

A.F.R.

Neutral Citation No. - 2023:AHC:198657

Reserved on : 31.07.2023

Delivered on : 13.10.2023

Court No. :- 65

1. Case :- WRIT - B No. - 612 of 2022

Petitioner :- Achhaibar Yadav And 6 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Kripa Shanker,Rama Shanker

Counsel for Respondent :- C.S.C.,Bhupendra Kumar Tripathi

Connected with

2. Case :- WRIT - B No. - 927 of 2020

Petitioner :- Vijay Kumar And 5 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Shyamdhara Pandey,Diwakar Mishra

Counsel for Respondent :- C.S.C.,Bhupendra Kumar Tripathi,Sunil Kumar Singh

Connected with

3. Case :- WRIT - B No. - 1092 of 2020

Petitioner :- Radhey Shyam And 4 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Harihar Prasad Yadav,Birendra Pratap Yadav,Krishna Kant Yadav

Counsel for Respondent :- C.S.C.,Bhupendra Kumar Tripathi,Sunil Kumar Singh

Connected with

4. Case :- WRIT - B No. - 656 of 2021

Petitioner :- Manna And 2 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Surya Nath Yadav

Counsel for Respondent :- C.S.C.

Connected with

5. Case :- WRIT - B No. - 1828 of 2021

Petitioner :- Kanta And 4 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Diwakar Mishra

Counsel for Respondent :- C.S.C.

Connected with

6. Case :- WRIT - B No. - 2301 of 2021

Petitioner :- Rambodh And 11 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Kripa Shanker

Counsel for Respondent :- C.S.C.

Connected with

7. Case :- WRIT - B No. - 1193 of 2022

Petitioner :- Bechan Ram And 19 Others

Respondent :- State Of U P And 5 Others

Counsel for Petitioner :- Diwakar Mishra

Counsel for Respondent :- C.S.C., Bhupendra Kumar Tripathi

Connected with

8. Case :- WRIT - B No. - 1788 of 2022

Petitioner :- Gaya Prasad Rai And 5 Others

Respondent :- State Of U P And 5 Others

Counsel for Petitioner :- Diwakar Mishra, Shyamdhara Pandey

Counsel for Respondent :- CSC, Bhupendra Kumar Tripathi

Connected with

9. Case :- WRIT - B No. - 2883 of 2022

Petitioner :- Rajendra Prasad Singh

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Diwakar Mishra,Shyamdhara Pandey
Counsel for Respondent :- C.S.C.,Bhupendra Kumar Tripathi

Connected with

10. Case :- WRIT - B No. - 3002 of 2022

Petitioner :- Mohammad Sabir Ali And 2 Others
Respondent :- State Of U.P. And 5 Others
Counsel for Petitioner :- Shyamdhara Pandey,Diwakar Mishra
Counsel for Respondent :- C.S.C.,Bhupendra Kumar Tripathi

Connected with

11. Case :- WRIT - B No. - 18 of 2023

Petitioner :- Kamlesh Yadav And 2 Others
Respondent :- State Of U.P. And 5 Others
Counsel for Petitioner :- Vinod Kumar Singh
Counsel for Respondent :- C.S.C.,Bhupendra Kumar Tripathi

Connected with

12. Case :- WRIT - B No. - 20 of 2023

Petitioner :- Lalchand Yadav
Respondent :- State Of U.P. And 5 Others
Counsel for Petitioner :- Vinod Kumar Singh
Counsel for Respondent :- C.S.C.,Bhupendra Kumar Tripathi

Connected with

13. Case :- WRIT - B No. - 21 of 2023

Petitioner :- Bachanu Yadav And 4 Others
Respondent :- State Of U.P. And 5 Others
Counsel for Petitioner :- Diwakar Mishra,Shyamdhara Pandey
Counsel for Respondent :- C.S.C.,Bhupendra Kumar Tripathi

Connected with

14. Case :- WRIT - B No. - 33 of 2023

Petitioner :- Hari Nath

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Rama Shanker, Kripa Shanker

Counsel for Respondent :- C.S.C., Bhupendra Kumar Tripathi

Connected with

15. Case :- WRIT - B No. - 249 of 2023

Petitioner :- Tilakdhari And Another

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Diwakar Mishra, Shyamdhari Pandey

Counsel for Respondent :- C.S.C., Bhupendra Kumar Tripathi

Connected with

16. Case :- WRIT - B No. - 316 of 2023

Petitioner :- Munra

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Vinod Kumar Singh

Counsel for Respondent :- C.S.C., Bhupendra Kumar Tripathi

Connected with

17. Case :- WRIT - B No. - 1283 of 2023

Petitioner :- Kharpattu Bhola Yadav

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Diwakar Mishra, Shyamdhari Pandey

Counsel for Respondent :- C.S.C., Bhupendra Kumar Tripathi

Hon'ble Rajeev Misra, J.

1. All these writ petitions have been filed challenging the order dated 14.01.2020 passed by the Deputy Director of Consolidation, Varanasi (hereinafter referred to as the DDC) in Reference No. 660 of 2019 (Gram Sabha Vs. Ramashray and others), under Section 48 (3) of the U.P. Consolidation of Holdings Act (herein after referred to as the U.P.C.H. Act), Village-Rampur Pargana-Kolasala, District-Varanasi, whereby aforementioned reference has been allowed. The alleged

order of the Tahsildar dated 26.05.1952 has been set aside. It has also been directed that all the plots recorded in Khata No. 585 in the Khatauni of 1366 to 1368 Fasli, as Banjar shall be re-recorded in the Banjar Khata.

2. That Village-Rampur, Pargana-Kolasala, District-Varanasi, where the land in dispute is situate was brought under Consolidation operations by means of a Gazette notification dated 09.08.1972 published under Section 4 (2) of the U.P.C.H. Act.

3. It transpires from record that no objection under Section 9A(2) of the U.P.C.H. Act was filed by the Gaon Sabha concerned claiming right, title or interest over the land in dispute. Land in dispute, which was part of the consolidation area, was accorded valuation. No objection under section 9-B of the U.P.C.H. Act was filed by the Gaon Sabha disputing the valuation accorded to the land in dispute. As such, the land in dispute was included in the Chak Allotment Scheme. Resultantly, new tenures came to be allotted to different land holders on the land in dispute by virtue of the provisions contained in Section 19 of the U.P.C.H. Act.

4. Subsequently, village-Rampur, where the land in dispute is situate was denotified for the purposes of consolidation by means of a Gazette Notification dated 29.08.2020. The effect of the same was that consolidation operations in the village, where the land in dispute is situate came to an end.

5. During pendency of consolidation operations, an application dated 30.12.17 alleged to have been filed on behalf of most of the villagers of Village-Rampur, was submitted before the District Magistrate, Varanasi, alleging therein that the names of tenure holders, which

have been fraudulently recorded on the basis of forged lease, alleged to have been executed by Bhoodan Yagya Committee over Survey Plot No. 372/1 area 10.72 acres be expunged and the said plot be re-recorded in the Banjar Khata as was previously recorded. It is apposite to mention here that the said complaint is not signed by any individual villager nor a list is appended to the same disclosing the names and signature of the villagers' who have signed the complaint. The same is manifest from the complaint itself, copy of which is on record as Annexure-1 in WRIT-B No. 612 of 2022 (Acchaibar Yadav Vs. State of U.P.). It is this complaint, which has given rise to the litigation out of which, this bunch of writ petition arises.

6. As per the aforesaid application, the dispute relates to following plots situate in Village-Rampur, Pargana-Kolasala, District-Varanasi:-

(I) Plot No. 372/1 Bhoodan area 10.72 acres.

(II) Plot No. 420/1 Bhoodan area 05.50 acres.

(III) Plot No. 639/1 Bhoodan area 03.74 acres.

(IV) Plot No. 706/1 Bhoodan area 04.83 acres.

(V) Plot No. 980/1 Bhoodan area 26.17 acres.

(VI) Plot No. 1060/1 Bhoodan area 05.29 acres.

(VII) Plot No. 10612/1 Bhoodan area 02.80 acres.

(VIII) Plot No. 1136/1 Bhoodan area 07.87 acres.

(IX) Plot No. 1167/1 Bhoodan area 08.86 acres.

(X) Plot No. 1731/1 Bhoodan area 06.68 acres.

(XI) Plot No. 1758/1 Bhoodan area 03.93 acres.

(XII) Plot No. 1770/1 Bhoodan area 02.81 acres.

(XIII) Plot No. 2081 Bhoodan area 04.06 acres.

(XIV) Plot No. 2418 Bhoodan area 10.66 acres.

(XV) Plot No. 2442 Bhoodan area 03.52 acres.

((XVI) Plot No. 2456 Bhoodan area 14.68 acres.

(XVII) Plot No. 2457 Bhoodan area 06.50 acres.

(XVIII) Plot No. 2480 Bhoodan area 09.10 acres.

(XIX) Plot No. 2601 Bhoodan area 09.08 acres.

(XX) Plot No. 2613 Bhoodan area 22.72 acres.

(XXI) Plot No. 2674/1 Bhoodan area 08.64 acres.

(XXII) Plot No. 2675 Bhoodan area 07.50 acres.

7. Aforementioned application dated 30.12.2017 was entertained by the District Magistrate-Varanasi, who is also the District Deputy Director of Consolidation by virtue of Section 4-B of U.P.C.H. Act. The District Magistrate, Varanasi, passed an order dated 30.12.2017 on the aforesaid application, whereby a report was called for.

8. In the light of aforementioned order dated 30.12.2017, a report dated 04.09.2018 was submitted by the Settlement Officer of Consolidation, Varanasi. Thereafter, it was decided that the matter be registered under Section 9 of the U.P.C.H. Act and was referred to

the Consolidation Officer-II Varanasi for disposal. The Consolidation Officer-II, Varanasi, however, instead of registering a case under Section 9 of the U.P.C.H. Act, referred the matter to D.G.C. Revenue for his opinion in the matter vide his letter dated 27.09.2019. Ultimately, in the light of the opinion given by the D.G.C. Revenue and the enquiry conducted by the Consolidation Officer-II, Varanasi himself, he opined that revenue entries in respect of the land in dispute be expunged and the land in dispute be re-recorded in the Banjar Khata. In view of above, the Settlement Officer of Consolidation, Varanasi, made his report dated 18.10.2019 and in furtherance thereof registered the complaint dated 30.12.2017 alleged to have been filed by the villagers referred to above, as a reference in terms of Section 48(3) of the U.P.C.H. Act. Accordingly, Reference No. 660 of 2019 (Gaon Sabha Vs. Ram Ashray and Others), under Section 48(3) U.P.C.H. Act, Village-Rampur, Paragna-Kolasala, District-Varanasi came to be registered.

9. As per the report of the Consolidation Officer on the basis of which aforementioned reference came to be registered, the following entries in respect of different tenure holders were disputed;

भूदान यज्ञ कमेटी विवरण

ग्राम रामपुर, परगना कोलअसला, तहसील पिण्डरा, जिला वाराणसी

क्रम सं०	आधार वर्ष खतौनी खाता सं०	चक संख्या	गाटा संख्या	रकबा	नाम खातेदार, पिता का नाम, निवास स्थान	विशेष विवरण
1	2	3	4	5	6	7
1	447	932	2580/4	3.05	हर्षिचन्द्र पुत्र सनन्द स्थानीय	
			2580/5	0.7		
			2580/6	0.15		
			2580/8	1.94		
2	334	253	2674	1.56	पुन्नासी, फलाल, सुबेदार पुत्राण दैलत व राजेन्द्र पुत्र स्व. प्रेमचन्द, अम्नाथ व राज नाथ पुत्राण रामरूप स्थानीय	

3	406	375	2674	0.32	छेदी प्रसाद व रामसुन्दर पुत्राण विरजू व शिवधनी व रामधनी पुत्राण स्व० गेहूर स्था०	
4	404	436	2674	2.32	कुन्नी लाल, रामधारी पुत्राण बाबूनन्दन व मुन्नीलाल व रामधारी पुत्राण छंगुर, रज्जी देवी पत्नी छंगुर व मुकेश, गोकुल व दशरथ । पुत्राण जेखन व शान्ति देवी पत्नी जेखनस्था	
5	475	466	2674	2		
6	550	544	2674	0.6		
7	631	799	2674	0.7 0.62	पुजरी, हर्ष लाल पुत्राण श्यामसुन्दर स्थीय	
8	550	543 799	2674	0.82	रामलखन, मकरन, उमराव, चुमुड पुत्राण राम देव व श्याम सुन्दर पुत्र लुसुकर स्थनीय	
9	633	14 105 797 812 699 698	2674	0.18	रघुनाथ पुत्र शिवरत, गया प्रसाद, अमृत प्रसाद व शम्भू नारायन व राधेश्याम पुत्राण द्वास्विक व श्यामा देवी पत्नी शेष नारायन श्री नारायण पुत्र वंशलेखन नि० फूलपुर	
10					कमल पुत्र स्व० जगहिर व जगदीश पुत्र स्व० रामधनी, मनोज कुमार पुत्र स्व० राजमन, भाव्क्ती पत्नी स्व० राजमन स्था	
11	681	-	2669	7.04	बंजर	
	676	-				
12	676	-	2651	1.65	बसन्त पुत्र बलिराम, विजई पुत्र श्रीराम व सेतू पुत्र शोभा स्था	
13	35	180 753 589 789	2651	0.35	जगहिर पुत्र बलमन्ता शंकर, राधे रामा पुत्राण रघुनाथ स्था०	
14	681	-	2651	0.31	बंजर	
15	447	465	2613	1.46	बैजनाथ पुत्र बाबू नन्दन स्था०	
16	447	465	-	-	श्रीमान् च० अ० मु० नं०-317 / 15.11.79 धरा 12 अदेश हुआ कि गाट सं०-2599 / 0.10, 2613 मि० / 1.74, 420/0.92 से भूदान समिति का नाम निस्सत करके बालकन्द पुत्र मन्विक नि० रामपुर का नाम सीखर दर्ज हो।	
17	447			465--	श्रीमान् च० अ० मु० नं०- 315/15-11-79 को अदेश हुआ कि 2613/0.91, 420/0.93 से भूदान यज्ञ समिति का नाम निस्सत करके प्यारी पत्नी द्वास्विक नि० रामपुर का नाम बतौर सीखर दर्ज हो।	
18	447	465	-	-	श्रीमान् प० अ० मु० नं० 1030 1037 दि० 100180 अदेश हुआ कि गाट सं०-420 नि० / 4.23 से भूदान समिति से खरिज करके इस पर राम विशोर, कैलाश पुत्राण श्याम बिहारी, विपिन, विकास पुत्राण कैलाश पार्वती देवी पत्नी स्व० कैलाश नाथ नि० रामपुर का नाम दर्ज हो।	
18	447	465	-	-	श्रीमान् प० अ० मु० नं०-202/040381 धरा 12 अदेश हुआ कि चक्र सं० 465 के गाट सं० 2013 मि० / 1.88 से भूदान यज्ञ समिति का नाम खरिज करके श्रीमती चमेरी देवी पत्नी भौरिक यादव रामपुर का लम असंक्रमणीय भूमि दर्ज किया जाय।	
20	447	465	-	-	श्रीमान् च० अ० श्री हीरालाल अन्तिम अभिलेख सस्तर, वाराणसी वाद सं० 208/ 27.02.31 धरा 12 श्रीमती जेखनी देवी बनम भूदान समिति अदेश दिया जाता है कि ग्राम रामपुर के गाट सं०	

					980 मि० / 1.70 भूदान समिति के नाम खरिज करके श्रीमती जेखी फत्ती धर्मा नि० ग्राम का नाम अ०सं० भूमिधर दर्ज हो ।	
21	477	465	-	-	अपेक्षा अनुसार श्रीमान् च०अ० सर, वाराणसी। (श्री भावती प्रसद श्रीवास्तव) मु० नं०-176 / 17-1-85 विजय कुमार बनाम भूदान अपेक्षा । हुआ कि अ० नं० -980 मि० / 0.38, 639 मि० / 0.52 भूदान समिति का नाम खरिज होकर । मुताबिक दान लेख प्रमाण-पत्र 2-7-84 1) विजय कुमार पुत्र श्याम नारायण नि० रामपुर का नाम बतौर सीस्वर दर्ज किया जाये ।	
22	447	465	-	-	अपेक्षा च० अ० सर वाराणसी पूर्वी मु० नं०- 324/26.02.82 धारा-12 अपेक्षा हुआ कि अ० नं० 2599 मि० / 0.12, 2613 मि० / 0.15 से भूदान समिति का नाम खरिज होकर मुताबिक दान लेख प्रमाण-पत्र दिनांक 22.07. 81 श्रीमती गजराती जेजे नोरखी का नाम बतौर सीस्वर दर्ज किया जाये।	

10. In view of above, notices were issued to the aggrieved persons who filed their objections in aforementioned reference. The details of the same are as under:-

(a) An objection dated 3.1.2020 was filed by Vijay Kumar. Another objection dated 8.1.2020 was filed by Kamlesh who are petitioner nos. 1 and 3 in Writ-B No. 927 of 2020 (Vijay Kumar and Others Vs. State of U.P), disputing the reference.

(b) An objection dated 3.1.2020 was filed by Rambodh and Chabhu who are petitioner nos. 1 and 2 in Writ-B No. 2301 of 2021 (Rambodh and Others Vs. State of U.P.), disputing the reference.

(c) An objection dated 7.1.2020 was filed by Lalman, who is petitioner no. 18 and another objection dated 8.1.2020 was filed by Lal Chand who is petitioner No. 20, in Writ B No. 1193 of 2022 (Bechan Vs. State of U.P. and others), disputing the reference.

(d) An objection dated 8.1.2020 was filed by the petitioners of Writ-B No. 612 of 2022 (Achaiber Yadav Vs. State of U.P. and others), disputing the reference.

(e) An objection dated 8.1.2020 was filed by Kamlesh and Ramesh,

Petitioner nos. 1 and 2 in Writ-B No. 18 of 2023 (Kamlesh Yadav and others Vs. State of U.P.), disputing the reference.

(f) An objection dated 8.1.2020 was filed by Gaya Prasad and Others i.e. petitioners of Writ-B No. 1788 of 2022 (Gaya Prasad Rai and others Vs. State of U.P. and Others), disputing the reference.

(g) An objection dated 8.1.2020 was filed by Sabir Ali, petitioner of Writ-B No. 3002 of 2022 (Mohd. Sabir Ali Vs. State of U.P. and Others), disputing the reference.

11. Apart from the above objectors who have filed writ petition before this Court, various other tenure holders also filed their objections. The details of the same are as under:-

I. An objection was filed by Bhorik Yadav Advocate in respect of Khatauni Khata No.442, 462, 433.

II. An objection dated 23.12.2019 was filed by Baliram in respect of survey Plot No. 2601 area 090 decimal praying therein that the revenue entry regarding the said plot be maintained.

III. An objection dated 24.12.2019 was filed by an objector Bhorit Yadav in respect of Khatauni Khata No. 77 and 212, whereby it was prayed that the revenue entry regarding the same be maintained.

IV. An objection dated 24.12.2019 was filed by Kanta in respect of survey plot no. 2457 area .50 decimal praying therein that the revenue entry regarding the same be maintained.

V. An objection dated 24.12.2019 was filed by Baldhari Yadav in respect of Khatauni Khata no. 615 of the basic year Khatauni regarding survey plot no. 2613 area 0.97 decimal praying therein that

the revenue entry regarding the same be maintained.

VI. An objection dated 03..01.2020 was filed by Ram Dular in respect of Khatauni Khata no. 389, of the basic year khatauni regarding survey plot no. 1731 area 0.15 decimal praying therein that the revenue entry regarding the same be maintained.

VII. An objection dated 03..01.2020 was filed by Ram Bodh and Chhabbu praying therein that the revenue entry in respect of survey plot no. 2455, area 1.1 acre occurring at page 5 and at Sl. No. 72 of the report dated 21.10.2019 submitted by the Assistant Consolidation Officer be maintained.

VIII. An objection dated 03.01.2020 was filed by Begraj praying therein that the revenue entry in respect of survey plot no. 1065, area 0.65 decimal occurring at page 60 and at Sl. No. 1065 of the report dated 21.10.2019 submitted by the Assistant Consolidation Officer be maintained.

IX. An objection dated 03.01.2020 was filed by Rajesh Yadav praying therein that the revenue entry in respect of survey plot no. 2474, area 1 acre occurring at page 6 and at Sl. No. 98 of the report dated 21.10.2019 submitted by the Assistant Consolidation Officer be maintained.

X. An objection dated 03..01.2020 was filed by Daya Ram praying therein that the revenue entry in respect of survey plot no. 2457, area 1.04 acre occurring at page 6 and at Sl. No. 91 of the report dated 21.10.2019 submitted by the Assistant Consolidation Officer be maintained.

XI. An objection dated 03.01.2020 was filed by Vijay Kumar praying

therein that an enquiry be conducted regarding order dated 26.05.1952 and the final compensation roll be summoned. Another objection dated 03.01.2020 was filed praying therein that the unnamed complaint dated 30.12.2017 and the report dated 24.09.2019 and 27.09.2019 submitted by the Assistant Consolidation Officer and the Consolidation Officer regarding reference be rejected.

XII. An objection dated 03.01.2020 was filed by Kashi Nath and Ram Chitar praying therein that adequate opportunity be granted to file objections and in case same is not possible then, in that eventuality Chak be allotted to the objectors in accordance with the valuation in the Chak already allotted. The amendment chart be prepared accordingly.

XII. An objection dated 04.01.2020 was filed by Mirtunjay Giri and Shiv Shankar Tiwari praying therein that since the father of the objectors was the vendee of the sale deed regarding aforementioned land therefore their land be kept intact.

XIII. An objection dated 07.01.2020 was filed by Raja Ram in respect of Basic Year Khatauni Khata No. 452, Chak No 452, Plot No. 980 area 1 acre as occurring at Sl No. 42 at page 4 of the list of details of land pertaining to Bhoodan that the revenue entry be maintained.

XIV. An objection dated 07.01.2020 was filed by Gopal in respect of Basic Year Khatauni Khata No. 372, Chak No 344, Plot No. 980 area 1.35 acre occurring at page 3 and at Sl. No. 28 of the list of details of land pertaining to Bhoodan that the revenue entry be maintained.

XV. An objection dated 07.01.2020 was filed by Raja Ram in respect

of the land mentioned at page 4 and at Sl. No. 47 of the list of details of land pertaining to Bhoodan that the revenue entry be maintained.

XVI. An objection dated 07.01.2020 was filed by Doodh Nath in respect of Basic Year Khatauni Khata No. 343, Chak No 186, Plot No. 2613 area 2.32 acres occurring at page 7 and at Sl. No. 121 of the list of details of land pertaining to Bhoodan that the revenue entry be maintained.

XVII. An objection dated 07.01.2020 was filed by Ram Lakhan praying therein that revenue entry in respect of the land mentioned at page 3 and at Sl. No. 37 of the list of details of land pertaining to Bhoodan that the revenue entry be maintained.

XVIII. An objection dated 08.01.2020 was filed by Akshaibar in respect of Basic Year Khatauni Khata No. 495, Chak No 27 and Khatauni Khata No. 2601 area 0.65 acre occurring at page 7 and at Sl. No. 106 of the list of details of land pertaining to Bhoodan that the revenue entry be maintained.

XIX. An objection dated 08.01.2020 was filed by Prem Singh in respect of Plot No. 1060 area 0.19 acre occurring at page 4 and at Sl. No. 56 of the list of details of land pertaining to Bhoodan that the revenue entry be maintained.

XX. An objection dated 08.01.2020 was filed by Chhedi Singh in respect of Basic Year Khatauni Khata No. 284Kha, Plot No. 639 area 0.10 acre occurring at page 2 and at Sl. No. 12 of the list of details of land pertaining to Bhoodan that the revenue entry be maintained.

XXI. An objection dated 08.01.2020 was filed by Prema Devi, Asha

Devi and Srota Devi praying therein that the revenue entry in respect of Basic Year Khatauni Khata No. 336, Chak No. 274, 980 occurring at page 3 and at Sl. No. 36 of the list of details of land pertaining to Bhoodan that the revenue entry be maintained.

XXII. An objection dated 08.01.2020 was filed by Kishori in respect of Basic Year Khatauni Khata No. 494, Chak No. 83, Plot No. 980 area 0.10 acre occurring at page 3 and at Sl. No. 39 of the list of details of land pertaining to Bhoodan that the revenue entry be maintained.

XXIII. An objection dated 08.01.2020 was filed by Sabir Ali praying therein that unnamed complaint dated 30.12.2017 and reports dated 24.12.2019/27.12.2019 regarding the reference be rejected.

XXIV. An objection dated 08.01.2020 was filed by Lal Matti, Kamla and Durbal praying therein that unnamed complaint dated 30.12.2017 and reports dated 24.12.2019/27.12.2019 regarding the reference be rejected.

XXV. Similar objections were filed by Lalman, Lautan, Ramesh, Kamlesh sons of Hari Chandra, Mahgu and Danju sons of Dallu, Panna Lal son of Bechan, Phool Chand son of Baldev, Kamlesh and Ramdhani sons of Sukhoo, Hari Shankar, Shiv Shankar sons of Somaru, Lalchand son of Budhi Ram.

12. Ultimately, respondent-1, the Deputy Director of Consolidation, Varanasi allowed aforementioned reference, vide order dated 14.01.2020. Resultantly, the alleged order of the Tehsildar dated 26.05.1952 was set aside. All the lands which were previously recorded in Banjar Khata No. 585 in the Khatauni of 1366 to 1368 Fasli were directed to be re-recorded in the Banjar Khata. The

mutation made in favour of the affected tenure holders and the Bhoodan Yagya Samiti were directed to be expunged. The valuation accorded to the tenure holders in respect of their holdings qua the land in dispute in the light of above was directed to be re-adjusted. The details of the tenure holders who stand affected by the impugned order has been detailed in the report of the Consolidation Authorities, copy of which is on record at page 43 of the paper book pertaining to C.M.W.P. No. 612 of 2022 (Achhaibar Yadav Vs. State of U.P.).

13. Thus, feeling aggrieved by the aforesaid order dated 14.1.2020, above mentioned writ petitions have been filed before this Court. The individual grievance of the petitioners in each of the writ petitions qua the land in dispute/claimed by them is summarized hereinunder:-

14. Writ Petition No. 1283 of 2023 has been filed by the petitioner Karpattu Bhola Yadav challenging the order dated 14.01.2020 passed by the DDC, Varanasi, in Reference No. 660 of 2019 (Gaon Sabha Vs. Ramashray) claiming right title and interest over survey plot no. 1731 area 2.00 acres situate in village Rampur, Tehsil Pindra, Paragana Kolasala, District Varanasi. The basis of the writ petition is that lease was granted by the Bhoodan Yagya Committee to the petitioner inasmuch as, the name of the Bhoodan Yagya Committee came to be recorded over the land in dispute vide order dated 26.5.1952 passed by Tehsildar. The said order has become final and the veracity of the same cannot be examined after 68 years.

15. Civil Misc. Writ petition No. 612 of 2022 has been filed by Achchaibar Yadav along with his six sons challenging the order dated 14.01.2020 passed by the DDC, Varanasi, in Reference No. 660 of 2019 (Gaon Sabha Vs. Ramashray). Petitioners have claimed right title and interest over survey plot no. 1381 area 0.7690 acres,

plot no. 1554 area 0.9910 acres, plot no. 1560 area 0.15220 acres, plot no. 1512/1334 area 0.2230 acres, plot no. 1382-Kha area 0.9.60 acres, survey plot no. 1453 area 0.4050 acres situate in Village-Rampur, Pargana-Kolasala, Tehsil-Pindra, District-Varanasi. It is the case of the petitioners that the land in dispute was initially held by the Maharaja of the Benaras (Kashi Naresh), who gifted the same to the Bhoodan Yagya Committee. Subsequently, the name of the Bhoodan Yagya Committee came to be recorded in the revenue records and thereafter, lease was executed by the Bhoodan Yagya Samiti in favour of the petitioners. The lease granted to the petitioners cannot be examined after expiry of 68 years.

16. Civil Misc. Writ Petition No. 1828 of 2021 has been filed by Kanta (since deceased) now represented by his widow and five sons along with (i) Raja Ram, (ii) Chanra, (iii) Umrai and (iv) Kamla challenging the order dated 14.01.2020 passed by the DDC, Varanasi, in Reference No. 660 of 2019 (Gaon Sabha Vs. Ramashray) claiming right title and interest over plot no. 2457 area 50 decimal and 2457/5 area 50 decimal situate in Village-Rampur, Pargana-Kolasala, Tehsil-Pindra, District-Varanasi. It is the case of the petitioners that name of Narayan S/o Algoo was recorded in the Khatauni of 1359 Fasli regarding the land in dispute. After abolition of Zamindari, the name of the ancestors of the petitioners came to be recorded. As such, the Gaon Sabha or the State Government has no concern with the land in dispute. Since the land in dispute is the tenure of the predecessors of aforesaid petitioners, therefore, the name of the Gaon Sabha was never recorded over the same. As such the petitioners cannot be deprived of their right title and interest over the land in dispute on the erroneous assumption that the land in dispute was recorded in the Banjar Khata previously.

17. Civil Misc. Writ Petition No. 2301 of 2021 has been filed by Rambodh along with eleven others challenging the order dated 14.01.2020 passed by the DDC, Varanasi, in Reference No. 660 of 2019 (Gaon Sabha Vs. Ramashray). Petitioners are claiming right title and interest over survey plot no. 2455 area 1.01 ahrs and 0.6 ahrs and survey Plot No. 2613, area 0.32 and 1/2 ahrs and 0.5213 ahrs situate in Village-Rampur, Pargana-Kolasala, Tehsil-Pindra, District-Varanasi. The basis of the writ petition is that lease deed was executed by the Bhoodan Yagya Committee in favour of the predecessors in interest of the petitioners on 06.01.1956. Thereafter, the name of the petitioners was mutated in the revenue records. The veracity of the lease so granted in favour of the petitioners by the Bhoodan Yagya Committee cannot be examined in the consolidation proceedings and that to after 68 years.

18. Civil Misc. Writ Petition No. 927 of 2020 has been filed by Vijay Kumar along with 5 others challenging the order dated 14.01.2020 passed by the DDC, Varanasi, in Reference No. 660 of 2019 (Gaon Sabha Vs. Ramashray). The petitioners therein have claimed their right title and interest in the following manner;-

Regarding petitioner no. 1, the claim is over Survey Plot No. 1060 area 4.00 acres.

Regarding petitioner no. 2, the claim is over Survey Plot No. 2442/4 area 1.32 acres and Survey Plot No. 2613 area 2.32 acres.

Regarding petitioner no. 3, the claim is over Survey Plot No. 2601 area 2.24 acres,

Regarding petitioner no. 4, the claim is over Survey Plot No. 2613 area 0.91 acre, Survey Plot No. 420 area 0.93 acre, Survey Plot No.

2631/1 area 0.64 acre and Survey Plot No. 2613/1 area 0.65 acres.

Regarding petitioner no. 5, the claim is over Survey Plot No. 2613 area 0.71 acres, Survey Plot No. 2651/2 area 0.35 acres.

Regarding petitioner no. 6, the claim is over Survey Plot No. 2674 area 0.32 acres, 2457 area 0.60 acres situate in Village-Rampur, Pargana-Kolasala, Tehsil-Pindra, District-Varanasi. According to the petitioners, land in dispute initially belong to the Maharaja of Benaras (Kashi Naresh) who gifted the same to Bhoodan Yagya Committee. Accordingly, the name of the Bhoodan Yagya Committee came to be mutated in the revenue records, vide order dated 26.05.1952. Thereafter, the Bhoodan Yagya Committee executed lease in favour of various persons including petitioners. The lease was executed in favour of the petitioners on 06.01.1956. Subsequently, the name of the petitioners came to be recorded over the land in dispute in the revenue records. The said orders have become final and now cannot be examined.

19. Civil Misc. Writ Petition No. 1193 of 2022 has been filed by Bechan Ram along with 19 others challenging the order dated 14.01.2020 passed by the DDC, Varanasi, in Reference No. 660 of 2019 (Gaon Sabha Vs. Ramashray). Petitioners have claimed their right title and interest in the following manner;-

Petitioners No. 1 to 6 have claimed their right over Survey Plot No. 1167 area 1.90 acres,

Petitioners No. 7 to 14 have claimed their right over Survey Plot No. 1167 area 1.62 acres,

Petitioner No. 15 has claimed his right over Survey Plot No. 0.86

acres,

Petitioners No. 16 and 17 have claimed their right over Survey Plot No. 1167 area 1.62 acres,

Petitioner No. 18 has claimed his right over Survey Plot No. 2613 area 1.91 acres,

Petitioners No. 19 and 20 have claimed their right over Survey Plot No. 2418 area 0.65 acres and Survey Plot No. 2457 area 0.66 acres situate in Village-Rampur, Pargana-Kolasala, Tehsil-Pindra, District-Varanasi. According to the petitioners, lease was executed by the Bhoodan Yagya Committee in favour of the predecessors of the petitioners on 06.01.1956. Subsequent to above, the names of the predecessors in interest of the petitioners came to be recorded over the land in dispute. The predecessors in interest of the petitioners are in possession over the land in dispute since then. The Consolidation Authorities have no jurisdiction to cancel the lease granted in favour of the predecessors in interest of the petitioners nor the veracity of the said lease can be examined after expiry of 68 years.

20. Civil Misc. Writ Petition No. 1788 of 2022 has been filed by Gaya Prasad Rai along with 5 others challenging the order dated 14.01.2020 passed by the DDC, Varanasi, in Reference No. 660 of 2019 (Gaon Sabha Vs. Ramashray). Petitioners are claiming their right title and interest over Survey Plot No. 1167 new No. 920 Ta, area 0.23 acres situate in Village-Rampur, Pargana-Kolasala, Tehsil-Pindra, District-Varanasi. The claim of the petitioners is that the land in dispute never belong to the Gaon Sabha or the Bhoodan Yagya Committee. The name of the petitioners are recorded over the land in dispute in the Khatauni of 1427 to 1432 Fasli. The petitioners are in

possession over the same. The name of the petitioners which stands recorded over the land in dispute for the last 68 years cannot be set aside abruptly.

21. Civil Misc. Writ Petition No. 1092 of 2020 has been filed by Radhey Shyam along with 4 others challenging the order dated 14.01.2020 passed by the DDC, Varanasi, in Reference No. 660 of 2019 (Gaon Sabha Vs. Ramashray). Petitioners are claiming their right title and interest over Survey Plot No. 2675 situate in Village-Rampur, Pargana-Kolasala, Tehsil-Pindra, District-Varanasi. It is the case of the petitioners that lease was granted in favour of the father of the petitioners by the Bhoodan Yagya Committee. Pursuant to the said lease, the name of the father of the petitioners namely - Ayodhya Prasad came to be recorded as Sirdar. During Consolidation Operations, petitioners were allotted Chak No. 7 and a separate Khatauni Khata being Khatauni Khata No. 205 was also allotted. Proceedings under Section 9A(2) of U.P.C.H. Act were initiated by one Basantu, who claimed his right over Survey Plot No. 2675 area 3 acres on the basis of lease granted by the Bhoodan Yagya Samiti. Claim of Basantu was negated by the Consolidation Officer, vide order dated 16.08.1975. Feeling aggrieved by above order dated 16.08.1975, Basantu preferred an appeal before Settlement Officer of Consolidation which also came to be dismissed, vide order dated 02.08.1977. Feeling aggrieved by above orders dated 16.08.1975 and 02.08.1977, Basantu has filed C.M.W.P. No. 8795 of 1981 (Basantu Vs. DDC and Others), wherein an interim order dated 30.08.1984 has been passed by this Court and the Writ Petition is pending. According to the petitioners, they are lessees of the Bhoodan Yagya Committee. The claim of the petitioners cannot be examined after 70 years nor the consolidation courts have any jurisdiction to decide the

validity of the lease granted by the Bhoodan Yagya Committee, by virtue of the provisions contained in Section 15A of the U.P. Bhoodan Yagya Act.

22. Civil Misc. Writ Petition No. 316 of 2023 has been filed by Munra challenging the order dated 14.01.2020 passed by the DDC, Varanasi, in Reference No. 660 of 2019 (Gaon Sabha Vs. Ramashray). Petitioner has claimed his right title and interest over Survey Plot No. 2601 area 2.24 acres situate in Village Rampur, Pargana-Kolasal, Tehsil-Pindra, District Varanasi. According to the petitioner, one Khaderu was the Bhumidhar of aforementioned plot no. 2601 area 2.24 acres. Khaderu, the recorded tenure holder during his life time executed a registered will dated 22.06.1990 in favour of petitioner. After the death of Khaderu, the name of petitioner came to be mutated in the revenue records regarding the land in dispute on the basis of aforementioned registered will. Initially lease was granted by the Bhoodan Yagya Samiti on the basis of which, the names of predecessors in interest of petitioner came to be recorded. The veracity of the lease so granted cannot be examined after expiry of a long period of 71 years. Moreover, the Consolidation Courts have no jurisdiction to consider the veracity of the lease granted by the Bhoodan Yagya Committee.

23. Civil Misc. Writ Petition No. 249 of 2023 has been filed by Tilakdhari alongwith Buddhi Ram challenging the order dated 14.01.2020 passed by the DDC, Varanasi, in Reference No. 660 of 2019 (Gaon Sabha Vs. Ramashray). Petitioners have claimed their right title and interest over Survey Plot No. 2474/2 area 1 acre situate in Village Rampur, Pargana-Kolasal, Tehsil-Pindra, District Varanasi. According to the petitioners, the title of the petitioners over

the land in dispute cannot be examined after 68 years. No objection was filed by the Gaon Sabha claiming right title and interest over the land in dispute, as such, Chaks were carved out in favour of petitioners in the consolidation proceedings. The same cannot be undone simply on the basis of an application.

24. Civil Misc. Writ petition No. 33 of 2023 has been filed by Hari Nath challenging the order dated 14.01.2020 passed by the DDC, Varanasi, in Reference No. 660 of 2019 (Gaon Sabha Vs. Ramashray). Petitioner is claiming his right title and interest over survey plot no. 2442 area 0.24 acres situate in Village Rampur, Pargana-Kolasal, Tehsil-Pindra, District Varanasi. According to petitioner, the land in dispute initially belonged to the Maharaja of Benaras (Kashi Naresh), who gifted the land in dispute to the Bhoodan Yagya Committee. Subsequently, name of the Bhoodan Yagya Committee came to be registered in the revenue record. Subsequently Bhoodan Yagya Committee executed a lease deed dated 06.01.1956 in favour of petitioner. On the basis of above, the name of petitioner came to be recorded in the revenue record. The validity of the lease so granted could not be examined after such a long period nor the Consolidation Courts have any jurisdiction to examine the correctness of the lease so granted in favour of petitioner.

25. Civil Misc. Writ petition No. 21 of 2023 has been filed by Sachanu Yadav alongwith Baba Yadav, Jhalara Devi, Jangali Prasad Yadav and Subhash Yadav challenging the order dated 14.01.2020 passed by the DDC, Varanasi, in Reference No. 660 of 2019 (Gaon Sabha Vs. Ramashray). Petitioners 1 to 4 have claimed their right title and interest over survey plot no. 2455 area 1 acre, whereas

petitioner-5 has claimed his right title and interest over survey plot no. 2455 area 1 acre situate at Village Rampur District-Varanasi. According to petitioners, lease was granted by the Bhoodan Yagya Committee in their favour inasmuch as, the name of the Bhoodan Yagya Committee had already been recorded in the revenue records, vide order dated 26.05.1952. The said order of the Tehsildar has become final for want of challenge. Thereafter, lease was granted regarding the land in dispute in favour of petitioners on 06.01.1956 by the Bhoodan Yagya Committee. The veracity of the said lease cannot be examined after such a long period and that to by the consolidation courts as they have no jurisdiction to adjudicate upon the correctness of the lease.

26. Civil Misc. Writ petition No. 20 of 2023 has been filed by petitioner Lalchand Yadav challenging the order dated 14.01.2020 passed by the DDC, Varanasi, in Reference No. 660 of 2019 (Gaon Sabha Vs. Ramashray). Petitioner is claiming his right, title and interest over survey plot no. 2442 area 0.90, Survey Plot No. 2613 area 1.67 acres, Survey Plot No. 2480 area 0.40 acres and Survey Plot No. 2081 area 3.49 acres situate in Village Rampur, Pargana-Kolasal, Tehsil-Pindra, District Varanasi. According to petitioner, the land in dispute came to be recorded in the name of Bhoodan Yagya Committee, vide order dated 26.05.1952 passed by the Tehsildar, Varanasi. Subsequently, the Bhoodan Yagya Committee executed lease in favour of the petitioner and other co-sharer on 14.11.1959. The veracity of the above cannot be examined after such a long period nor the consolidation courts have any jurisdiction to examine the correctness of the said lease.

27. Civil Misc. Writ petition No. 18 of 2023 has been filed by

petitioners Kamlesh Yadav, Ramesh Yadav and Rakesh Yadav challenging the order dated 14.01.2020 passed by the DDC, Varanasi, in Reference No. 660 of 2019 (Gaon Sabha Vs. Ramashray). Petitioners are claiming their right, title and interest over Survey Plot No. 2580/4 area 3.05 acres, Survey Plot No. 2580/5 area 0.70 acres, Survey Plot No. 2580/6 area 0.15 acres, Survey Plot No. 2580 area 1.94 acres situate in Village Rampur, Pargana-Kolasal, Tehsil-Pindra, District Varanasi. It is the case of the petitioners that the name of Bhoodan Yagya Committee came to be recorded in the revenue records, vide order dated 26.05.1952 passed by the Tehsildar, Varanasi. Thereafter, the Bhoodan Yagya Committee executed lease in favour of the petitioners on 14.11.1959. The validity of the above cannot be examined after 68 years. Moreover, the Consolidation Courts have no jurisdiction to examine the correctness of the lease.

28. Civil Misc. Writ petition No. 3002 of 2022 has been filed by petitioners Mohammad Sabir Ali, Zakir Hussain and Sakir Ali, challenging the order dated 14.01.2020 passed by the DDC, Varanasi, in Reference No. 660 of 2019 (Gaon Sabha Vs. Ramashray). Petitioners are claiming their right, title and interest over Survey Plot No. 1062/1 area 2 acres and Survey Plot No. 2480/6 area 2 acres situate in Village Rampur, Pargana-Kolasal, Tehsil-Pindra, District Varanasi. According to the petitioners, the Bhoodan Yagya Committee executed lease in favour of the petitioners on 01.01.1956. Subsequent to above, the name of the petitioners came to be recorded. The Consolidation Courts cannot examine the veracity of the lease after expiry of such a long period. Moreover, Consolidation Courts have no jurisdiction for examining the correctness of aforementioned lease.

29. Civil Misc. Writ petition No. 2883 of 2022 has been filed by petitioner Rajendra Prasad Singh challenging the order dated 14.01.2020 passed by the DDC, Varanasi, in Reference No. 660 of 2019 (Gaon Sabha Vs. Ramashray). Petitioner is claiming his right, title and interest over Survey Plot no. 1785 area 3.53 acres, Survey Plot no. 1731 area 0.21 acres, plot no. 2480 area 0.20 acres, plot no. 1770 area 2.81 acres and plot no. 1062 area 0.80 acres situate at Village Rampur District-Varanasi. It is the case of the petitioner that the Maharaja of Benaras (Kashi Naresh) was the owner of the disputed land. He gifted the same to Bhoodan Yagya Committee. Thereafter, name of Bhoodan Yagya Committee came to be recorded over the land in dispute, vide order dated 26.05.1952 passed by the Tehsildar, Varanasi. Thereafter, the Bhoodan Yagya Committee executed lease in favour of petitioners on 06.01.1956. The validity of the orders above cannot be examined after expiry of such a long period. Moreover, the Consolidation Courts have no jurisdiction to decide the veracity of the lease granted by the Bhoodan Yagya Committee.

30. Civil Misc. Writ petition No. 656 of 2022 has been filed by petitioners Manna now dead and represented by legal heirs along with Teras and Lalji challenging the order dated 14.01.2020 passed by the DDC, Varanasi, in Reference No. 660 of 2019 (Gaon Sabha Vs. Ramashray). Petitioners are claiming their right, title and interest over Survey Plot no. 1450 Kha old Plot No. 2669N situate at Village Rampur District-Varanasi. According to the petitioners, the Maharaja of Benaras (Kashi Naresh) was the owner of the land in dispute. He executed lease in favour of the petitioners in respect of the Plots mentioned in paragraph 4 of the petition. Petitioners are the recorded tenure holders in the Khatauni of 1427 to 1432 Fasli.

Petitioners have raised Pakka constructions over their land. In view of above, by no stretch of imagination, it can be inferred that the land was gifted by the Maharaj of Benaras to Bhoodan Yagya Committee. As such, Bhoodan Yagya Committee never came in possession over the land in dispute.

31. In all the writ petitions referred to above, this court passed interim orders, whereby the interest of the petitioners were protected and the learned Standing Counsel as well as the counsel for the Gaon Sabha were directed to file their respective counter affidavits.

32. The State has opposed the claim of petitioners by filing counter affidavits in most of the writ petitions.

33. Subsequently, Hon'ble the Chief Justice, vide his Lordship's order dated 15.05.2023, nominated this bunch of writ petitions to this Court. Accordingly, the matter has come up before this Bench.

34. I have heard Mr. Shyamdhar Pandey, Mr. S.N. Yadav, the learned counsel for petitioners, Mr. Manish Goyal, the Additional Advocate General assisted by Mr. A.K. Goel, the Additional Chief Standing Counsel for State Respondents and Mr. Bhoopendra Tripathi, the learned counsel representing the Land Management Committee/Gaon Sabha.

35. Counsel for the parties agreed that though counter affidavits have not been filed in all the writ petitions but since common questions of law and fact are involved therefore irrespective of above, the writ petitions can be heard and decided together finally. Accordingly, with the consent of the counsel for the parties as well as the provisions contained in the Rules of Court, this bunch of writ petitions has been heard together and is now being disposed of finally by a common

judgement.

36. It is contended by learned counsel for petitioners that the impugned order dated 14.1.2020, passed by the D.D.C. Varanasi is not only illegal but also without jurisdiction. Consequently, the same is liable to be quashed by this court.

37. Elaborating the said submission, learned counsel for petitioners submit that it is an undisputed fact that the village, where the land in dispute is situate was brought under consolidation operations by means of a Gazette Notification dated 09.08.1972 published under section 4 (2) of U.P. C.H. Act. The land in dispute was part of the consolidation area and therefore, included in the consolidation scheme for the purpose of allotment of Chaks. Accordingly, valuation was accorded to the land in dispute. However, no objection was filed by the concerned Gaon Sabha under section 9(B) of UPCH Act disputing the valuation so accorded to the land in dispute. It is also contended that no objection under section 9-A(2) of the U.P. C.H Act was filed by the concerned Gaon Sabha claiming right title or interest over the land in dispute. As such, the land in dispute which was part of the consolidation area got included in the Chak Allotment Scheme.

38. On account of above, Chaks were allotted to the petitioners and other tenure holders over the land in dispute. As a result, new tenures have emerged over the land in dispute. The chak allotment proceedings have attained finality upto the revisional stage inasmuch as no such material has been brought on record by the State Respondents to show that revisions pertaining to allotments of chaks over the land in dispute are pending before the Deputy Director of Consolidation. The transfer of possession over the new tenures in

terms of Section 28 of U.P.C.H. Act has already taken place. As such, the chak allotment proceedings qua the land in dispute have become final.

39. Subsequently, at a very belated stage, an application dated 30.12.2017 is alleged to have been submitted by the villagers alleging therein that the allotment made in favour of petitioners over the land in dispute on the basis of lease granted by the Bhoodan Yagya Samiti is forged. As such, the allotment so made be cancelled and the land in dispute be re-recorded in the Banjar Khata.

40. Disputing the maintainability of aforesaid application, it is contended by the learned counsel for petitioners that the U.P.C.H. Act is a self contained Act. The Act contemplates specified mechanism regarding redressal of grievances in respect of Chak allotment matters (Sections- 19, 20, 21 and 48) Title Proceedings (Sections- 9-A(2), 11, 48), Mutation (Sections- 12, 11 and 48) Valuation (Sections- 9B, 9B(3) & 48).

41. The procedure contemplated under the Act clearly provides finality of proceedings at different stages and also compartmentalization inasmuch as the veracity of the proceedings under one head cannot be examined in other proceedings like valuation cannot be examined in chak allotment proceedings, the veracity of the chak allotment proceedings cannot be examined in title proceedings so on and so forth.

42. It is however, submitted that irrespective of above, there is an exception contained in section 42 (A) of the Act which provides for correction of clerical and arithmetical errors. For ready reference the same is reproduced herein under:

"Correction of clerical or arithmetical errors-
Notwithstanding anything contained in any law for the time being in force, if the Consolidation Officer or the Settlement Officer, Consolidation, is satisfied that a clerical or arithmetical error apparent on the face of the record exists in any document prepared under any provisions of this Act, he shall, either on his own motion or on the application of any person interested correct the same."

43. With reference to above, it is sought to be urged that once the chak allotment proceedings became final upto the stage of D.D.C. and the consequential transfer of possession in terms of section 28 of U.P.C.H. Act also took place, the proceedings under the act became final and the said proceedings (Chak allotment proceedings) could not be looked into in the garb of a reference in terms of section 48 (3) of U.P.C.H. Act as section 48(3) relates to any pending proceedings. It is thus sought to be urged that since no proceedings was pending before the Consolidation Officer or the Settlement Officer of Consolidation, therefore, no reference could be made on the aforementioned complaint dated 30.12.2017.

44. Since the order impugned dated 14.01.2020 passed by D.D.C. Varanasi, arises out of proceedings under Section 48 (3) of U.P.C.H. Act, therefore, for ready reference, Section 48 is reproduced hereinunder:-

"48. Revision and reference. - (1) *The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order] [other than an interlocutory order] passed by such authority in the case or proceedings, may, after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit.*

(2) *Powers under sub-section (1) may be exercised by the Director of Consolidation also on a reference under sub-section (3).*

(3) *Any authority subordinate to the Director of Consolidation may, after allowing the parties concerned an opportunity of being heard,*

refer the record of any case or proceedings to the Director of Consolidation for action under sub-section (1).

[Explanation. -] [(1)] For the purposes of this section, Settlement Officers, Consolidation, Consolidation Officers, Assistant Consolidation Officers, Consolidator and Consolidation Lekhpals shall be subordinate to the Director of Consolidation.

Explanation (2) - For the purposes of this section the expression 'interlocutory order' in relation to a case or proceeding, means such order deciding any matter arising in such case or proceeding or collateral thereto as does not have the effect to finally disposing of such case or proceeding.

[Explanation (3). - The power under this section to examine the correctness, legality or propriety of any order includes the power to examine any finding, whether of fact or law, recorded by any subordinate authority, and also includes the power to re-appreciate any oral or documentary evidence."

45. On the above conspectus, what is sought to be urged is that since no proceeding was pending before the authorities below i.e. the Consolidation Officer or the Settlement Officer of Consolidation on the basis of complaint dated 30.12.2017, as such, no reference could have been made to the D.D.C. in terms of Section 48 (3) of U.P.C.H Act on the complaint dated 30.12.2017. Since the proceedings in which the order impugned has been passed are itself not maintainable, therefore, the order impugned is also illegal. Hence the same is liable to be quashed by this Court.

46. Learned counsel for petitioners also contend that Gaon Sabha is not a tenure holder but a custodian of the property belonging to the State Government. Therefore, the Gaon Sabha cannot be represented by a representative or a next friend. As such, no representative suit as contemplated under Order 1 Rule 8 C.P.C. can be filed on behalf of Gaon Sabha in respect of the land subjected to consolidation operations. However, in the present case, a complaint is alleged to have been made by the villagers and on behalf of same, the state stepped into the shoes of the complainant and supported the complaint even when none of the complainant appeared before Court

below and led evidence to support the complaint. It is thus urged that the complaint has been engineered on behalf of the State (as the land is to be utilized for construction of Homeopathic College) and on basis of above, the State has tried to overcome acquiescence and estoppel which has emerged against Gaon Sabha by conduct, as no objection was filed by the Gaon Sabha claiming its right and title over the land in dispute during the consolidation operation. The complaint was filed in respect of 22 plots only as is evident from the complaint itself but the D.D.C. Varanasi in the garb of the said complaint has directed that the revenue entry in respect of 238 plots be corrected and they be recorded as banjar in the Banjar Khata. Moreover, from the perusal of the complaint on the basis of which the entire proceedings have been initiated, copy of which is on record as Annexure-1 in Writ B No. 612 of 2022 (Achhaibar Yadav Vs. State of U.P.) will go to show that the said complaint is not signed by any person nor it is accompanied by a list of persons who are signatories to the complaint. As such, the complaint itself was wholly vague and no action could be taken on such a complaint, as the identity of the complainant is conspicuous by its absence. However, irrespective of above, the reference was registered as (Gaon Sabha Vs. Ram Asrey and Others) even when, the Gaon Sabha was not the complainant.

47. Attention of the Court was then invited to the reference made by the Consolidation Officer Varanasi, copy of which is on record as Annexure-2 to the WRIT-B No. 612 of 2022 (Achhaivar Yadav Vs. State of U.P. and Others). On the basis of aforesaid document, it is contended by the learned counsel for petitioner that so far as the claim of tenure holders of Khatauni Khata No. 447 is concerned orders under Section 12 of the U.P.C.H. Act were passed in favour of

different tenure holders. The said orders are of the years, 1979, 1981, 1985 and 1982 respectively.

48. According to the learned counsel for petitioners, the proceedings under Section 12 of the U.P.C.H. Act are title proceedings and not proceedings pertaining to mutation simplicitor. Section 12 of the U.P.C.H. Act reads thus:-

"12. Decision of matters relating to changes and transactions affecting rights or interests recorded in revised records. - (1) All matters relating to changes and transfers affecting any of the rights or interests recorded in the revised records published under sub-section (1) of Section 10 for which a cause of action had not arisen when proceedings under Sections 7 to 9 were started or were in progress, may be raised before the Assistant Consolidation Officer as and when they arise, but not later than the date of notification under Section 52, or under sub-section (1) of Section 6.

(2) The provisions of Sections 7 to 11 shall mutatis mutandis, apply to the hearing and decision of any matter raised under sub-section (1) as if it were a matter raised under the aforesaid sections."

49. Attention of the Court was then invited to the judgment of Supreme Court in **Makhan Singh Vs. Sohan Singh and Others, (1985) 4 SCC 469**, wherein the Court has observed as follows in the second last paragraph of the report:-

"11. Before we close the judgment we would like to make it clear that after the amendment of the U.P. Consolidation of Holdings Act in 1963 the position has materially changed. Section 12 of the Act brought in by the amendment deals with the decision of matters relating to changes and transactions affecting rights or interests recorded in revised records. It reads:

"12.(1) All matters relating to changes and transfers affecting any of the rights or interests recorded in the revised records published under sub-section (1) of Section 10 for which a

cause of action had not arisen when proceedings under [Section 7](#) to [9](#) were started or were in progress, may be raised before the Assistant Consolidation Officer as and when they arise, but not later than the date of notification under [Section 52](#), or under sub-section (1) of [Section 6](#).

(2) The provisions of [Sections 7](#) to [11](#) shall mutatis mutandis, apply to the hearing and decision of any matter raised under sub-section (1) as if it were a matter raised under the aforesaid sections."

[Sections 7](#) to [11](#) of the Act deal with the rights and title of the tenure holder and by the application of those provisions to the proceedings under [s. 12](#) in matters for which cause of action had arisen subsequently will make the decision a decision of title. But the position prior to the amendment of 1963 was different and there was no provision for the adjudication of the right and title of a tenure holder once the title and interest of the original tenure holder had been finally determined and had been allotted."

50. The Deputy Director of Consolidation, while passing the impugned order, has clearly ignored aforesaid aspect of the matter as the effect of the order passed in proceedings under Section 12 of the U.P.C.H. Act could not be undone by way of a reference under Section 48(3) of U.P.C.H. Act. As such, the order impugned is wholly unsustainable and arbitrary, therefore, liable to be quashed by this Court.

51. It is lastly contended that the petitioners have been in continuous and long possession over the land in dispute subsequent to the lease granted by Bhoodan Yagya Samiti. Even otherwise, the petitioners are poor and landless persons and except for the land in dispute they have no other tenure. As such, in accordance with the scheme of U.P. Revenue Code, 2016, which provides for allotment of land to landless person, the land in dispute be settled with the petitioners. To buttress their submissions, they have relied upon two judgments of this Court in **Smt. Shakuntla and others Vs. State of U.P. and Others, 2019 (5) ADJ 871**, **Babu Lal and Others Vs. State of U.P. and Others, 2020 (4) ADJ 380**,

52. In **Sakuntla and Others (Supra)**, allotment was made in favour of petitioners therein which was subsequently cancelled. Court took the view that merely non observance of statutory provision cannot lead to the conclusion that the action is fraudulent. In the penultimate part of the judgement, the Court observed that even in case of fraud, power must be exercised within a reasonable period.

53. Similar view has been taken by the Court in **Babu Lal and Others (Supra)**.

54. With reference to the aforesaid ratio laid down by this Court, it is urged by learned counsel for petitioners that in the present case, the petitioners came in possession over the land in dispute, after lease was executed in their favour in the year, 1956, by the Bhoodan Yagya Samiti, subsequent to the order dated 26.5.1952, passed by the Tehsildar Varanasi. As such, petitioners have been in possession over the land in dispute since then. As no action was taken within a reasonable period, the order impugned is, therefore, unsustainable and liable to be quashed by this Court.

55. Another argument which has been raised with equal vehemence by the learned counsel for petitioners is that the DDC, Varanasi had no jurisdiction to determine the lease granted in favour of the petitioners by the Bhoodan Yagya Committee. The said argument is founded on the ground that the power to determine the lease granted under the Bhoodan Yagya Act, 1952 is with the Collector by virtue of Section 15-A of the said Act. Since no determination of lease executed in favour of petitioners was made by the Collector at any point of time, therefore, the veracity of the lease granted in favour of the petitioners by the Bhoodan Yagya Committee could not have been examined by

the DDC, Varanasi in the impugned proceedings. It is thus urged that the order impugned insofar as, it declares that no valid lease was granted in favour of the petitioners by the Bhoodan Yagya Committee is in excess of jurisdiction and therefore, a nullity.

56. One of the learned counsel for petitioners has urged that the claim of the objector-Basantu in respect of some part of the land is engaging attention of this Court in C.M.W.P. No. 8795 of 1981 (Basantu Vs. DDC and Others) wherein an interim order has been passed therefore, no proceedings could have been initiated on the basis of the alleged complaint dated 30.12.2017 without obtaining the prior permission of this Court.

57. On the cumulative strength of above, it is urged that the impugned order cannot be sustained neither in law nor fact and therefore, the same is liable to be quashed by this Court.

58. On the other hand, Mr. Manish Goel, the learned Additional Advocate General assisted by Mr. A. K. Goel, the Additional Chief Standing Counsel has vehemently opposed the claim of petitioners. He submits that claim of petitioners qua the land in dispute is wholly misconceived. He has referred to the impugned order passed by the DDC, Varanasi and has highlighted the finding recorded therein which are to the following effect. The land in dispute were recorded in the Banjar Khata even before the date from which the U.P.Z.A.L.R. Act came into force i.e. 01.07.1952. In the Khatauni of 1356, 1359, 1360, 1362, 1363 and 1365 Falsi, the land in dispute were recorded in the Banjar Khata. Even in the Khatauni of 1366 to 1368 Falsi, the land in dispute were recorded in the Banjar Khata. It is in the Khatauni of 1366 to 1368 Fasli that an order dated 26.05.1952 passed by the Tehsildar Varanasi has been mutated to the effect that the name of the

Bhoodan Yagya Samiti be mutated over Survey Plot No. 372 etc. i.e. 22 plots area 178.61 acres. The entry so occurring has been doubted as the Officer who has made the entry has not made his signature nor the date on which the said entry was made has been mentioned. In the same Khatauni, on the right hand side from page 1 to 6, 45 orders have been mutated, wherein the Case No. and the date has been mentioned. However, the signature of the officer making the mutation is absent nor the date on which the said mutation was made has been transcribed. From pages 4 to 9 of the same Khatauni, 28 orders have also been mutated which are said to have been passed by Tehsildar. However, there is no endorsement as to how and from whom the said orders were received for mutation when admittedly all the plots which are the subject matter of different orders referred to above pertain to Banjar Khata. There is no order directing that the land in respect of which mutation has been made in aforesaid Khatauni be expunged from the Banjar Khata and thereafter mutated in the name of the beneficiaries. As such, even on date, the land in dispute continues to be recorded in the Banjar Khata. The objectors allege themselves to be the lessee of the Bhoodan Yagya Samiti but their names have not been recorded after expunging the name of the Bhoodan Yagya Samiti or the Banjar entry. As such, the said entries are without any legal basis. The D.D.C. Varanasi, further observed that the U.P.Z.A.L.R. Act came into force on 01.07.1952 as provided in Section 4. As per Section 6 of aforesaid Act, all land stood vested in the state. On 01.07.1952, the corresponding Falsi shall be 1359 Fasli. Therefore, if prior to 01.07.1952, the Maharaja of Benaras (Kashi Naresh) had made any gift in favour of Bhoodan Yagya Samiti then the name of the Bhoodan Yagya Samiti would have been incorporated in the Khatauni of 1359 Fasli. Even after the Khatauni

of 1359 Fasli i.e. the Khatauni of 1360, 1362 and 1363 to 1365 Fasli, the land in dispute was recorded in the Banjar Khata. As such, it is proved that no gift was made by Maharaja of Benaras (Kashi Naresh) in favour of Bhoodan Yagya Samiti. The D.D.C. Varanasi also observed that by virtue of the amending Act No. 35 of 1976 in Section 210 of U.P.Z.A.L.R. Act, no right shall accrue on the basis of adverse possession over government land. In support of above, reliance was placed upon the judgment of this Court in **Rama Vs. State of U.P., 1971 RD 520** and **Baijnath Vs. D.D.C., 1986 RD 306**. He, therefore, contends that in view of above no illegality has been committed by the Deputy Director of Consolidation, Varanasi in allowing the reference by directing that the fraudulent entry be expunged and in rejecting the claim of the petitioners qua the land in dispute by means of impugned order dated 14.1.2022

59. According to the learned Additional Advocate General, it is the case of petitioners that the land initially belonged to Maharaja of Benaras, Kashi Naresh who donated the same to the Bhoodan Yagya Samiti and thereafter, the name of Bhoodan Yagya Samiti came to be mutated in the revenue record, vide order dated 26.5.1952. passed by Tehsildar, Varanasi concerned. Subsequently, the Bhoodan Yagya Samiti granted lease in favour of petitioners in the year, 1956 and on basis thereof, the petitioners came in possession over the land in dispute.

60. The learned Additional Advocate General contends that prima-facie at the first flush, the case of the petitioners appears to be sound and attractive but on deeper scrutiny, the same falls like a house of cards.

61. The merger agreement was signed by the Maharaja of Benaras,

Kashi Naresh on 05.09.1949. The said merger agreement clearly provides the details of the properties which were retained by the Maharaja of Benaras and the private properties and other properties of Maharaja of Benaras, which were surrendered by him. In the schedule attached to the merger agreement, the land in dispute does not find mention in the list of personal properties of the Maharaja of Benaras that were retained by him. As such, no donation of the land in dispute was made by the Maharaja of Benaras (Kashi Naresh) in favour of Bhoodan Yagya Samit.

62. It is next contended by the learned Additional Advocate General that the Bhoodan Yagya movement initiated by Acharya Vinoba Bhave, whereby land holders were requested to donate their lands so that the same could be allotted to landless persons, acquired statutory character only with the passing of the U.P. Bhoodan Yagya Act 1952. The Act of 1952 was passed by the U.P. Legislative Assembly on 24.12.1952 but received the presidential assent on 27.02.1953 under Article 201 of the Constitution of India and was thereafter published in the U.P. Gazette Extra Ordinary on 05.03.1953.

63. By virtue of Sub-Section 3 of Section 1 of Act 1952, the Act came into force on the date of its publication in the Official Gazette i.e. on 05.03.1953. Therefore, no right under the said Act could have accrued to the Bhoodan Yagya Committee prior to 05.03.1953.

64. Referring to the Scheme of the Act of 1952, the learned Additional Advocate General contends that Recognition of lands donated prior to Act, 1952 shall be governed by Sections 12 and 13 of the Act, 1952. For ready reference, Sections 12 and 13 of the Act 1952 are reproduced herein under:

Section-12

Lands which cannot be donated- Notwithstanding anything contained in any law an owner shall not, for purposes of this Act, be entitled to donate the land falling in any of the following classes, namely:-

- (a) lands which on the date of donation are recorded or by usage treated as common pasture lands, cremation or burial grounds, tank, pathway or threshing floor; and*
- (b) land in which the interest of the owner is limited to the life-time, and*
- (c) such other land as the State Government may by notification in the Gazette specify.*

Section-13

Lands donated prior to the commencement of this Act. - (1) Where any land has been donated to the Bhoodan Yagna prior to the commencement of this Act, the Collector shall prepare a list of all such lands other than lands to which the provisions of section 12 apply showing therein-

- (a) the area and other particulars of the land;*
- (b) the name and address of the donor;*
- (c) date of donation;*
- (d) the nature of the interest of the donor in the land;*
- (e) if the land has already been granted to any person in pursuance of the Bhoodan Yagna, the name and address of the person to whom the land has been granted (hereinafter called the grantee);*
- (f) the date of the grant under sub-clause (e); and*
- (g) such other particulars as may be prescribed.*

(2) The list so prepared shall be published in the manner prescribed.

(3) Upon the publication of list under sub-sections (2) and notwithstanding anything in any law to the contrary-

- (a) the right, title and interest of the donor in such land shall with effect from the date of donation be deemed to stand transferred to and vest in the Bhoodan Yagna Committee as if a Bhoodan Yagna declaration had been duly made and confirmed in respect thereto under and in accordance with section 8 and subsection (3) of section 11;*
- (b) where such land has in pursuance of Bhoodan Yagna been granted to any person it shall with effect from the date of grant be deemed further to have been granted to the grantee under and in accordance with the provisions of section 14.*

65. In the submission of the Additional Advocate General, there is

no such document prepared by the Collector, Varanasi, which may go to show that the land in dispute was donated by Maharaja of Benaras/Kashi Naresh in favour of Bhoodan Yagya Committee. As such, the mutation of the name of Bhoodan Yagya Committee in the khatauni of 1366-1368 fasli is a fraudulent act which does not create any right or title in favour of Bhoodan Yagya Committee. As such, no lease could have been executed by the Bhoodan Yagya Committee in favour of petitioners regarding the land in dispute.

66. With reference to the record, the learned Additional Advocate General contends that the land in dispute was initially recorded as Banjar in the Khataunis of 1356, 1359, 1360, 1362, 1363 to 1365 and 1366 to 1368 Fasli. The entry in favour of Bhoodan Yagya Samiti came in the Khatauni of 1366-1368 Fasli by virtue of the alleged order dated 26.05.1952 alleged to have been passed by the Tehsildar, Varanasi. However, the said entry is not corroborated from the record as no entry of the same is found in the Record Register (Goswara). The petitioners have claimed their right on the basis of the said order of Tehsildar but none of the petitioners has given the title of the case, the case number and the provision under which the said order was passed. He has also referred to the findings recorded by Deputy Director of Consolidation Varanasi in the order impugned regarding aforesaid. According to the learned Additional Advocate General, the said findings could not be dislodged by the petitioners being illegal, perverse or erroneous. On the above premise, the learned Additional Advocate General contends that once the findings recorded in the impugned order regarding illegality in the entry pertaining to the order of Tehsildar in the Khtauni of 1366 to 1368 Fasli could not be dislodged, the conclusion so drawn by the DDC, Varanasi can not be altered.

67. He, therefore, submits that since there is no legal basis for the order of Tehsildar Varanasi dated 26.05.1952, therefore, entry regarding the same occurring in the revenue record is a fraudulent entry and therefore the same does not confer any right, title or interest in favour of the Bhoodan Yagya Committee and the petitioners.

68. According to the learned Additional Advocate General, it is well settled that mere entry in the revenue record does not create a right. Until and unless, the legal basis behind the entry is established, no right can accrue merely on the basis of entry. The petitioners have miserably failed to establish the basis regarding the entry made in the Khatauni of 1366-68 Fasli in respect of the order of Tehsildar, Varanasi dated 26.05.1952. To lend legal support to his submission, he has initially relied upon the judgement of Apex Court in **Bhimabai Mahadeo Kambekar Vs. Arthur Import and Export Company and Others, (2019) SCC 191** (paragraph 6). Reliance is placed upon paragraph 6 of the report, which is reproduced herein under:-

"This Court has consistently held that mutation of a land in the revenue records does not create or extinguish the title over such land nor it has any presumptive value on the title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. (See *Sawarni v. Inder Kaur*², *Balwant Singh v. Daulat Singh*³ and *Narasamma v. State of Karnataka*⁴)"

69. Reference has also been made to the judgement of this Court in **Smt. Kalawati Vs. Board of Revenue and 06 others, (2022) 4 ADJ 578**. He has relied upon paragraph 21 of the report, which reads as under:-

"The mutation proceedings being of a summary nature drawn on the basis of possession do not decide any question of title and the orders passed in such proceedings do not come in the way of a person in getting his rights adjudicated in a regular suit. It is for this reason that it has consistently been held that such petitions are not to be entertained in exercise of powers under [Article 226](#) of the Constitution of India. The consistent legal position with regard to the nature of mutation proceedings, as has been held in the previous decisions, may be stated as follows :-

- (i) mutation proceedings are summary in nature wherein title of the parties over the land involved is not decided;*
- (ii) mutation order or revenue entries are only for the fiscal purposes to enable the State to collect revenue from the person recorded;*
- (iii) they neither extinguish nor create title;*
- (iv) mutation in revenue records does not have any presumptive value on the title and no ownership is conferred on the basis of such entries;*
- (v) the order of mutation does not in any way effect the title of the parties over the land in dispute; and*
- (vi) such orders or entries are not documents of title and are subject to decision of the competent court."*

70. Lastly, reference has been made to the judgement of this Court in **Writ-C No. 143 of 2021 (Brahmanand Pandey Vs. State of U.P. and 4 others)**. Reliance is placed upon paragraph 5 of the report in support of the aforesaid submission. Same is extracted herein under:-

"44. The settled legal position that an entry in revenue records does not confer title on a person whose name appears in record- of-rights and that such entries are only for "fiscal purpose" and no ownership is conferred on the basis thereof and further that the question of title of a property can only be decided by a competent Civil Court has again been restated in a recent decision of the Supreme Court in Jitendra Singh Vs. State of Madhya Pradesh and others, 2021 SCC OnLine SC 802; wherein after referring to the previous authorities on the point in Suraj Bhan Vs. Financial Commissioner, (2007) 6 SCC 186, Suman Verma Vs. Union of India, (2004) 12 SCC 58, Faquddin Vs. Tajuddin (2008) 8 SCC 12, Rajinder Singh Vs. State of J & K, (2008) 9 SCC 368, Municipal Corporation, Aurangabad Vs. State of Maharashtra,

(2015) 16 SCC 689, T Ravi Vs. B. Chinna Narasimha, (2017) 7 SCC 342, Bhimabai Mahadeo Kambekar Vs. Arthur Import & Export Co. (2019) 3 SCC 191; Prahlad Pradhar Vs. Sonu Kumhar, (2019) 10 SCC 259 and Ajit Kaur Vs. Darshan Singh (2019) 13 SCC 70, it was observed thus :-

"8. In the case of Suraj Bhan v. Financial Commissioner (2007) 6 SCC 186, it is observed and held by this Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only "fiscal purpose", i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent Civil Court. Similar view has been expressed in the cases of Suman Verma v. Union of India (2004) 12 SCC 58; Faqrudin v. Tajuddin (2008) 8 SCC 12; Rajinder Singh V. State of J&K, (2008) 9 SCC 368; Municipal Corporation v. State of Maharashtra, (2015) 16 SCC 689; T. Ravi v. B. Chinna Narasimha (2017) 7 SCC 342; Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co. (2019) 3 SCC 191; Prahlad Pradhan v. Sonu Kumhar, (2019) 10 SCC 259; and Ajit Kaur v. Darshan Singh, (2019) 13 SCC 70."

71. On the above premise, it is thus contended by the Additional Advocate General that since the petitioners have no valid right, title or interest over the land in dispute therefore, no illegality can be said to have been committed by Deputy Director of Consolidation, Varanasi in passing the order impugned.

72. Furthermore, the petitioners cannot claim any right over the land in dispute on the basis of adverse possession. The plea of adverse possession cannot be pleaded against State. Therefore, even on the basis of long and uninterrupted possession, if any, petitioners cannot acquire any right, title or interest over the land in dispute. He also submits that the plea of adverse possession and rightful ownership cannot go together. Once the claim of the petitioners on the basis of right, title or interest over the land in dispute stands demolished, inasmuch as the alleged order of Tehsildar dated 26.5.1952, whereby the name of Bhoodan Yagya Samiti came to be recorded over the land in dispute is found to be forged then it cannot be said that any

valid lease was executed by the Bhoodan Yagya Committee in favour of the petitioners. As such, the alternate plea of adverse possession cannot be pressed qua the right of the petitioners over the land in dispute.

73. It is lastly contended by the learned Additional Advocate General that jurisdiction under Article 226 of the Constitution of India is one of equity and good conscience. It is not necessary that even if the order is illegal, the Court may interfere. However, in the present case (as is evident from the discussions made in preceding paragraph), petitioners are claiming their right on the basis of fraud inasmuch as the order of Tehsildar dated 26.5.1952 which is the basis of claim of the petitioners, by which, the name of the Bhoodan Yagya Samiti was mutated, is itself found to be forged, as such, no benefit can be claimed by petitioner on the basis of the said forged order. It is well settled that fraud vitiates everything. Moreover, fraud and equity do not go together. A party which commits a fraud cannot be allowed to reap the benefits of fraud. Thus the D.D.C. Varanasi has not committed any illegality in undoing the fraud.

74. According to the Additional Advocate General, the basis of the claim of the petitioners is that the land initially belonged to the Maharaja of Benaras, who gifted the same to the Bhoodan Yagya Committee. Thereafter, the name of the Bhoodan Yagya Committee came to be recorded in the revenue records vide order dated 26.05.1952 passed by the Tehsildar, Varanasi. It is thereafter, that lease is alleged to have been executed by the Bhoodan Yagya Committee in favour of petitioners. The DDC, Varanasi by means of the impugned order has not delved into the question regarding the validity of the lease alleged to have been executed in favour of the

petitioners but has considered the limited question as to whether the name of the Bhoodan Yagya Committee came to be recorded in the revenue records in a rightful manner or not. It is this issue which has been answered by the DDC, Varanasi. In short, the submission is that once the name of the Bhoodan Yagya Committee was not found to have been duly recorded, therefore, the Bhoodan Yagya Committee was not entitled to execute any lease as no valid title vested in the Bhoodan Yagya Committee to execute the alleged lease.

75. With regard to pendency of C.M.W.P. No. 8795 of 1981 (Basantu Vs. DDC and Others), the learned A.G.A. submits that the dispute in the aforesaid writ petition is in between two private tenure holders. As such, the pendency of the writ petition aforementioned could not come in the way of the DDC, Varanasi in deciding the reference so made to him.

76. On the above conspectus, the Additional Advocate General concludes by submitting that the present writ petitions are devoid of merits. As such, they are liable to be dismissed.

77. Having heard the learned counsel for petitioners, the learned Additional Advocate General assisted by the learned Additional Chief Standing Counsel for State, the learned counsel for Gaon Sabha, after evaluating the respective submissions urged by the learned counsel for the parties and upon perusal of record, the Court finds that following issues arise for determination in the present writ petition:

(i) Whether in the absence of any objection filed by Gaon Sabha in terms of Section 9-A(2) of U.P.C.H Act, claiming right, title or interest over the land in dispute, the claim of Gaon Sabha could be

considered on the basis of a complaint made by villagers after the finalization of the chak allotment proceedings.

(ii) Whether the alleged complaint filed by the villagers after the finalization of the Chak allotment proceeding could be entertained in the garb of Order 1 Rule 8 C.P.C. even when the Gaon Sabha is the custodian of State property and therefore cannot be represented by a representative or a next friend and therefore, no action could be taken on the basis of the said complaint.

(iii) Whether the tenure allotted to the petitioners and other tenure holders over the land in dispute could be undone in the garb of proceedings under section 48 (3) of U.P.C.H. Act even when on the date of reference, made by S.O.C. no case or proceedings was pending before the Consolidation Authorities under any provision of the Act, on the basis of the complaint dated 30.12.2017 and as such, no reference could have been made on the basis of the complaint dated 30.12.2017.

(iv) Whether in the absence of any signatory to the complaint dated 30.12.2017 and in the absence of any list appended to the complaint containing the names and signatures of the complainant, the same was vague and therefore, not maintainable. Hence, no action could be taken on the basis of the said vague complaint.

(v) Whether the veracity of the orders passed by the Consolidation Officer in proceedings under Section 12 of the U.P.C.H. Act, which are title proceedings, could be examined in proceedings under Section 48 (3) of U.P.C.H. Act after 40 years approximately when admittedly the said cases cannot be said to be pending on the date of reference.

(vi) Whether in the absence of any valid right, title or interest over the land in dispute, the petitioners can still resist the claim of the Gaon Sabha/Whether on the basis of title claimed by petitioners that lease was granted to petitioners by the Bhoodan Yagya Samiti. subsequent to the order date 20.6.1952, passed by Tehsildar, Varanasi mutating the name of Bhoodan Yagya Samiti which itself is found to be forged and thus no right accrued in favour of Bhoodan Yagya Samiti to execute the lease in favour of the petitioners, the petitioners can still claim right and title over the land in dispute.

78. The first issue is taken up first. As per the report of the Consolidation Officer which has already been extracted in the preceding part of this judgment, it is evident that the land in dispute was recorded in the names of different tenure holders on account of the proceedings under the U.P.C.H. Act. As such, if the Gaon Sabha claimed any right title or interest in the land in dispute then it was obligatory for the Gaon Sabha concerned to have filed an objection under Section 9A(2) of the U.P.C.H. Act claiming right over the land in dispute. Admittedly, this was not done. As such, the Gaon Sabha acquiesced its right to file objections claiming right over the land in dispute. The village where the land in dispute is situate was denotified for the purpose of consolidation vide notification dated 29.08.2020. As such, no objection under Section 9A(2) of the Act could have been filed by the Gaon Sabha concerned after 29.08.2020 . Consequently, the Gaon Sabha concerned was estopped from raising any claim regarding right title or interest over the land in dispute on account of its conduct.

79. The learned Additional Advocate General has even though opposed the present writ petitions tooth and nail yet no submissions

were urged by him on the aforesaid aspect of the matter.

80. The U.P.C.H. Act is a self contained Act and provides a complete mechanism for the redressal of grievances in respect of valuation, rights, allotment, substitution etc. Even if, there is some delay in filing the objection regarding any of the above contingency except valuation the same can be filed along with an application under Section 5 of the Limitation Act by seeking condonation of delay. Irrespective of above, the Gaon Sabha choosed not to file any objection regarding the lands in dispute.

81. Reference at this stage be made to the judgment of the Privy Council in **Nazir Ahamad Vs. King Emperor, 1936 SCC OnLine PC 41**, wherein it is provided that where the law requires a thing to be done in a particular manner, the same can be done in that manner alone or not at all. For ready reference, the relevant portion of the aforesaid report, which is applicable to the controversy in hand is extracted hereinunder:-

".....Whether a Magistrate records any confession is a matter of duty and discretion and not of obligation. The rule which applies is a different and not less well recognized rule, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."

82. It is thus apparent that the Gaon Sabha concerned did not file any objection under Section 9A(2) of the U.P.C.H. Act claiming right, title or interest over the land in dispute. As such, the Gaon Sabha concerned acquiesced its right over the land in dispute and further the right to file objections came to an end on account of

estoppel by conduct.

83. In view of above, this Court has no hesitation to hold that once the Gaon Sabha failed to file any objection under Section 9A(2) of U.P.C.H. Act claiming its right, title or interest over the land in dispute, the Gaon Sabha lost its right, title or interest over the land in dispute. Therefore, the said issue could not be considered indirectly by making a reference.

84. Coming to the IInd issue i.e. whether the claim of the Gaon Sabha as espoused by the complaint dated 30.12.2017 even after finalization of the Chak allotment proceedings and consequent upon same new tenures came into existence over the land in dispute, the claim of the Gaon Sabha could yet be considered.

85. Admittedly, the Gaon Sabha is not a tenure holder but only a custodian of the property belonging to the State. Consequently, the cause of the Gaon Sabha could not be espoused by a Third person nor the Gaon Sabha could be representated by a representative or a next friend as contemplated under Order 1 Rule 8 C.P.C.

86. Apart from above, the Court finds that the litigation out of which the present bunch of writ petition arises is the complaint dated 30.12.2017 alleged to have been made by most of the villagers. The copy of the said complaint is on record as Annexure-1 in WRIT-B No. 612 of 2022 (Achhaibar Yadav and Others VS. State of U.P. and Others), From perusal of the same, it is apparent that the said complaint has not been signed by any of the villager nor a list is attached to the said complaint containing the names and signatures of the signatories to the complaint. As such, the complaint was engineered on behalf of the Gaon Sabha. As already noted, the Gaon

Sabha had acquiesced its right to file objections under Section 9A(2) of the Act and consequently, the Gaon Sabha was estopped from raising any claim on account of its conduct. Aforementioned complaint was engineered to espouse the cause of the Gaon Sabha. Astonishingly, the cause title of the reference, which came to be registered subsequent to the complaint is titled as (Gaon Sabha Vs. Ram Ashray and Others) even when no complaint was made by the Gaon Sabha. Thus in the absence of the complainant being well defined and well represented the proceedings out of which, this bunch of writ petitions arises was engineered in a clandestine manner to overcome the rigours of acquiescence and estoppel which emerged against the Gaon Sabha on account of its own conduct. As such, the claim of the petitioners could not be examined on the basis of the said complaint. The proceedings which emerged are itself illegal and therefore, not maintainable. As a logical corollary to the above, the inescapable conclusion is that once the proceedings itself are illegal, the order passed therein shall also be illegal.

87. With regard to issue no. 3 the Court finds that the order impugned in present writ petitions arises out of proceedings under Section 48(3) of the U.P.C.H. Act. The said provision has already been reproduced in paragraph 43 of the judgment.

88. From a plain reading of the provisions referred to above, it is apparent that the Consolidation Authorities i.e. the Consolidation Officer/The Settlement Officer of Consolidation may make a reference of any case or proceedings pending before them.

89. As per the scheme of the Act, as noted above, in paragraph 40 of this judgment, a finality is attached to the various proceedings contemplated under the Act. Admittedly, the Act contemplates filing

of objections at appropriate stage by the agreed person qua the grievance. However, in case, the aggrieved person fails to file an objection in respect of his grievance except an objection relating to valuation then such an objection could be filed belatedly along with an application under Section 5 of the Limitation Act. There is no mechanism to consider the grievance of a tenure holder otherwise or on the basis of a complaint. Therefore, firstly, the complaint itself was not maintainable qua the grievance of the Gaon Sabha. Furthermore, the Chak allotment proceedings qua the land in dispute had already become final inasmuch as, nothing has been brought on record to establish that proceedings pertaining to allotment of Chaks qua the land in dispute were pending adjudication before the Consolidation Authorities. Similarly as no objection was filed by the Gaon Sabha under Section 9A(2) of the U.P.C.H. Act claiming right, title or interest over the land in dispute, no title proceedings were pending before the Consolidation Authorities regarding the land in dispute. As such, no case or proceeding was pending adjudication before the Consolidation Authorities in respect of the land in dispute. By reason of above, no reference could have been made to the DDC Varanasi on the complaint dated 20.12.2017.

90. With regard to issue no. 4, the Court finds that the proceedings giving rise to the impugned order originated on the basis of the complaint dated 20.12.2017 alleged to have been made by most of the villagers. As already pointed out, the said complaint is on record as Annexure-1 in WRIT-B No. 612 of 2022 (Achhaibar Yadav and Others Vs. State of U.P. and Others). However, upon perusal of same, it is manifest that the said complaint has not been signed by any of the villager nor it contains the names, address and signatures of the signatories to the complaint. Admittedly, the said complaint

has not been made by the Gaon Sabha. Surprisingly, the cause title of the reference so made by the Consolidation Authorities on the basis of the said complaint was registered as Reference No. 660 (Gram Sabha Vs. Ramashray and Others), even when the Gaon Sabha is neither the complainant nor it could be represented by a third person in terms of Order 1 Rule 8 C.P.C. It is in the garb of above, that the state has stepped into the shoes of the Gaon Sabha and thereafter, propogated the cause of the Gaon Sabha. In view of the findings returned on issues 1 and 2, the complaint itself was misconceived as the Act does not provide filing of a complaint qua the grievance in respect of any land. As such, no cognizance on the said complaint could have been taken by the Consolidation Authorities nor could have they proceeded with the same, on the basis of a reference in terms of Section 48(3) of the U.P.C.H. Act.

91. In respect of issue no. 5, the Court finds that as per the report made by the Consolidation Officer in respect of the land in dispute which has been reproduced in paragraph 9 of this judgment, the Court finds that in respect of certain tenure holders the orders were passed in their favour in proceedings under Section 12 of the U.P.C.H. Act. The Gaon Sabha and the State are necessary parties to such proceedings. What will be the nature of an order passed in respect of proceedings under Section 12 of the U.P.C.H. Act is no longer res-integra and stands concluded by the authoritative pronouncement of the Supreme Court in **Makhan Singh (Supra)**, the ratio laid down in the report, which has already been reproduced in paragraph 48 of this judgment, is squarely applicable to the facts of the case. Therefore, by virtue of above, the entry so occurring on the basis of orders passed under Section 12 of the U.P.C.H. Act could not have been altered on the basis of proceedings under Section

48(3) of the U.P.C.H. Act. The DDC Varanasi, while passing the impugned order has completely ignored the aforesaid aspect of the matter which has vitiated the impugned order. Consequently, the same is unsustainable and therefore, liable to be quashed.

92. Coming to the last issue which has arisen for determination in this bunch of writ petitions, the Court finds that the DDC Varanasi has recorded cogent and definite findings with regard to the rights of the Bhoodan Yagya Committee over the land in dispute as well as the rights of the individual petitioners over the land in dispute. The findings so recorded in the impugned orders could not be dislodged by the learned counsel for petitioners. As such, the said findings are not liable to be interfered with.

93. In the light of the findings returned on issue nos. 1 to 5 on the one hand and issue no. 6 on the other hand, the Court is faced with a conundrum as to whether to accept the impugned order which negates the right title and interest of the petitioners over the land in dispute or to accept the cardinal principle i.e. the rule of law inasmuch as, the determination made by the DDC Varanasi by means of the impugned order is in such proceedings which are otherwise not maintainable and therefore, the order impugned is also illegal.

94. The genesis of the entire jurisprudence, which has emerged over a period of 75 years in this country is deeply indebted to the golden principle of "Rule of Law". The principle "Rule of Law" is not an illusionary concept. The same also reflects the principle of free and fair trial. Therefore, irrespective of the finding returned by the DDC, Varanasi regarding the right title and interest of the petitioners over the land in dispute but since the proceeding in which, the order impugned has been passed is itself not maintainable,

consequently, the order impugned is also illegal. It is by now well settled that where the law prescribes a procedure or the manner for doing a particular Act, the same can be done in that manner alone and not otherwise. Admittedly, the Gaon Sabha did not file any objection claiming right title and interest over the land in dispute. Once no objection was filed, the grievance of the Gaon Sabha regarding the land in dispute could not have been considered indirectly by-passing the scheme of the Act. Furthermore, the reference was registered as Gaon Sabha Vs. Ramashray and Others even when no complaint was made by the Gaon Sabha concerned. The complaint dated 30.12.2017 giving rise to the litigation in which, the DDC, Varanasi has passed the impugned order is not signed by the complainant nor a list of signatories is attached to the complaint. Therefore, there was no complaint in the eyes of law. As such, in the garb of reference proceedings, the claim of the Gaon Sabha could not have been considered. Moreover, on the date, the reference was made, no proceeding was pending before any of the Consolidation Authorities regarding the land in dispute and therefore, no reference could have been made. It is thus apparent that the manner in which, adjudication has been made by the DDC, Varanasi is unsustainable in law. The net result of the same is that once the proceedings in which, the order impugned has been passed are itself not maintainable, therefore, consequently, the impugned order is also illegal.

95. As a result, all the writ petitions succeed and are therefore, liable to be allowed.

96. The impugned order dated 14.01.2020 passed by the Deputy Director of Consolidation, Varanasi (hereinafter referred to as DDC) in Reference No. 660 (Gram Sabha Vs. Ramashray and others) under

Section 48 (3) of U.P. Consolidation of Holdings Act, Village-Rampur Pargana-Kolasala, District-Varanasi is hereby quashed.

97. The writ petitions are **allowed**.

98. In the facts and circumstances of the case, parties shall bear their own cost.

Order Date :- 13.10.2023

Vinay