किया जाता है। विपक्षी के हक में जो र्क ९ का अंमल है उसे भी खरिज किया जाता है और यह अदेश दिया जाता है कि विवादित भूमि पर मु० गंगाजली का नाम बजाय सीस्वार के भूमिधर अंकिता किया जाये। माल गुजरी जो च० अ० फ० ७ के अनुसार नियमानुसार निर्धारित की जाये। अमल दामद तदनुसार किया जाय।"

(Emphasis Supplied)

(g) Above referred order passed by Deputy Director of Consolidation is impugned in present writ petition.

(h) During pendency of this writ petition, original respondent no.2 has died and her legal heirs are brought on record.

(3) Submissions on behalf of petitioner

(i) Learned counsel for the petitioner has submitted that Deputy Director of Consolidation has erred by interfering with a well-reasoned concurrent finding on facts as well as on law, returned by the Consolidation Officer and Settlement Officer of Consolidation and the Revisional Authority has acted beyond jurisdiction as provided under Section 48 of Act of 1953. Learned counsel for petitioner has placed reliance on following judgments on this issue as well as on other issues and relevant parts thereof are also mentioned hereinafter:-

(a) ***Kanchan Singh Vs. Deputy Director of Consolidation & Ors. 2017 (134) RD 752.*** Relevant paragraph are mentioned hereinafter:-

"21. In view of above exposition of law and considering the facts and circumstances of the case, in my view the order impugned in this writ petition passed by DDC cannot be sustained being beyond the scope of Section 48 of Act, 1953. In the present case, revisional authority has neither examined regularity of the proceedings conducted by subordinate authority nor has examined correctness and propriety of such order but has, on his own, examined the facts as if it was considering the matter as original Court and has passed its order, which has the effect of upsetting the order passed by lower authority without pointing out any illegality or inaccuracy or incorrectness therein.

22. Looking to the scope of revisional jurisdiction of DDC, as discussed above, such an approach on the part of DDC is not permissible in law while exercising jurisdiction under Section 48 (1) of Act, 1953 and therefore, the impugned order, in my

view, cannot sustain. In the result, the writ petition is allowed. The order dated 18.02.1983 passed by DDC is hereby set aside. Matter is remanded to DDC to pass a fresh order in accordance with law."

(b) Chauthi Vs. Deputy Director of Consolidation & Ors. 2018 (140) RD 650. Relevant paragraph are mentioned hereinafter:-

"33.

X X X

As held in Bachan (supra), the Settlement Officer is the final Court of fact. In paragraph No. 16 of Ram Avadh (supra), it was held that under section 48 of the Act, 1953, the Director Consolidation does not have the jurisdiction to interfere with the findings of facts, without any basis and assumptions. In Ram Dular (supra), the Supreme Court held as follows:-

"It is clear that the Director had power to satisfy himself as to the legality of the proceedings or as to the correctness of the proceedings or correctness, legality or propriety of any order other than interlocutory order passed by the authorities under the Act. But in considering the correctness, legality or propriety of the order or correctness of the proceedings or regularity thereof it cannot assume to itself the jurisdiction of the original authority as a fact- finding authority by appreciating for itself of those facts de novo. It has to consider whether the legally admissible evidence had not been considered by the authorities in recording a finding of fact or

law or the conclusion reached by it is based on no evidence, any patent illegality or impropriety had been committed or there was any procedural irregularity, which goes to the rest (sic root) of the matter, had been committed in recording the order or finding."

(Emphasis supplied)

(c) Jagvidit (Dead) through Lrs Vs. Deputy Director of Consolidation Varanasi & Ors. 2012 (116) RD 631.

Relevant paragraph are mentioned hereinafter:-

"19. In the present case the Respondent Nos. 2 and 3 were recorded in Part II of the Khatauni of 1359F showing the entry to exist since past three years. Therefore, their status on the basis of such entry can be only as that described under Part II. The Respondent Nos. 2 and 3 were therefore not tenure holders as described in Part I of the khatauni. There is no record available to show that they were recorded at any time prior to 1359F. Therefore it was a first time entry in 1359F under Part II obtained to show possession on the date of vesting under the Act. The source of this entry has not been disclosed by them hence whether it was an entry showing the correct state of affairs is itself doubtful.

20. On the other hand khasra unlike a khatauni is not a record of rights. Its entries are not connected with settlement. Form P.A.-10 relates to partial (survey) entries after each Kharif and Rabi crop. It is recorded by the Lekhpal and verification report of such entry is made by the Supervisor Kanungo. In the present case an entry was made of an order

dated 31.10.1964 of the Supervisor Kanungo for mutation of the name of Jagvidit Singh in Column 9 of the khatauni 1371F to 1373F. But the Deputy Director of Consolidation has recorded a finding that such order was never communicated. He has held that in proceedings for recording a name the requirements under the Land Record Manual have to be satisfied.

21. *Form P.A.-10 requires the recording of changes. The entries to be made therein are :-*

Column 1 - khasra number of plot.

Column 2 - Area

Column 3 - Details of entry in the last year

Column 4 - Details of entry made in the current year

Column 5 - Verification report by Supervisor Kanungo

Column 6 - Remarks

Paragraph 89-A of Chapter V (Map and Khasra) of the Land Record Manual is quoted hereunder :

"89-A. List of changes.-After each kharif and rabi partial of a village the Lekhpal shall prepare in triplicate a consolidated List of new and modified entries in the khasra in the following form:

<i>Khasra No. of Plot</i>	<i>Area</i>	<i>Details of entry in the last year</i>	<i>Details of entry made in the current year</i>	<i>Verification report by the Supervisor Kanungo</i>	<i>Remarks</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>

(ii) The Lekhpal shall fill in first four Columns and hand over a copy of the list to the Chairman of the Land Management Committee. He shall also

prepare extract from the list and issue to the persons concerned recorded in Columns 3 and 4 to their heirs, if the person or persons concerned have died, obtaining their signature in the copy of the list retained by him. Another copy shall be sent to the Supervisor Kanungo.

(iii) The Supervisor Kanungo shall ensure at the time of his partial of the village the extract have been issued in all the cases and signatures obtained of the recipients".

22. *Apart from the procedure prescribed under the above quoted paragraph 89-A the signatures of the recipients are also to be obtained. This provision therefore ensures that any change in the list which is to be entered in Form P.A.-10 must be within the knowledge and be issued to the person. The Deputy Director of Consolidation has recorded that there was no evidence on record as to how such change in the list was made. Hence the petitioner had to discharge his burden of proof and show that such change was informed to the Respondent Nos. 2 and 3. In the absence of such evidence and proof the entry of order for mutation dated 31.10.1964 in Form P.A.-10 was not believed by the Deputy Director of Consolidation.*

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28. *Thereafter the possession of the petitioner has been continuously recorded in the Remarks column of the Khasra's of 1362F, 1366F, 1367F, 1371F and 1372F.*

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30. *The Deputy Director of Consolidation is the last Court of facts. In a writ petition this Court will not reappraise the evidence to substitute its own findings. But when the evidence is ignored and a conclusion is arrived at to give benefit of a provision of law then the conclusion would be against the evidence. Such an illegal conclusion can be interfered with in exercise of jurisdiction under Article 226 of the Constitution of India. The Deputy Director of Consolidation has concluded that the Respondent Nos. 2 and 3 were recorded in the Revenue Records for several years which indicate their possession and the petitioner did not bring any action or suit for their eviction hence the Respondent Nos. 2 and 3 had matured their rights under the U.P.Z.A. & L.R. Act. This conclusion could be only on two grounds. Firstly in view of Section 20 of the U.P.Z.A. & L.R. Act and secondly by adverse possession. The first circumstances has already been dealt with herein above. The second ground would be the rights by adverse possession. For claiming adverse possession it has to be established that there was no iota of title in existence and the possession was hostile to the knowledge of the owner. If that be the circumstance then the petitioner would be required to bring an action or suit. If he did not do so for more than 12 years then the Respondent Nos. 2 and 3 would be entitled to maintain such a plea. In the present case the evidence is otherwise. The*

Respondent Nos. 2 and 3 entered the land on Sajha with permission of the petitioner in 1359F. Therefore their continued possession on 1379F was not an adverse possession. The Respondent Nos. 2 and 3 could not claim rights by adverse possession. The petitioner on the other hand was owner since the time of his ancestors. He had a valid source of title over the land hence in law the issue of the owner proving adverse possession was not at all required. The Deputy Director of Consolidation has erred in law in recording that the petitioner was required to prove his adverse possession against the Respondent Nos. 2 and 3 who in turn could not establish any source of title. Their name came in the revenue record for the first time in 1359F in the remarks column which is Part II of the khatauni and that entry indicates only permissive possession.

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32. *The Deputy Director of Consolidation has carved out a totally alien case by holding that the Respondent Nos. 2 and 3 were the land holder hence he has misled himself in shifting the burden of proof on the petitioner to prove adverse possession against the Respondent Nos. 2 and 3. Clearly such burden was not required to be discharged by the petitioner. The possession of Respondent Nos. 2 and 3 was permissive hence they were not occupant of the land in dispute and could not be given the benefit of Section 20 of the U.P.Z.A. & L.R. Act.*

(d) ***Jagtar Singh & Ors Vs. State of Uttarakhand & Ors. 2018 (138) RD 564.*** Relevant paragraphs are mentioned hereinafter:-

"4. The High Court held that though Para 423 of the Land Records Manual authorizes the Supervisor Qanoongo to make entry of possession in remarks column but it shall be done after full publicity about his visit. In this case, neither publicity was done nor notice was given to the legal heirs of Teja Singh and, therefore, both the Settlement Officer and the Deputy Director, Consolidation were justified in quashing the entries made in favour of the present appellants. The High Court went on to hold as follows:

"In the impugned orders passed by the S.O.C. and D.D.C., so far as the finding that the Supervisor Qanoongo has no right to correct the entry in revenue record, which is already in existence, is concerned, this finding is affirmed, but so far as the direction given to enter the names of Karnail Singh and Jagir Singh on the land in dispute is concerned, the same is quashed and it is held that the entry of petitioners and the respondents cannot continue in revenue record after consolidation and it is directed that entry of Varg-4 be deleted from the land in question of both the parties, petitioners as well as the respondents."

5. *We are in agreement with the aforesaid findings to the extent that Supervisor Qanoongo could not have made entries in favour of the appellants*

without giving public notice and without giving notice to the legal heirs of Teja Singh. The dispute is as to which of the parties is in possession of the land. The High Court erred in directing that the names of both the parties should be removed. This could not have been done. Therefore, the direction of the High Court that the entry of possession cannot continue in favour of either of the parties is set aside. The matter is remanded to the Supervisor Qanoongo, who after hearing both the sides, shall decide as to who is in legal possession of the land in dispute and thereafter make relevant entry in the revenue records."

(ii) Learned counsel has referred below mentioned specific averments raised in writ petition in support of his submissions and has assailed the finding returned by Deputy Director of Consolidation that PA 10 was not prepared in accordance with due procedure and Ramraj a witness of respondent had never accepted possession of petitioner. Specific averments raised in writ petition are as follows:-

"7. *That the Dy. Director of Consolidation committed a manifest error of law in discarding the entries from 1372 F till today in the Khasras and Khataunis which were quite according to law, as such the impugned order is untenable in law.*

8. *That the name of Petitioner was recorded in the Remarks column of Khasra 1372 F showing also the Diary No., date and P.A. 10, which is the only requirement under the rules for making the legal entry and raising the correctness of its presumption. It was for the Opposite party No. 2 to have established that P.A. 10 was not served on*

him. The view of the Dy. Director of consolidation to the contrary is manifestly erroneous. It is not necessary under the Rules to fix the P.A. 10 in the Khasra.

9. *That the entry of Barg-9 in Khasra and Khatauni in 1373 F and onward having been entered by the order of Supervisor Qanoon-go which is quite legal. The view of Opposite party No. 1 that Supervisor Qanoon-go had no authority to make the entry of Barg-9 on 18.10.64 is grossly erroneous and against the provisions of law. The Dy. Director acted illegally in not raising the presumption of correctness of entries and also the presumption of P.A. 10 having been issued /served and after complying with the Rules and also about the presumption of the official acts having been done and procedures having been followed.*

10. *That the statement and admission of Ram Raj about the possession of Petitioner has been completely misread, misconstrued and misinterpreted. Moreover, Ram Raj has asserted his own possession and not that of O.P. No.2. This aspect of the case has been ignored by the Dy. Director of Consolidation.*

11. *That all the findings and reasonings adopted by the consolidation officer and Settlement officer consolidation has not been adverted to by the Dy. Director while reversing their orders.*

12. *That the entire evidence on record oral and documentary adduced by the Petitioner has been completely, misread, misconstrued and misinterpreted by Dy. Director.*

13. *That the alleged sale deed was wholly immaterial so far as the question of possession is concerned.*

14. *That while considering the statement of Ram Raj, the Dy. Director of consolidation has wrongly mentioned that the counsel for the petitioner agreed with him about the statement of Ram Lal.*

15. *That the non appearance of petitioner, in the witness box was wholly immaterial in the circumstances of the present case.*

16. *That there is no ruling or case law of this Hon'ble court supporting the view of Dy. Director of consolidation nor has the opposite Party No. 1 mentioned any such case law.*

17. *That all the aforesaid points were fully pressed and argued on behalf of petitioner' before Dy. Director of Consolidation but not considered by him.*

18. *That the petitioner is in possession over the Chak allotted to them in accordance with the order of consolidation officer, & Settlement Officer (c) and opposite parties are trying to dispossess him on the basis of the illegal order of Opposite party No.1 which if they succeed will result irreparable loss and injury.*

(iii) Learned counsel has submitted that finding returned by Deputy Director of Consolidation that Supervisory *Kanungo* has no right to expunge an entry made in column to be erroneous and has referred **Jagtar Singh (supra)** that Supervisory *Kanungo* could make entry of possession in remark column but after making full publicity about his visit.

(iv) Learned counsel has submitted that in Column 9 there was

a reference of PA 10, which proves that petitioner was in possession and in pursuance of sale deed, possession was not handed over to Original Respondent No.2 since vendor was not in possession of land in dispute. There was record that PA 10 was issued though not pasted, which would have no adverse consequence since plea of adverse possession was an alternative plea, though it was not pressed therefore, Deputy Director of Consolidation has erroneously shifted burden of proof on petitioner, whereas burden was on original respondents that whether she in pursuance of sale deed got possession over land in dispute, to which she failed. In this regard learned Counsel has referred finding returned by Consolidation Officer and Settlement Officer of Consolidation as well as about admission of Ram Raj, a witness of respondents and that though petitioner-Moti Lal, has not appeared in person but his witness- Sri Ram Raj has given testimony about possession, which was misread by the Deputy Director of Consolidation.

4. Submissions on behalf of legal heirs of Respondent no.2.

(i) Learned counsel for respondents has supported the impugned order and submitted that petitioner has made a self-contradictory claim that he was in possession as *Bhumidhar* and in alternative has claimed right on basis of adverse possession. Both are self-destructive pleas.

(ii) Petitioner's possession was based on entry in Form P.A.- 10 and as held by Deputy Director of Consolidation that Form PA-10 was not properly prepared and that admittedly it was not pasted. Mandatory compliance of procedure prescribed under Para A-80 and Para 102-C of the Uttar Pradesh Land Records Manual, were not followed. Learned counsel has placed reliance on **Smt. Bitiya Bano vs. DDC, 1979 SCC Online All 502 :**

1980 RD 190, as well as on **Sadhu Saran & Anr Vs. Assistant Director of Consolidation, Gorakhpur & Ors, 2003 (94) RD 535**, and relevant paragraph thereof quoted hereinafter:-

"7. The authorities below have recorded concurrent findings of fact that in the present case P.A. 10 was not issued. It was held that the entry of clause IX was illegal as the same was made without order passed by any competent authority. It is well settled in law that the illegal entry does not confer title, therefore, the submission of learned counsel for the petitioners to the contrary cannot be accepted. The authorities below committed no error of law in holding that the petitioners have failed to make out a case of acquisition of sirdari rights in the land in dispute and that the entry in question was illegal."

(iii) Learned counsel also referred **Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbhai Harijan & Ors., AIR 2009 SC 103**, and submitted that essential requirements to prove adverse possession were absent in present case and referred paragraph 22 of it, which states that:-

"22. In a relatively recent case in P. T. Munichikkanna Reddy & Others v. Revamma & Others (2007) 6 SCC 59 this court again had an occasion to deal with the concept of adverse possession in detail. The court also examined the legal position in various countries particularly in English and American system. We deem it appropriate to reproduce relevant passages in extenso. The court dealing with adverse possession in paras 5 and 6 observed as under:-

"5. Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile. [See Downing v. Bird 100 So. 2d 57 (Fla. 1958), Arkansas Commemorative Commission v. City of Little Rock 227 Ark. Page 15 to 17.]

(iv) Learned counsel has distinguished **Jagtar Singh (supra)** on the issue that Supervisory *Kanungo* may have power to make entry of possession, but has no power to expunge it.

(v) Learned counsel referred extensively the impugned order that since there was error in order passed by the Consolidation Officer and the Settlement Officer of Consolidation, therefore, under power of Section 48 of Act of 1953, it was corrected on basis of correct appreciation of record.

5. Analysis.

(i) As referred above in present case concurrent findings returned by the Consolidation Officer and the Settlement Officer, Consolidation, were interfered by the Revisional Authority i.e., Deputy Director of Consolidation.

(ii) The Consolidation Officer as well as the Settlement Officer, Consolidation, has held that original respondent was in possession of land in dispute. The vendor of original respondent (vendee) was never in possession of land in dispute, therefore, not only vendor has no right/authority to execute sale deed but vendee also never got possession of land in dispute.

(iii) The Deputy Director of Consolidation has interfered with above referred findings essentially on ground that name of petitioner was recorded under Column-9 of revenue records, however, Form P.A.-10 was not prepared in terms of prescribed procedure, whereas vendor had possession on land in dispute.

(iv) The Deputy Director of Consolidation has interfered with concurrent finding within limited scope of revision as provided under Section 48 of Act of 1953 (as then it was) i.e. during regime of pre-amendment. In this regard, a judgement passed by this Court in the case of **Nathoo Ram & Anr Vs. Deputy Director of Consolidation, Varanasi & Ors: 2017 (124) ALR 753** would be relevant and paragraphs 61, 62 and 63 thereof being relevant are quoted hereinafter:

"61. In a recent decision in Jagdamba Prasad Vs. Kripa Shankar (2014) 5 SCC 707, the Court has considered Section 48 as amended in 1963, but thereafter in para 15, following earlier decision in Sher Singh Vs. Joint Director of Consolidation (supra), has said as under:

"15. According to the legal principle laid down by this Court in the case mentioned above, the power of the Revisional Authority under Section 48 of the Act only extends to ascertaining whether the subordinate courts have exceeded their jurisdiction in coming to the conclusion. Therefore, if the Original and Appellate Authorities are within their jurisdiction, the Revisional Authority cannot exceed its jurisdiction to come to a contrary conclusion by admitting new facts either in the form of documents or otherwise, to come to the conclusion. Therefore, we answer point no. 1 in favour of the appellants by holding that the Revisional Authority exceeded its jurisdiction under Section 48 of the Act by

admitting documents at revision stage and altering the decision of the subordinate courts."

62. It is thus difficult to observe that Explanation III to Section 48 has brought scope of revision at par with appellate jurisdiction so as to assess evidence on pure issue of fact and recording findings de novo. Revisional power is not a power of first or second appellate Court which are final Courts of fact. The findings recorded therein would be possible to be interfered under Section 48 only on the grounds, discussed in Ram Dular (Supra), Sheshmani (Supra) and Jagdamba Prasad (supra).

63. Recently, this Court has examined power of revisional authority in detail in Ram Udit Vs. D.D.C. & others (Writ S/S no. 885 of 2001) (Lucknow Bench), decided on 24.09.2014. This Court in para 26 of the judgment, has observed:

"..... From a bare and plain reading of Section 48(1) it is evident that Director of Consolidation has been given power to call for and examine any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself (i) to the regularity of the proceedings and (ii) to the correctness, legality or propriety of any order."

(v) I have carefully perused the impugned order passed by the Deputy Director of Consolidation. The authority has held that original respondent no.2 (Gangajali) was recorded as Sirdar whereas petitioner was recorded under Column 9, therefore, it was upto the petitioner to prove that due process

was followed in preparing P.A.10 however, petitioner was not able to prove it and further that according to oral evidence there was an admission that Somdutt and his mother were in possession of land in dispute through force.

(vi) Learned counsel for petitioner has criticized above referred finding mainly on two grounds that it was upon the respondents to prove that P.A.10 was not prepared in accordance with due procedure and that statements of witnesses were misread. It was also argued that impugned order was beyond jurisdiction.

(vii) It is well settled position of law that in view of Sections 101 and 102 of Evidence Act, ordinarily the burden of proof would be on the party who asserts the affirmative of the issue. The Supreme Court in **Anil Rishi Vs. Gurbaksh Singh (2006) 5 SCC 558** has held that:-

"The elementary rule in Section 101 is inflexible. In terms of Section 102, the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to relief, onus shifts to the defendant to prove those circumstances, if any which would disentitle the plaintiff to the same."

(viii) The Consolidation Officer has not referred to the effect of entry under Category 9 or preparation of P.A.10. The Authority has only considered statement of witnesses that since there was an admission that petitioner was in possession of land in dispute and respondent was not in possession, therefore, sale deed executed by her would not give any benefit to vendees.

(ix) The Settlement Officer of Consolidation has returned a finding that much before the sale deed dated 11.12.1970, petitioner was recorded in revenue records having possession of land in dispute and further that it was upon the respondents to prove whether P.A.10 was served upon them or not.

Petitioner's name was duly and legally recorded under Column 9. Respondent's witness (Ramasray) has accepted that petitioner was doing agriculture over land in dispute forcefully.

(x) At this stage, it would be relevant to refer statement of Ramraj (a certified copy is placed on record) that he has denied possession of petitioner on land in dispute. The witness has stated in his cross examination that, "यह कहना गलत है कि आ० नि० को मोती अदि जबरदस्ती जोते हैं" i.e. witness has specifically denied any possession of petitioner even under force, therefore, the finding returned by Settlement Officer of Consolidation that there was an admission of witness of Ramraj about possession of petitioner appears to be contrary to record. On other hand the Deputy Director of Consolidation has correctly observed that, "मैंने रामराज के बयान को पढ़ा। उसने जिरह में यह कही नहीं स्वीकार किया है कि विपक्षी ने निगरानीकर्ता के खेत को जबरदस्ती जोत लिया जैसा कि विद्वान स.व.अ.च. और च.अ. ने अपने अपने निर्णय में लिखा है"

(xi) The Deputy Director of Consolidation has considered two issues. Firstly P.A.10 was not served upon real Kashtkars and secondly witness Ramraj has not made any admission.

(xii) The Deputy Director of Consolidation has held that witness Sri Ram has accepted in cross-examination that he had forcefully taken possession of land of Somdutt and his mother, however, a copy of his statement supplied during arguments does not confirm it rather this witness has said "राम राज पांडे कभी आ.नि. को जबरदस्ती जोतने की कोशिश नहीं किया था।" and in cross he has stated that, "टीकम भूलन मर गये तो मैं आ० नि० जोतने लगा। मैंने जबरदस्ती जोत लिया।" therefore, this witness had never said that he had taken land forcefully from Somdutt and his mother. The Deputy Director of Consolidation has wrongly placed reliance on statement of Ramraj.

(xiii) Despite above discussion, it would not be proper to lost

sight of revenue records of Khasra 1372F. Somdutt was recorded as real Kashtkar whereas petitioner was recorded under column as Sikmi. Similar details were recorded in 1374F to 1378F and in 1372F to 1374F, name of petitioner was recorded under Column 9, therefore, claim of petitioner would be proved only when he remained successful that P.A.10 was properly prepared.

(xiv) At this stage, it would be apposite to refer few paragraphs of a judgment passed by this Court in **Mata Din Singh Vs. Deputy Director of Consolidation & Ors 2023:AHC:158629**. Relevant paragraphs thereof are extracted hereinafter:

"30. On the face of it, the above approach of Consolidation Officer appears to be contrary to the settled position of law. As referred above, there must be a finding on the basis of clear and unequivocal evidence that possession was hostile to real owner and to denial of his title and knowledge, to the property claimed. There must be animus of the person doing those acts which must be ascertained from the facts and circumstances of the case. However, the Consolidation Officer has in very cursory manner has decided the issue of adverse possession, without reference of above referred essential pleadings and nature of evidence being on record.

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32. The Deputy Director of Consolidation has placed heavy reliance again only on the entries made in revenue records and has not considered factors relevant for taking decision in regard to adverse possession that the possession was

adequate in continuity, publicity and adverse to competitor. Adverse possession requires that all three essential requirements to co-exist at the same time, viz., it should be adequate in continuity, adequate in publicity and adverse to competitors in denial of the title and his knowledge. There must be physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner. However, these important factors also skipped from consideration of Deputy Director of Consolidation as well as two Courts below.

33. I have carefully perused the contents of memo of counter affidavit filed by the respondents, however, they have not stated any averment in regard to any of the factors referred above. Even during the course of argument, learned Senior Advocate appearing for respondents has not pointed out any relevant detail or factor on record that claim of adverse possession was positively proved in terms of the above referred factors. The Ramdular (supra) relied upon by learned Senior Advocate for respondent would not be helpful since it is on the issue of power under Section 48 of U.P. Consolidation of Holdings Act, 1953, and Revisional Authority has power to reexamine the issue but contrary in present case, Deputy Director of Consolidation has not exercised that power.

34. In view of discussion and findings on above referred issues, I am of the considered opinion that all the Authorities under the Consolidation Act have erred and miserably failed to return a finding

whether mandatory procedure for recording revenue entries under 'the Manual' was followed and have also erred in returning a finding about adverse possession only on the basis of revenue entries which only indicates the possession of the respondents for less than 12 years as well as that PA-10 was not prepared in terms of the procedure prescribed under 'the Manual' and further erred in placing reliance on the evidence of mukhtar-khas who was not competent to give evidence in regard to facts which were in exclusive knowledge of the original respondent qua to adverse possession. Lastly, the Authorities have also failed to give finding that possession of respondent was nec vi, nec clam, nec precario."

(xv) In aforesaid circumstances now only issue left for consideration is that whether petitioner was able to prove his title on basis of adverse possession. There is a categorical finding of Deputy Director of Consolidation that "खसरा में पं० १० का अंजन नहीं है। इससे इस बात का संकेत मिलता है कि पं० १० जारी नहीं हुआ।" Deputy Director of Consolidation has also noted that "परन्तु उनकी ओर से यह सिद्ध नहीं किया गया कि असल कास्तकार एवं अन्य सम्बन्धित व्यक्तियों पर पं० १० जारी हुआ और उन पर तामीली हुई।"

(xvi) As referred in **Anil Rishi (supra)** initial burden was on petitioner to prove that P.A.10 was properly prepared and was served upon real Kashtkar, but from the records and orders, it would be evident that the petitioner has failed to discharge initial burden of prove. No material was placed on record which could indicate that P.A.10 was duly prepared or was served upon real owner, therefore, following finding returned by Deputy Director of Consolidation could not be faulted that:

"उपरोक्त विवेचना से यह स्पष्ट है कि विपक्षी के पक्ष में जो कब्जे का अंकन है वह नियमानुसार नहीं है इसलिये उसे इसके आधार पर कोई अधिकार प्राप्त नहीं हो सकता । जहां तक बतौर भू-स्वामी के अधिकार का प्रश्न है इसके बारे में पूर्व विवेचना की जा चुकी है। उनका यदि कोई अधिकार विवादित भूमि में था भी तो वह समाप्त हो चुका है। मौखिक साक्ष्य से विपक्षी को कोई लाभ नहीं मिलता।

बैनामा के आधार पर निरासनीकर्ता का नाम राजस्व अभिलेखों में अंकित हो चुका है। फस्तु उसका नाम गलती से बतौर भूमिधर के सीस्वार अंकित हुआ है। असल बैनामा फावली पर उमलब्ध है और उसमें कब्जा दखल का उल्लेख है। ऐसी स्थिति में निरासनीकर्ता बैनामे के आधार पर विवादित भूमि कि भूमिधर होगी।"

(xvii) The argument that Deputy Director of Consolidation at relevant time may by limited power under Section 48 of Act of 1953, has also no basis since Deputy Director of Consolidation has after considering evidence and material on record and on basis of valid reasons has interfered with orders passed by Consolidation Officer and Settlement Officer of Consolidation that P.A.10 was not duly prepared, which would not fall under 'reappreciation of evidence' rather examining the correctness and validity of the entries in Khasra/Khatauni in light of procedure to be followed during preparation of P.A.10 and it would be a case where substantial irregularity was committed by lower authorities. (See **Ram Bahal & Anr Vs. Deputy Director of Consolidation, Azamgarh & Ors, (2016) 16 SCC 493**).

(xviii) The Revisional Authority had jurisdiction to interfere with order or orders passed by lower authority or authorities only under such circumstances when authority has exercised jurisdiction not vested in him in law or failed to exercise jurisdiction vested in him or acted in the exercise of his jurisdiction illegally or with substantial irregularity and as a result of which substantial injustice

appeared to have been caused to a tenure holder. (See Act No.XXXVIII of 1958).

(xix) The word 'substantial' carries importance. Word 'substantial' often means more than 'significant'. Word 'substantial' means 'having substance' 'essential', 'real', 'of sound worth', etc. According to P.Ramanatha Aiyar's: The Law Lexicon 3rd Edition, 2012 meaning of word 'substantial' is 'considerable' and is not the same as 'not substantial'. Hindi translation of word 'substantial' as used in Amendment Act is 'साखान्' i.e. which goes to the root of dispute.

(xx) The Supreme Court in ***Ram Avadh & Ors Vs. Ram Das & Ors., (2008) 8 SCC 58***, has held that concurrent findings of two lower authorities could not be disturbed mainly on basis of assumption or without any basis. It would be relevant that above referred clauses were neither referred nor considered effect of U.P. Land Laws (Amendment) Act, 1982 (U.P.Act No.XX of 1982) enforced with effect from 10.11.1980.

(xxi) In view of above, I am of opinion that Revisional Authority had sufficient jurisdiction to interfere with concurrent findings of two authorities, if there was 'substantial irregularity' which had resulted in 'substantial injustice' to a land holder i.e. in present case, the respondents and as discussed above, there was 'substantial irregularity', which goes to the root of the case, therefore, no illegality or irregularity was committed by Deputy Director of Consolidation in impugned order.

6. The outcome of above discussion is that this writ petition has no force, accordingly dismissed.

7. No order as to costs.

Order Date :-13.10.2023

SB