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Reserved on 01.11.2023

Delivered on 08.11.2023

Court No. - 48

Case :- WRIT - B No. - 4087 of 1983

Petitioner :- Bhanwar Singh

Respondent :- D.D.C. And Others

Counsel for Petitioner :- C.S. Chaturvedi, Anil Kumar Tiwari, H.O.K. Srivastava, Rajendra Singh

Counsel for Respondent :- N.C. Rajvanshi, A.K. Srivastava, Manoj Kumar Rajvanshi, S.C., Vishesh Rajvanshi

Hon'ble Saurabh Shyam Shamshery, J.

1. This writ petition is pending since the year 1983. In first round of litigation, a case arising out of Section 9 of Uttar Pradesh Consolidation of Holdings Act, 1953 (hereinafter referred to as 'Act of 1953'), reached upto the Deputy Director of Consolidation and vide order dated 23.02.1981 matter was remitted back to the Settlement Officer of Consolidation to decide the appeals afresh.

2. On remand, the Settlement Officer of Consolidation vide order dated 19.01.1982 has rejected the appeal filed by original petitioner and partly allowed the appeal filed by original respondent no.4. Thereafter a revision was preferred against order dated 19.01.1982 by original petitioner but was dismissed by the Deputy Director of Consolidation vide order dated 05.02.1983.

3. In brief facts of the case are that a Khata No.114, situated at Village Mohammadpur Khurd, Pargana Hastinapur, Tehsil Mawana, District Meerut, was comprised of several plots bearing Nos.30, 52, 53, 71, 101 and 102.

4. On commencement of consolidation proceedings, one Kalu (predecessor-in-interest of Respondent Nos.5, 6 and 7) filed objections in respect to the Plot No.30, under Section 9A(2) of Act of 1953 claiming to be its Bhumidhar. In respect of Plot Nos.52, 53, 71 and 101, Dal Singh (Original Respondent No.4) filed objections claiming right on basis of adverse possession. On Plot No.102, Dal Singh (Original Respondent No.4) was found to be in possession during a *Partial* and therefore has filed objections claiming his right in respect of said plot.

5. The Consolidation Officer has allowed objections of Kalu (predecessor-in-interest of Respondent Nos.5, 6 and 7) in respect of Plot No.30 as well as allowed claim of Dal Singh (Original Respondent No.4) in respect of Plot No.52, however, rejected his objections in respect to the Plot Nos.53, 71, 101 and 102. The relevant part thereof is mentioned hereinafter:-

“श्री कलू तथा दल सिंह की ओर से अपने सबूत में नकल खतौनी महाल गांगार सन् 1357 फसली नकल खसरा सन् 1357 फ० नकल खसरा 12 साला सन् 1369 फ० से 1376 फ० नकल रिपोर्ट थाना जानी, पर्चाजात आबपासी सन् 1381 व 1382 फ० द्वारा दाखिल हुई है तथा श्री कालू स्वयं व दल सिंह स्वयं तथा गवाह घिस्सा के ब्यान हुये हैं। नकल खतौनी सन् 1357 फ० में विवादित गाटे इनके पुराने नम्बरान से राम सरन आदि का नाम दर्ज है। तथा इसी खतौनी में विवादित गाटे दल सिंह के नाम वर्ग 2 में बला लगान अंकित है। परन्तु वादीगण दल सिंह आदि की ओर से उक्त खतौनी के पश्चात का किसी खतौनी की नकल दाखिल नहीं की है जिससे यह साबित होता है कि सन् 1356 फ० के बाद भी विवादित गाटे दल सिंह आदि का नाम आदि चलते रहे। अतः खतौनी सन् 1356 फ० के ही आधार पर वादीगण को विवादित भूमि का सीरदार नहीं माना जा सकता है। नकल खसरा 12 साला सन् 1369-1376 फ० जो वादी वादीगण की ओर से दाखिल किया है उसके विवादित गाटो में से केवल गाटा सं० 30/1.193 पर कालू का कब्जा तथा गाटा संख्या 52/1.193 पर दल सिंह का कब्जा सन् 1369 फ० से 1376 तक लगातार अंकित है। तथा शेष विवादित नम्बरान पर वादी दल सिंह का कब्जा अंकित लगातार नहीं है। तथा वादी राम सरन व उनके गवाहान ने भी गाटा सं० 30/1.193 पर कालू का तथा गाटा संख्या 52/1.193 पर दल सिंह का कब्जा साबित किया है। तथा ग्राम मोहम्मद पुर खेडी के जमींदारी उन्मूलन अधिनियम सन् 1970 को लागू हुआ है। अतः वादी गण दल सिंह व कालू विवादित गाटो पर सन् 1969 फ० से 1376 फ० तक लगातार काबिज होने के कारण तथा जमीनदारी खात्मा के समय

भी विवादित गाटो पर काबिज होने के कारण कब्जे के आधार पर धारा 20 जमींदारी उन्मूलन के अनुसार अधिवासी हो गये तथा उनको जमीनदारी उन्मूलन लागू होने के पश्चात सीरदारी अधिकार प्राप्त हो गये है। गाटा संख्या 30/1.193, 52/1.193 के अतिरिक्त शेष गाटो पर वादी गण अपना लगातार कब्जा साबित करने में अस्मर्थ रहे हैं। अतः इन गाटो पर वादी दल सिंह का कब्जा नियमानुसार न होने के कारण किसी प्रकार के अधिकार प्राप्त नहीं होते हैं। अतः तर्क से सिद्ध है कि श्री कालू पुत्र हीरा गाटा संख्या 30/1.193 तथा श्री दल सिंह पुत्र हीरा गाटा संख्या 52/1.193 कब्जे के आधार पर सीरदार हैं। तथा इन गाटे से खाते पर राम सरन का नाम खारिज किया जाए वादीगण कालू आदि के नाम बतौर सीरदार दर्ज किया जाना तथा शेष विवादित गाटो के सम्बन्ध में दल सिंह की आपत्ति बाबत थाने सीरदारी अधिकार साबित किये जाने योग्य है। श्री राम सरन पुत्र कल्लू के मृतक होने तथा उनका एक मात्र वारिस भंवर सिंह पुत्र राम सरन दर्ज किया जाने के सम्बन्ध में तथा श्री कालू पुत्र हीरा के मृतक होने तथा उसके वारिसान मूल चन्द्र बालिग रूपमती आयु 15 साल, सतेन्द्र आयु 11 साल, देवेन्द्र आयु 7 साल संरक्षक श्रीमती आसी माता स्वयं पुत्रगण कालू को दर्ज किये जाने के सम्बन्ध में पक्षों में कोई विवाद नहीं है। अतः मृतक राम सरन तथा कालू के स्थान पर उनके अंकित वारिसान के नाम दर्ज किया जाना उचित है। वाद बिन्दु नं० 1 व 2 उपरोक्तानुसार निर्णीत किये जाते हैं। ”

(Emphasis supplied)

6. Since both the parties were aggrieved by aforesaid order of Consolidation Officer, therefore, they preferred two separate appeals.

7. The Settlement Officer of Consolidation by an order dated 05.07.1978 dismissed an appeal filed by the appellant/original petitioner Bhanwar Singh, however, partly allowed the appeal filed by Dal Singh (Original Respondent No.4).

8. As referred above, the aforesaid order of Settlement Officer of Consolidation was challenged before the Deputy Director of Consolidation, who by order dated 23.02.1981, allowed the revision petition and remanded case to the Settlement Officer Consolidation to decide the appeals afresh. On remand, the Settlement Officer of Consolidation dismissed the appeal filed by the appellant/original petitioner Bhanwar Singh and partly allowed the appeal filed by Dal Singh (Original Respondent No.4) as held in earlier round that Original Respondent No.4 (Dal Singh) has also proved their claim on

Plots No.53, 71, 101, however claim on Plot No.102 remained rejected.

The relevant part thereof is mentioned hereinafter:-

“6. गाटा सं० 102 पर कब्जे का इन्द्राज ऐसा नहीं है जिससे कि यह साबित हो सके कि दल सिंह का कब्जा विवादित भूमि पर दर्ज खातेदपर की जानकारी मे जायद मुदत 6 या 12 साल से रहा हो। इस नम्बर की बाबत बहस के समय भी दल सिंह की ओर से कुछ नहीं कहा जा सकता। गाटा सं० 52 पर 1376 फ० से कब्जे का इन्द्राज है। 1376 फ० के इन्द्राज का वही महत्व है जैसा कि 1356 फ० के इन्द्राज का है क्योंकि यहां पर जमींदारी उन्मूलन अधिनियम सन् 01.07.70 ई० को लागू हुआ था और गाटा सं० 52 पर सन् 1369 फ० से दल सिंह के कब्जे का इन्द्राज है। इस की बाबत पी० 10 जारी होने का प्रमाण तो पत्रावली पर नहीं है किन्तु इसकी आवश्यकता इसलिये नहीं है कि सन् 1356 फ० में कब्जे में जो दर्ज थे वे अधिवासी से सीरदार हो गये थे। इसी प्रकार स्थित इस नम्बर की है। इस के अतिरिक्त गाटा सं० 53 में सन् 1369 फ० लगायत 1374 फ० तक अन्य व्यक्ति महेन्द्र सिंह का कब्जा दर्ज था और उसके बाद दल सिंह के कब्जे का इन्द्राज प्रारंभ हुआ और सन् 1375 फ० से दल सिंह गाटा सं० 71, 53, 101 पर काबिज चला आया। चूंकि 1376 फ० में इन नम्बरान पर दल सिंह के कब्जे का इन्द्राज है इसलिये इन नम्बरान पर अधिवासी से सीरदारी अधिकार दल सिंह को प्राप्त हो जाते हैं। पी० 10 जारी होने की बात केवल वहां लागू होती है जहां पर कि जमींदारी उन्मूलन अधिनियम सन् 1952 ई० में लागू हुआ था किन्तु यहां पर जमींदारी उन्मूलन अधिनियम 01.07.70 ई० को लागू हुआ है इसलिये पी० 10 जारी हो की बात महत्वहीन है। पी०ए० 10 जारी होने की बात इन मुकदमों में इसलिये पैदा नहीं होती क्योंकि गाटा सं० 52,53,71,101 पर दल सिंह का कब्जा जमींदारी उन्मूलन अधिनियम लागू होने के पहले से है और 1376 फ० में उसका नाम श्रेणी 20 में दर्ज था। गवाहान के गयानात से भी गाटा सं० 30 पर कल्लू के लड़को मूलचन्द्र आदि का तथा गाटा सं० 52,53,71 तथा 101 पर दल सिंह का कब्जा स्पष्ट होता है। खुद भंवर सिंह ने अपने बयान में यह स्वीकार किया है कि मेरी या मेरे पिता की कोई रंजिस पटवारी या लेखपाल से नहीं थी। ऐसी दशा में इन्द्राजात जो कब्जे की बाबत है, के सही होने का बाबत शक नहीं किया जा सकता नम्बरान में रकबो की सिंचाई करने की बाबत सिंचाई रसोदात भी दल सिंह की ओर से दाखिल की गई है। 1357 फ० खतौनी के भाग। मे राम सरन पुत्र कल्लू का नाम दर्ज था तथा भाग 2 में दल सिंह का नाम दर्ज था। जमींदारी उन्मूलन अधिनियम के लागू होने के समय भी दल सिंह का व मूल चन्द्र के पिता कल्लू का कब्जा था। इस प्रकार मेरे पूर्वाधिकारी द्वारा इन अपीलो में जो आदेश दिनांक 05.07.78 ई० को पारित किया गया था, उससे मैं सहमत हूँ तथा उसमें इन्द्राजात की बाबत स्पष्ट व पूर्ण विवरण भी दिया गया है। इन नम्बरान की बाबत पी०-10 जारी करने का विवरण ऊपर आ चुका है तथा इन दोनों में पी० 10 जारी किये जाने की वास्तविकता को देखने की आवश्यकता भी नहीं थी और इसी के

अनुसार भवर सिंह द्वारा प्रस्तुत अपील खारिज हो जानी चाहिये तथा दल सिंह द्वारा प्रस्तुत अपील आंशिक रूप से स्वीकार हो जाना चाहिए।”

(Emphasis supplied)

9. Thereafter, two revisions filed by the rival parties, were dismissed by order dated 05.02.1983. The relevant part thereof is mentioned hereinafter:-

“7. इस ग्राम मोहम्मदपुर खेडी में हर पांच साल बाद अभिलेखशुद्ध (रिकार्ड अपरेशन) होता था। इस प्रकार इस ग्राम के संबंध में उत्तर प्रदेश भू-राजस्व अधिनियम के चैप्टर 4 के प्राविधान लागू होंगे और उसकी धारा 57 के अनुसार अभिलेख शुद्धि के समय किये गये प्रविष्टि सही माना जायेगा जब तक कि उनको गलत प्रमाणित न कर दिया जाय। फर्द मुताबिक दाखिल करके यह प्रमाणित किया गया है कि इस ग्राम में अभिलेख शुद्धि हुई थी और उस समय भी इस कब्जा की प्रविष्टि की पुष्टि की गई है। पुनरीक्षण कर्ता ने अपने बयान में यह स्वीकार किया है कि सिंचाई के पर्चे कालू और दल सिंह के नाम भी आते हैं। उसकी ओर से कोई सिंचाई का पर्चा दाखिल नहीं किया गया है। उसने अपना भूमि के विषय में सिंचाई के पर्चे दल सिंह, कालू के नाम जारी करने के लिये नहर विभाग को कोई शिकायत नहीं की। इसका अर्थ यह होता है कि पुनर्निरीक्षण कर्ता को विपक्षी गण का कब्जा का ज्ञान था और उसने जानकारी होते हुये भी कोई कार्यवाही नहीं की। ऐसी स्थिति में खसरे में श्रेणी 20 और तदोपरान्त श्रेणी 8 की गई प्रविष्टि को अनियमित नहीं माना जा सकता क्योंकि सिंचाई के पर्चों से बल प्राप्त करता है और पुनर्निरीक्षण कर्ता द्वारा दिये गये बयान से भी इस प्रविष्टि को अप्रत्यक्ष रूप से पुष्टि ही होती है। उसके द्वारा सिंचाई के पर्चों के संबंध में कोई कार्यवाही नहीं करना ही इस बात की पुष्टि करता है कि कब्जा की जानकारी होते हुये भी कार्यवाही नहीं की गयी है।

8. अतः इन दोनों पुनर्निरीक्षण में कोई बल नहीं है और दोनों पुनर्निरीक्षण निरस्त किये जाते हैं। यह आदेश पुनर्निरीक्षण संख्या 615 पर संलग्न रहेगा और पुनर्निरीक्षण संख्या 617 पर भी लागू होगा।”

(Emphasis supplied)

10. Shri Pradeep Kumar Rai, learned counsel for the petitioner has mainly concentrated his arguments on issue that though the Zamindari was abolished qua to concerned village w.e.f. 01.07.1970, that is from the date, U.P. Zamindari Abolition & Land Reforms Act, 1950 (hereinafter referred to as ‘Act of 1950’) was enforced qua to concerned village, however, the relevant date to determine the rights of

rival parties under the Act of 1950, would be the date of vesting i.e. 01.07.1952, and in order to justify claim of contesting respondent, they have to prove that they were occupant of land in dispute, immediately preceding the date of vesting (i.e. 01.07.1952) and continued to be occupant thereafter and correspondingly by virtue of the provision of Section 20 (2)(b) of Act of 1950, they would initially become 'Adhivasi' and later on, 'Sirdar'.

11. Learned counsel for the petitioner further submitted that the authorities have wrongly considered claim of the respondent on basis of the date of abolition of Zamindari in the concerned village i.e. 01.07.1970 and by virtue of earlier amendment (as existed on the date), there was no terminology named 'Adhivasi'.

12. The counsel for the petitioner has not much disputed the revenue records as available on record except that it was not prepared in accordance with prescribed procedure and made a reference of para 43 of **Bhagwati Deen Vs Seetladeen & Others 2022 (156) RD 602**, which is reproduced hereinafter:-

“43. It is equally settled that an entry in the revenue records do raise a presumption but the same is rebuttable in nature. Any entry which is not prepared in accordance with law cannot confer any benefit to a party claiming the same. In the instant case as both the SOC as well as the DDC have meticulously considered the submissions and the material available on record and had arrived at a finding that merely because of one entry in 1359 fasli which is also not proved nor having been made in accordance with the provisions contained under the Land Revenue Act as has been discussed in the preceding paragraphs, no benefit could be granted to the petitioner, thus, the third plea of the petitioner also fails and the Special Bench decision of Avdhesh Singh (Supra) also does not come to the rescue of the petitioner. Moreover, it could not be disputed that the respondents were granted bhumidhari rights after the application of the respondents under Rule 109 of the Uttar Pradesh Consolidation of Holdings, Rules, 1954 was allowed.”

13. Per contra, Shri N. C. Rajvanshi, learned Senior Counsel assisted by Shri Vishesh Rajvanshi, learned counsel for the respondent has placed reliance on the Section 20 of Act of 1950 and submitted that

since the revenue entries were in favour of the contesting respondent being occupant of the land in dispute, therefore consequence of law shall follow and only on basis of dispute of terminology 'Adhivasi', the right of the respondents, if any, could not be diluted.

14. Learned Senior Counsel further submitted that corresponding Fasli Year of the date of Zamindari abolition i.e. 01.07.1970 would be 1376 fasli and one year of occupancy will be determined on the basis of 1377 fasli, which was in favour of Respondents.

15. Learned Senior Counsel further submitted that issue of Form P. A. 10 would not be relevant since Zamindari qua to village, where land in dispute is situated, was abolished on 01.07.1970, therefore, there was no provision in regard to Form P. A. 10 prior to it.

16. In rejoinder learned counsel for the petitioner submitted that Uttar Pradesh Land Reforms (Supplementary) Act, 1952 (U.P. Act No.XXXI of 1952), which came into force w.e.f. 07.11.1952 and accordingly, relevant year would be 1359 fasli and relevant part of the said Act i.e. Section 3 is reproduced hereinafter:-

“3. Persons in cultivatory possession in 1359 Fasli to be adhivasis or asami. - Every person who was cultivatory in possession of any land during the year 1359 Fasli but is not a person who as a consequence of vesting under Section 4 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the said Act) has become a bhumidhar, sirdar, adhivasi, or asami under Section 18 to 21 of the said Act shall be and is hereby declared to be, with effect from the appointed date-

(a) if the bhumidhar or sirdar of the land was, or where the land belongs jointly to two or more bhumidhars or sirdars, all of them were, on the appointed date person or persons referred to in items (i) (vi) of sub-section (2) of Section 10 of the said Act an asami from year to year, or

(b) if the bhumidhar or sirdar was not such a person, an adhivasi ;

and shall be entitled to all the rights and be subject to all the liabilities conferred or imposed upon an asami or an adhivasi, as the case may be, by or under the said Act.

Explanation – (1) A person shall not be deemed to be in cultivatory possession of the land, if he was cultivating it as a mortgagee with possession or a thekadar, or he was merely assisting or participating

with a bhumidhar, sirdar, adhivasi or asami concerned in the actual performance of agricultural operations.

(2) Where an adhivasi or asami declared under sub-section (1) has been dispossessed otherwise than in due course of law, he or any person claiming through him apply within six months of the date of making the entry referred to in sub-section (2) of Section 4 to the Assistant Collector in-charge of the Sub-Division for putting him in possession of the land and the provisions of Section 232 of the said Act shall, in so far as may be, apply to and the order of the Assistant Collector shall be executable in the same manner as an order under sub-section 4 of the said section.”

17. Learend counsel has placed reliance on **Ram Deo Vs. D.D.C. and Ors : 2020 (3) AWC 2993** and relevant paragraph thereof are mentioned herinafter:-

“11. Thus, the petitioner who was in cultivatory possession of the disputed plot in the year 1359 F as is evident from the record and who was not a person who as a consequence of vesting under Section 4 of U. P. Z. A. & L. R. Act had become bhumidhar, sirdar, adhivasi or asami under Sections 18 to 21 of U. P. Z. A. & L. R. Act and recorded bhumidhar of the disputed plot, and was not a person referred to item 1 to 6 of Sub-section 2 of Section 10 of U. P. Z. A. & L. R. Act, the petitioner’s father became adhivasi by virtue of Section 3(1)(b) of the Act of 1952.

12. Both the respondent nos. 2 and 1 had failed to examine and consider the consequences of Section 3(1)(b) of Act of 1952 and hence, the impugned orders passed by them cannot be sustained and are liable to be set aside.”

18. Heard learned counsel for the parties and perused the records.

19. In the background of above referred facts and rival submissions made by parties, it would be undisputed that the U.P. Zamindari Abolition and Land Reforms Act, 1950 was came into force in regard to concerned village on 01.07.1970 and corresponding fasli year would be 1376.

20. The crux of the controversy in the aforesaid circumstances is whether relevant date would be, the date on which the Act of 1950 itself came into force i.e. revenue entry of corresponding fasli year 1356 as well as effect of Act No.XXXI of 1952 or the date on which, the Act of 1950 came into force in concerned village i.e. corresponding fasli year 1376. All the three authorities have considered that relevant

fasli year would be 1376 when the revenue entries were in the name of (Original Respondent No.4) Dal Singh and on basis of possession and by virtue of provisions of Act of 1950, they became 'Adhivasi' and later on, 'Sirdar' as well as that Form P.A. 10 would have no importance. None of authorities have considered effect of Act No.XXXI of 1952, if any since it was not argued.

21. In this regard Section 1 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 would be relevant. It provides short title, extent and commencement. Sub-section (2) of it provides that it extends to the whole of the Uttar Pradesh except the areas which, on the 7th day of July, 1949, were included in a municipality or a notified area under the provisions of the United Provinces Municipalities Act, 1916 or a Cantonment, under the provisions of the Cantonment Act, 1924 or a Town Areas under the provisions of the United Provinces Town Areas Act, 1914. Sub-section 3 provides that Act shall come into force at once except, by different notifications on area mentioned in Section 2.

22. Section 4 of the said Act provides 'vesting of estates' in the State that as soon as may be after the commencement of this Act, the State Government may, by notification, declare that, as from a date to be specified, all estates situate in Uttar Pradesh shall vest in the State and the date of vesting was notified to be 01.07.1952. Sub-section (2) of the said section further provides that it shall be lawful for the State Government, to issue the notification referred to in sub-section (1) in respect only of such area or areas as may be specified and all the provisions of sub-section (1) shall be applicable to and in the case of every such notification.

23. Section 5 of the said Act provides notification to be published in the Gazette that the notification referred to in Section 4 shall be published in the Gazette and such publication shall be conclusive proof of the due publication thereof.

24. Section 6 of the said Act provides consequences of the vesting of an estate in the State that all the estates as provided therein will be vested in the State of Uttar Pradesh free from all encumbrances from the beginning of the date of vesting.

25. From the bare reading of the above referred provisions, the relevant date would be, the date of issuance of notification under Section 4 of the Act of 1950 and that would be, the date of vesting and with effect from the said date provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950 would commence and in the present case it is not under dispute that date of the notification was 01.07.1970, therefore, for purpose of application of Section 20, relevant date would be the date immediately preceding the date of vesting and it is also not under dispute that corresponding fasli year would be 1376 and one year of occupancy would be determined on basis of revenue entries in fasli year 1377 and admittedly it was in favour of the respondents.

26. Section 2(a) of U.P. Act No.XXXI of 1952 provides that “appointed date” means, with reference to any area, the date of vesting of such area under Section 4 of the U.P. Zamindari Abolition & Land Reforms Act, 1950, therefore, “appointed date” would differ on basis of “date of vesting”.

27. Section 3 of U.P. Act No.XXXI of 1952 provides that “persons in cultivatory possession in 1359 F to be adhivasi or asami”, in order to take benefit of aforesaid provision as the enactment itself indicates it is a supplementary provision to acquire rights of adhivasi or asami rights by persons who under a legal title were in possession in 1359 F however not on date of vesting, as well as it further qualifies that if the bhumidhar or sirdar of land was, or where the land belongs jointly to two or more bhumidhars or sirdars, all of them were, on the appointed date would be an asami from year to year or if the bhumidhar or sirdar was not such a person, an adhivasi. Therefore, in order to take benefit of above referred provision, petitioner has not pleaded that he was a ‘person in cultivatory possession in 1359 F’.

28. Supreme Court in **Sonawati and Others Vs. Sri Ram and Another**, AIR 1968 SC 466, has dealt with scheme of Section 3 of U.P. Land Reforms (Supplementary) Act, 1952 and paragraph no.9 thereof being relevant, is reproduced hereinafter:-

“9. The scheme of s. 3 of the U.P. Land Reforms (Supplementary) Act, 1952 is different from the scheme of s. 20(b) of the U.P. Zamindari Abolition and Land Reforms Act 1 of 1951. Whereas under Act 1 of 1951 the entry is made evidence without further enquiry as to his right of the status of the person who is recorded as an occupant, under s. 3 of the U.P. Land Reforms (Supplementary) Act, 1952, a person who claims the status of an asami or an adhivasi must establish that he was in "cultivatory possession" of the land during the year 1359 Fasli. The expression "cultivatory possession" is not defined in the Act, but the Explanation clearly implies that the claimant must have a lawful right to be in possession of the land, and must not belong to the classes specified in the explanation. "Cultivatory possession" to be recognized for the purpose of the Act must be lawful, and for the whole year 1359 Fasli. A trespasser who has no right to be in possession by merely entering upon the land forcibly or surreptitiously cannot be said to be a person in "cultivatory possession" within the meaning of s. 3 of U.P. Act 31 of 1952. We are of the view that the Allahabad High Court was right in holding in Ram Krishna v. Bhagwan Baksh Singh(1) that a person who through force inducts himself over and into some land and succeeds in continuing his occupation over it cannot be said to be in cultivatory possession of that land so as to invest him with the rights of an asami or an adhivasi, and we are unable to agree with the subsequent judgment of a Full Bench of the Allahabad High Court in Nanhoo Mal v. Muloo and others(2) that occupation by a wrongdoer without any right to the land is "cultivatory possession" within the meaning of s. 3 of the U.P. Act 31 of 1952.”

29. As referred above, the petitioner in order to take benefit of above provision must prove that he was in ‘cultivatory possession’ of land during 1359 F, however, petitioner has never asserted his right on basis of his ‘cultivatory possession’ nor Consolidation Officer has framed any such issue. No such averment was raised in memo of writ petition, therefore, at this stage in absence of specific pleading and document on record, the Court could not conclude that petitioner was a person in ‘cultivatory possession’ of land during 1359 F, therefore, this argument has no legal force.

30. The argument of learned counsel for the petitioner is that in the corresponding year, there was no term as 'Adhivasi' and which was wrongly used in the impugned orders. In this regard the contention of the learned Senior Counsel for the respondents would be relevant that

such terminology will have no adverse consequence, since otherwise in accordance with law the respondents have become 'Sirdar' even without going through the declaration of being 'Adhivasi'.

31. It is also well settled principles of law that concurrent findings of authorities could be interfered only when there are perverse or beyond jurisdiction. However, as the facts discussed above, none of the said factors are available in the present case.

32. In the aforesaid circumstances, this Court is of the considered opinion that there is no circumstance exists in the present case to interfere with the concurrent findings, accordingly, this writ petition has no force and lacks merits. Accordingly, this writ petition is **dismissed**.

33. No order as to costs.

Order Date :- 08.11.2023

Zafar