

Neutral Citation No. - 2024:AHC-LKO:8314

AFR

Reserved

Court No. 8

Case :- WRIT - B No. - 2 of 2022

Petitioner :- Sunita Mishra

Respondent :- Board Of Revenue U P At Lucknow Through Its Chairman And Others

Counsel for Petitioner :- Ashish Chaturvedi, Manish Mani Sharma

Counsel for Respondent :- C.S.C., Alok Saxena, Amit Srivastava, C.S.C., Dr. V.K.

Hon'ble Jaspreet Singh, J.

1. The petitioner has approached this Court assailing the order dated 27.09.2021 passed by the Board of Revenue in Revision No. 229 of 2020 whereby the revision of the private respondent no. 2 was allowed and the order dated 23.12.2019 passed by the Additional Commissioner was set aside, as a consequence, the mutation order passed in favour of the private respondents no. 2 dated 20.06.2018 has been affirmed.

2. The matter at hand has a chequered history, accordingly, it will be appropriate to take a glance at the facts giving rise to the instant petition first:-

3. The dispute in question relates to Plot No. 470M measuring 0.0693 hectares situate in Balia Shahbadi, Pargana Haweli Awadh, Tehsil-Sadar, District Faizabad.

4. It is the case of the petitioner that the said property was purchased in part by means of a registered sale deed dated 10.08.2000 and later the petitioner again purchased some more part of Plot No. 470M measuring 0.0438 hectares on 01.07.2006. The petitioner also got the said land

declared as non-agricultural by means of order dated 27.11.2012.

5. The petitioner thereafter for the purposes of expanding her business under the name and style of M/s S.P. Foods, took a loan from Allahabad Bank, Naharbagh Branch, Faizabad. A cash credit limit was granted to the tune of Rs. 20,42,000/-, a term loan was granted for Rs. 5,00,000/- and a vehicle loan was also granted for a sum of Rs. 1,42,000/-

6. The petitioner being the proprietor of a firm M/s S.P. Foods, could not service the loan, accordingly, the Bank who had granted the credit facilities issued a notice under Section 13(2) of *The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002* (hereinafter referred to as "the Act of 2002) requiring the petitioner to deposit a sum of Rs. 32,96,535/- along with interest and other expenses.

7. At this stage, the petitioner assailed the said notice by filing a writ petition before a Division Bench of this Court bearing W.P. No. 6925 (MB) of 2014 which was disposed of by means of order dated 01.08.2014. The Division Bench of this Court at the admission stage itself disposed of the petition directing the Bank-authorities to look into the matter regarding the value which was disputed by the petitioner and take appropriate decision in accordance with law.

8. In the aforesaid backdrop, while a one time settlement scheme was prevalent in the Bank, hence, the Bank informed the petitioner that in case if the petitioner wishes, she can take the benefit of the OTS scheme.

9. The record indicates that in a National Lok Adalat held on

02.12.2015, a settlement was arrived at in between the petitioner and the Bank and in terms whereof all the accounts of the petitioner was compromised for a total sum of Rs. 29,50,000/- out of which Rs. 4,00,000/- deposited by the petitioner in 'No Lien Account' was to adjusted and the balance sum of Rs. 25,50,000/- was to be paid by the petitioner in one lump-sum by 31st March, 2016 to the Bank.

10. It is also the case of the petitioner that the remaining sum of Rs. 25,50,000/- could not be paid by 31st March, 2016, however, the petitioner further alleges that there was a further settlement in terms whereof the petitioner was required to deposit the outstanding sum upto 30th September, 2016.

11. It is the case of the petitioner that the said subsequent proceedings/negotiations which had taken place with the Bank was through one Sri Rahul Rai who was a representative of Asset Recovery Management Branch of the said Bank. As per the said arrangement, Sri Rahul Rai was to arrange for a purchaser and the property would be sold for a sum of Rs. 55,00,000/- and after adjusting the outstanding sum of the Bank, the remaining would be paid to the petitioner, however, this alleged arrangement did not materialize and being aggrieved the petitioner preferred a suit before the Civil Judge, Senior Division, Faizabad bearing Regular Suit No. 217 of 2017 wherein a decree of declaration and injunction was sought.

12. It is also alleged by the petitioner that there was a collusion and conspiracy between private respondent no. 2 and the Bank-officials. In the meantime, the account of the petitioner continued to be treated as a non-

performing asset and the Bank proceeded to sell the property in question, which was a secured asset, through public auction.

13. The petitioner upto this stage did not challenge the auction proceedings nor the sale deed executed by the Bank in favour of the private respondent no. 2. In the aforesaid backdrop, the private respondent no. 2 on the strength of the sale deed executed by the Bank in respect of the disputed property sought his mutation which came to be allowed on 20th June, 2018.

14. Simultaneously, while these proceedings were going on, the National Highway Authority of India also issued a notification under Section 3-A of the National Highway Act, 1956 (hereinafter referred to as the act of 1956) on 11.08.2017 and the notification under Section 3-D of the Act of 1956 was issued on 03.08.2018.

15. It is at this stage that the petitioner assailed the mutation order by filing a revision. The revision of the petitioner was allowed by the Additional Commissioner (Administration) Ayodhya by means of order dated 23.12.2019 and it set aside the order dated 20th June, 2018 and 26th June, 2018 and remanded the matter to the Court of Tehsildar to decide the matter afresh. This order of remand was assailed by the private respondent no. 2 in a revision before the Board of Revenue which has been allowed against which the petitioner has approached this Court.

16. From the perusal of the aforesaid narration, it would be clear that the disputed land in question was recorded in the name of the petitioner and as she had taken a loan which she could not repay, as a result, the Bank had

initiated proceedings under the Act of 2002 and in pursuance thereof the property in question came to be sold in an auction, under the Act of 2002, in favour of the private respondent no. 2 who also got his name mutated in the revenue records.

17. In the aforesaid context, since the name of the private respondent no. 2 was recorded in the revenue records, the petitioner assailed the mutation order also for the reason that the National Highway Authority had acquired the land for widening of the Highway and as the name of the private respondent no. 2 continued to be recorded in the revenue records, he would be entitled to take the compensation. For the aforesaid reasons, the petitioner assailed the order for mutation and at this stage also filed an application under Section 17 of the Act of 2002 along with an application under Section 5 of the Limitation Act, 1963 assailing the proceedings under the Act of 2002, which culminated in the sale deed in favour of the private respondent no. 2.

18. Sri Manish Mani Sharma, learned counsel for the petitioner while attacking the impugned order has structured his submissions as under:-

(i) He submits that once the notification under Section 3-A was issued under the National Highway Act, 1956, the Tehsildar in such circumstances had no power or jurisdiction to continue or entertain any mutation request in respect of such land which stood acquired under the Act of 1956;

(ii) It is also submitted that once the aforesaid land in question had been declared as non-agricultural in the year 2012, accordingly, the Tehsildar would lose jurisdiction over the property as the said property becomes

Abadi and there can be no mutation proceedings in respect thereto, thus, the mutation of the private respondent no. 2 was wholly without jurisdiction.

(iii) It was also urged that the Lower Revisional Court i.e. the court of Additional Commissioner had merely allowed the revision and remanded the matter to be considered afresh by the Tehsildar and this being an interlocutory order, as well as, an order by which no rights of either of the parties were decided, consequently, there was neither any jurisdictional error nor any error of law on account of which the Board of Revenue could have entertained the revision of the private respondent no. 2 and as such the impugned order passed by the Board of Revenue also falls foul for the aforesaid reason.

(iv) It is also urged that in terms of the provisions contained in the National Highway Act, 1956, once the land of the petitioner was acquired, then the property vested with the State and the Bank was not justified in holding the auction. The only option available with the Bank was to have waited for the disbursement of the compensation and out of the compensation so awarded the outstanding sum of the Bank could have been appropriated and the remaining could have been paid to the petitioner but in no case the auction could take place and thus the proceedings are bad. The Authorities have not taken note of the aforesaid submissions, hence, the mutation order for the aforesaid reasons is without jurisdiction, accordingly, it is liable to be set aside after allowing the petition.

19. Sri Sharma, learned counsel for the petitioner has relied upon a decision of a coordinate Bench of this Court in ***Writ- C No. 12986 of 2018***

(Shiv Chander Devi and Another Vs. Commissioner, Varanasi Division and three others) decided on 10.04.2018; *Ram Bhajan and Others Vs. Deputy Director of Consolidation, Allahabad and Another 2001 (19) LCD 906*; *Shiv Kumar Vs. Union of India AIR 2019 SC 5374*, *Ajay Kumar Srivastava Vs. Union of India and three others 2020:AHC-LKO:87642-DB*, *Rana Sheo Ambar Singh Vs. The Allahabad Bank Ltd., Allahabad: AIR 1961 SC 1790*.

20. The learned Standing Counsel for the State-respondents has submitted that a mutation order does not decide any right, title or interest of any party finally and thus an order of mutation being an outcome of summary proceedings is not liable to be assailed in a writ petition and for the said reason, it would be open for the parties to get their rights adjudicated before the regular Court or the Debts Recovery Tribunal, as the case may be, or in terms of the provisions contained in the National Highway Act but the instant petition is not maintainable.

21. Sri Alok Saxena, learned counsel for the Bank has submitted that the petitioner had taken a loan which she could not repay and the Bank had already initiated proceedings by issuing notice under Section 13(2) of the Act of 2002. The Bank had also taken possession in terms of notice under Section 13 (4) of the Act of 2002 and since the petitioner despite approaching the court did not make any effort to pay and hence the auction was held on 24.08.2017 and a sale certificate was also issued in favour of the highest bidder and later the sale deed came to be executed on 16.03.2018.

22. It is also submitted that the petitioner has not approached the Court

with clean hands, inasmuch as, she has not indicated the status of the proceedings of the civil suit filed by the petitioner herself nor filing of two other proceedings before this Court. It is also urged that the petitioner did not assail the proceeding under the Act of 2002 by moving any application under Section 17 of the Act of 2002 and had been dragging the Bank into litigation before one court to another only to delay the proceedings.

23. In the aforesaid circumstances, once the auction had taken place and the sale certificate was issued, rights had accrued in favour of the private respondent no. 2 who had acquired title and as he applied for mutation before the Competent Court which was allowed and now it cannot be said that the Tehsildar does not have the authority to pass the mutation order.

24. It is further submitted that though the petitioner in the petition has levelled allegations against certain officials of the Bank but from the perusal of the averments made in the writ petition and the corresponding annexures, it would indicate that the said documents were signed by the husband of the petitioner and even though she filed the civil suit but she did not implead her husband as a party. This only indicates the malafides since the cause of action of the alleged fraud as indicated in the suit could only be unravelled, if the husband of the petitioner was a party since he was a signatory to the alleged compromise, which is now being assailed by the petitioner.

25. Sri Saxena further urges that the provisions of Act of 2002 have an overriding effect and since the petitioner had not repaid the loan and proceedings had been initiated which were taken to its logical conclusion by the auction and issuance of sale certificate, accordingly, the order of

mutation on the basis of same cannot be held to be bad.

26. Sri Saxena, learned counsel for the Bank in support of his submissions has relied upon a decision of the Apex Court in ***Shakeena and Others Vs. Bank of India and Others 2020 (144) ALR 288***.

27. Sri Amit Srivastava, learned counsel for the private respondent no. 2 submits that the private respondent no. 2 is a bona fide purchaser for value having purchased the disputed property in a public auction and the said property has vested with the private respondent no. 2.

28. The property vested with the private respondent no. 2 only when the auction became final and the Sale Certificate was issued to the respondent no. 2. It is urged that the notification under Section 3-D of the NH Act, 1956 was issued on 03.08.2018 while the Sale Certificate was already issued and the rights of the private respondent no. 2 had been crystalized by then. In the aforesaid backdrop, the petitioner got his name mutated on the basis of Sale Certificate/sale deed and thus the order of mutation cannot be held to be bad and the writ petition deserves to be dismissed.

29. Sri Sarvesh Dubey, learned counsel for the NHAI has submitted that the Act of 1956 envisages a complete scheme in terms whereof the land is notified and then acquired. It also provides for redressal of grievance regarding the compensation as well as who is entitled to obtain the same.

30. It is also urged that in so far as the compensation is concerned, that is the subject matter to be considered by the Competent Authority under the NHAI Act, however, the order of mutation per se does not decide the rights of any party, accordingly, the ground upon which the Additional

Commissioner (Administration) had allowed the revision of the petitioner was not in consonance with law which has been set aside by the Board of Revenue and such such the same does not require any interference and the writ petition deserves to be dismissed.

31. Now, the stage is set to examine the arguments of the respective parties. This Court first proposes to deal with the submissions of learned counsel for the petitioner regarding the effect of declaration of the land as non-agricultural under Section 143 of the U.P.Z.A. & L.R. Act, 1950 and in such circumstances whether the Tehsildar will have jurisdiction to entertain a mutation application in respect of such non-agricultural land and also by mere declaration, the land becomes an abadi land so as to exempt such land from mutation.

32. In this regard, it will be relevant to notice certain statutory provisions.

Section 143 of the U.P.Z.A. & L.R. Act, 1950 which reads as under:-

"143. Use of holding for industrial or residential purposes. - [(1) Where a [bhumidhar with transferable rights] uses his holding or part thereof for a purpose not connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming, the Assistant Collector-in-charge of the sub-division may, suo motu or on an application, after making such enquiry as may be prescribed, make a declaration to that effect.

(1-A) Where a declaration under sub-section (1) has to be made in respect of a part of the holding the Assistant Collector-in-charge of the sub-divisions may in the manner prescribed demarcate such part for the purposes of such declaration.]

(2) Upon the grant of the declaration mentioned in sub-section (1) the provisions of this chapter (other than this section) shall cease to apply to the [bhumidhar with transferable rights] with respect to such land and he shall thereupon be governed in the matter of devolution of the land by personal law to which he is subject.

[(3) Where a bhumidhar with transferable rights has been granted, before or after the commencement of the Uttar Pradesh Land Laws (Amendment) Act, 1978, any loan by the Uttar Pradesh Financial Corporation or by any other Corporation owned or controlled by the State Government, on the security of any land held by such bhumidhar, the provisions of this Chapter (other than this section) shall cease to apply to such bhumidhar with respect to such land and he shall thereupon be governed in the matter

of devolution of the land by personal law to which he is subject.]"

33. From the bare perusal of the aforesaid provision, it would reveal that the consequence of the declaration is contained in sub Section 2 of Section 143 of the Act of 1950.

34. The import and consequence of the declaration under Section 143 of the Act of 1950 was considered by this Court in ***Smt. Fatma Kubra Vs. Additional Commissioner (Administration, Ayodhya Mandal, Ayodhya and others; 2022 (6) ADJ 68 (LB)*** and the relevant paras read as under.

"20. From the perusal of the aforesaid, it would be clear that it is only a recorded bhumidhar, who can make the said application. Moreover, from the reading of sub-section (2) of Section 143 of the U.P.Z.A. & L.R. Act it indicates the consequence of the declaration as made in sub-section (1) is that the provisions of the Chapter-VIII of the U.P.Z.A. & L.R. Act shall cease to apply to the bhumidhar with transferable rights and in respect to such land and he shall be governed in the matter of devolution of interest in the land by personal law to which he is subjected to.

21. Thus, it is clear that apparently the initiation of the provisions at the behest of the petitioner was incorrect. Moreover, she did not have a right to move an application in the first place and what is most strange that the Sub-Divisional Officer in its order dated 31.03.2006 directed that the names of the recorded tenure-holders to be deleted and the land be recorded as 'abadi' under Category 6(2). This kind of a direction in the order, in proceedings under Section 143 of the U.P.Z.A. & L.R. is not known in law. This exercise of jurisdiction by the Sub-Divisional Officer was patently erroneous and without jurisdiction."

35. Having taken a look at the aforesaid provisions, it would be clear that in so far as the consequence of declaration of land as non-agricultural under Section 143 of the Act of 1950 is provided in Sub Section (2) of Section 143 and the effect is that the mode of devolution of interest is changed and for such land, the devolution as provided in the said Act of 1950 is not applicable and the succession and devolution would be governed by the personal law of such bhumidhar.

36. At this very stage, it will be apposite to notice that after the advent of the Uttar Pradesh Revenue Code, 2006, power to declare land as non-

agricultural is provided in Section 80 of the Code of 2006. The effect of such declaration, cancellation of declaration and recording of declaration or cancellation, is contained in Section 81 to 83 of the Code of 2006. The said Sections are being reproduced hereinafter:-

“80. Use of holding for Industrial, Commercial or Residential purpose.

(1) Where a Bhumidhar with transferable rights uses his holding or part thereof, for Industrial, commercial or residential purposes, the Sub-Divisional Officer may, suo motu or on an application moved by such Bhumidhar, after making such enquiry as may be prescribed, either make a declaration that the land is being used for the purpose not connected with agriculture or reject the application. The Sub-Divisional Officer shall state the reasons in writing of such declaration or rejection and inform the applicant of this decision within forty-five working days from the date of receipt of the application:

Provided that no such declaration under this section shall be made merely on the ground that the holding or part thereof is surrounded by boundary wall or is "Parti" on the spot:

Provided further that no application for the declaration under this sub-section moved by any co-Bhumidhar having undivided interest in bhumidhart land shall be maintainable, unless application is moved by all the co-Bhumidhars of such bhumidhart land or their interests therein are divided in accordance with provisions of law.)

(2) The application for declaration under sub section (1) shall contain such particulars and shall be made in such manner as may be prescribed.

(3) Where the application wider sub-section (1) is made in respect of a part of the holding, the Sub Divisional Officer may, in the manner presented, demarcate such part for purpose of such declaration.

(4) No declaration under this section shall be issued by the Sub Divisional Officer, if he is satisfied that the land is to be used for a purpos which is likely to cause a public nuisance of to affect adversely public prder, public health, safety or convenience of against uses proposed in the Master Plan.

(5) The State Government may fie the seule of fees for declaratine under this section and different fees may be fixed for different purposes;

Provided that if the applicant uses the holding or part thereof for his own residential purpose, no fee shall be charged for the declaration under this section.

81.Consequences of declaration. *Where a declaration has Leexi made under Section 80 the following consequences shall, in respect of such holding or part to which it relates ensue:-*

(a) all restrictions imposed by or under this chapter XI in respect of transfer of land shall cease to apply to the Bhumidhar with transferable rights;

(b) (b) Notwithstanding anything contained in chapter XI, the land shall, with effect from the commencement of the agricultural year following the date of declaration, be exempted from payment of land revenue;

(c) The bhumidhar shall, in the matter of devolution be governed by the personal

law to which he is subject.

82. Cancellation of declaration.- (1) *Whenever any holding or part thereof in respect of which a declaration has been made under section 80 is used for any purpose connected with agriculture, the Sub-Divisional Officer may, of his own motion or on an application made in that behalf and after making such inquiry as may be prescribed, cancel such declaration.*

(2) *where a declaration is cancelled under sub-section (1) the following consequences shall, in respect of the holding or part to which it relates ensue namely:*

(a) *the holding or part shall become subject to all restrictions imposed by or under*

this chapter in matters of transfer and devolution;

(b) *the holding or part shall become liable to payment of land revenue with effect from the commencement of the agriculture year in which the order for cancellation of the declaration is made:*

Provided that until any land revenue is reassessed on such holding or part in accordance

with the provisions of this Code, the land revenue payable or deemed to be payable in respect of such holding or part before the grant of declaration under section 80 shall be deemed to be the land revenue payable in respect of such holding or part.

(c) *where the land is in possession of any person other than the bhumidhar thereof on the basis of a contract or lease, and the terms of such contract or lease are inconsistent with the provisions of this Code, such contract or lease shall, to the extent of the inconsistency, become void and the person in possession shall be liable to ejectment on the suit of the bhumidhar:*

Provided that a mortgage with possession existing on the date of the cancellation of the declaration shall, to the extent of the amount due and secured on such land, be deemed to be substituted by a simple mortgage carrying such rates of interest as may be prescribed;

83. Recording of declaration or cancellation—*Every declaration under section 80 or cancellation under section 82 shall be recorded in record of rights in the manner as may be prescribed and even after declaration under section 80, the mutation order on the basis of transfer or succession shall be passed in the manner prescribed.*

37. Apparently, there is no provision by virtue of which the Tehsildar abdicates his right to prepare a Khatauni i.e. records of rights as provided in the Code of 2006. Moreover, the provisions of the U.P. Revenue Code, 2006 which is applicable to the instant case, as mutation proceedings were initiated under U.P. Revenue Code, 2006 and the consequences of Section 83 of the Code of 2006 is that the declaration made under Section 80 would be recorded in the records of rights and even after declaration, the mutation on the basis of transfer and successions shall be made in the record of

rights in the manner prescribed. This amplifies the fact that the Revenue Authority, under the Code of 2006, maintains the record of rights even in respect of property for which declaration under Section 80 of the U.P. Revenue Code, 2006 has been made.

38. At the time, when the land in question was declared as non-agricultural, it was in the year 2012 and the U.P.Z.A. & L.R. Act, 1950 and the U.P. Land Revenue Act, 1950 and the U.P. Land Revenue Act, 1901 were in operation. Mutation of agricultural lands was governed by Section 34 of the Land Revenue Act, 1901. Sections 31, 32, 33, 34 and 35 of the Land Revenue Act, 1901 are being reproduced hereinafter:-

“[31] Record of Rights.—(1) The Collector shall maintain, in the form and manner prescribed, a record of rights (khatauni) for each village, which shall contain the following particulars, namely

(a) the names of all tenure holders together with survey numbers or plot numbers held by them and their areas;

(b) the nature or extent of the respective interests including shares of such persons and the conditions or liabilities, if any, attaching thereto;

(c) the rent or revenue, if any, payable by or to any such person;

(d) particulars of all land (other than holdings) belonging to or vested in the State Government, Central Government, Gram Panchayat or a local authority;

(e) such other particulars as may be prescribed.

(2) Shares of the co-tenure holders shall be determined in the manner prescribed.

32. Correction of records.—(1) Subject to the control of the Collector, the Sub-Divisional Officer, the Tahsildar, or the Revenue Inspector shall record, in the manner hereinafter provided in this chapter, all changes in the record of rights (Khatauni), the field book (Khasra) and the map that may take place, and all transactions that may affect any of the rights or interests recorded, and correct therein any error proved to have been made in the records previously prepared 34[:]

[Provided that order for correction in map shall be passed by the Collector.]

(2) No application for correction of error under sub-section (1) where the claim is based solely on possession as well as involving intricate question of title shall be maintainable.

33. Mutation in cases of succession.—(1) Every person obtaining possession of any land by succession shall submit report of such succession to the Revenue Inspector of the circle in which the land is

situate in such form as may be prescribed.

(2) On receipt of a report under sub-section (1) or on facts otherwise coming to his knowledge, the Revenue Inspector shall—

(a) if the case is not disputed, record such succession in the record of rights (Khatauni);

39. (b) in any other case, make such inquiry as may appear to him to be necessary and submit his report to the Tehsildar.

40. (3)] Any person whose name has not been recorded by Revenue Inspector or who is aggrieved by the order passed by the Revenue Inspector 37[under clause (a) or (b) of sub-section (2)] may move an application before Tehsildar

[(4)] The provisions of this section shall mutatis mutandis apply to every person admitted as a Bhumidhar with non-transferable rights or as an asami by the Bhumi Prabandhak Samiti in accordance with the provisions of this Code or any enactment repealed by it.

34. Duty to report in cases of transfer.-(1) Every person obtaining possession of any land by transfer, other than a transfer referred to in sub-section (3) of section 33 shall report such transfer, in the manner prescribed, to the Tahsildar of the Tahsil in which the land is situate.

Explanation.- For the purposes of this section, the word 'transfer' includes a family settlement.

(2) State Government may fix a scale of fees for getting entry recorded in the record of rights on the basis of transfer. A fee in respect of any such entry shall be payable by the person in whose favour the entry is to be made.

35. Mutation in cases of succession or transfer.-(1) On the receipt of a report under section 33 or section 34, or upon facts otherwise coming to his knowledge, the Tahsildar shall issue a proclamation and make such inquiry as appears to be necessary and-

(a) if the case is not disputed, he shall direct the record of rights (Khatauni) to be amended accordingly;

(b) (deleted)

(c) if the case is disputed, he shall decide the dispute and direct, if necessary, the record of rights (khatauni) to be amended accordingly. (2) Any person aggrieved by an order of the Tahsildar under sub-section (1) may prefer an appeal to the Sub-Divisional Officer within a period of thirty days from the date of such order."

41. The provisions of A-157 of the Land Record Manual is also relevant and it reads as under:-

"A-157. Conversion of agricultural land into non-agricultural or vice versa. If a bhumidhar's holding or part thereof is declared by the Collector under Section 143 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, to be non-agricultural land, an entry in respect of the land so declared shall be recorded in columns 7, 8, 9, 10, 11 or 12 of the khatauni against the relevant entries. Such entries shall be continued to be recorded from year to year. If at any time the said declaration is revoked under Section 144 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, the particulars of the orders of revocation shall also be entered. In the case of such revocation the entries shall be omitted from the khatauni of

next and subsequent years). ”

42. After the enactment of the U.P. Revenue Code, 2006, the provisions relating to mutation are provided in Section 34 of the Code of 2006 which reads as under:-

34. Duty to report in cases of transfer.-(1) *Every person obtaining possession of any land by transfer, other than a transfer referred to in sub-section (3) of section 33 shall report such transfer, in the manner prescribed, to the Tahsildar of the Tahsil in which the land is situate.*

Explanation.- For the purposes of this section, the word ‘transfer’ includes a family settlement.

(2) *State Government may fix a scale of fees for getting entry recorded in the record of rights on the basis of transfer. A fee in respect of any such entry shall be payable by the person in whose favour the entry is to be made.*

While, Section 4 (1) of the U.P. Revenue Code, 2006 defines ‘Abadi’ reads as under:-

“abadi’ or “village abadi” means such area in a village which, on the date of commencement of this Code, is being used for the purposes of residence or its inhabitants or for purposes ancillary thereto such as Sahan and green trees, wells etc. or which may have been or be hereafter reserved for such use;”

43. Having taken a look at the abovementioned provisions, the position as obtained is that consequence of declaration of land as non-agricultural is limited to an extent as provided in Section 143 (2) of the U.P.Z.A. & L.R. Act, 1950 and Section 81 of the U.P. Revenue Code, 2006.

44. The record of rights was maintained earlier under the U.P. Land Revenue Act, 1901 and Land Record Manual and with the enforcement of the U.P. Revenue Code, 2006 it is now under Section 31 and Section 83 of the Code.

45. In the instant case at hand, it is admitted to the parties that the land in question was being used for business purposes and not for residential

purposes. Thus for the said reason, the land in question cannot be treated to be abadi as defined in Section 4(1) of the Code of 2006.

46. Moreover, the mutation proceedings were initiated under Section 34 of the Code of 2006 and there is no provision which results in abdication of powers of the Tehsildar to deal with such lands declared as non-agricultural and nor does it create any embargo to entertain a mutation application rather any transfer or succession including any change of status of land would be required to be incorporated in the record of rights, maintained in law as per the Land Record Manual.

47. Accordingly, this Court is unable to subscribe to the view that upon declaration of land as non-agricultural then the Tehsildar would loose jurisdiction to entertain an application for mutation or record any change in respect of such land. On the contrary, any change either by transfer, succession or change in the status of the land is to be recorded in the record of rights. The Collector is the custodian of all revenue records and all such records are to be kept updated from time to time.

48. The learned counsel for the petitioner has referred to a decision of a coordinate Bench of this Court in *Shiv Chander Devi (Supra)*, however, from the aforesaid discussions, it would reveal that the facts of the case of *Shiv Chander Devi (Supra)* are quite different and moreover the provisions of law as noticed in the instant case were not brought to the notice of the Coordinate Bench, hence, the said decision cannot be said to be an authority to state that upon declaration of land as non-agricultural, the Tehsildar loses jurisdiction to entertain and decide a mutation application. Thus, the contention of the learned counsel for the petitioner does not find

favour with this Court and is turned down.

49. Now, coming to the next contention of the learned counsel for the petitioner that after the notification of acquisition under the NH Act of 1956, the Tehsildar could not mutate the name of the private respondent no. 2 as that would be against law. In order to examine the aspect, it will be worthwhile to notice certain provisions of the NH Act of 1956 and the same reads as under:-

“3A. Power to acquire land, etc.--*(1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.*

(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.]

3D. Declaration of acquisition.--*(1) Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A.*

(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under sub-section (1) of section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect:

Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 3A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority.

3G. Determination of amount payable as compensation.--*(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.*

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has

been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government--

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration--

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.]

3H. Deposit and payment of amount.--(1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent, per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount

together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of subsections (2) to (4) shall apply to such deposit.

3I. Competent authority to have certain powers of civil court.--*The competent authority shall have, for the purposes of this Act, all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:--*

- (a) summoning and enforcing the attendance of any person and examining him on oath;*
- (b) requiring the discovery and production of any document;*
- (c) reception of evidence on affidavits;*
- (d) requisitioning any public record from any court or office;*
- (e) issuing commission for examination of witnesses.]”*

50. From the perusal of the aforesaid provisions, it would reveal that the NH Act of 1956 contains an inbuilt mechanism to resolve any dispute and the Competent Authority also has been conferred power to adjudicate. Section 3-G (5) (6) also provides the forum for any person who is aggrieved by an order of the Competent Authority of the NH Act of 1956.

51. None of the provisions of the NH Act 1956 indicate that the power of the Tehsildar or the Collector are in any manner abridged or curtailed to deal with mutation proceedings or maintenance of revenue records. Both the NH Act of 1956 and the Land Revenue Act, 1901 and now the U.P. Revenue Code, 2006 operate in different spheres and one does not overlap with the other or create any conflict. Thus, to state that upon issuance of notification under Section 3-A of the NH Act of 1956, the jurisdiction of Tehsildar or the Revenue Court is curtailed is not correct.

52. Now, if the interplay of the provisions of the Act of 2002 is seen with provisions of mutation under the U.P. Revenue Code, 2006 and the National Highway Act, 1956 and applied to the facts of the instant case, it would be seen that admittedly the land in question was non-agricultural and

it was a security asset as defined under the Act of 2002.

53. Since, the petitioner had defaulted, the creditor bank initiated proceedings under the Act of 2002 and in furtherance thereof it was put to auction on 24.08.2017 where the private respondent no. 2 was the successful auction purchaser and a sale certificate was also issued on 16.03.2018. Significantly, this is prior to the date of notification of Section 3-D of the NH Act of 1956 which was issued on 03.08.2018.

54. Section 3-D of the NH Act of 1956 assume significance as it is on the date of the said notification that the land would vest with the State. Any transaction, or status of the said land will have to be seen in context with the aforesaid date.

55. The Act of 2002 is a special Act and deals with special rights conferred to the creditor banks and financial institutions to recover the outstanding debts by taking recourse to the provisions of the Act.

56. While the NH Act of 1956 is also a special Act conferring powers to acquire land for the purposes of building, widening and development of highways.

57. Thus, any land which is a secured asset over which the bank has initiated proceedings under the Act of 2002 and if challenged has to be seen in terms of the provisions of the Act of 2002 before the forum as provided in the said Act.

58. Similarly, an issue relating to acquisition, payment of compensation, who is entitled or its quantum is all to be considered as per the NH Act of 1956.

59. As per the parties, the petitioner has already filed a civil suit, a petition under Section 17 of the Act of 2002 along with an application under Section 5 of the Limitation Act. The petitioner has also filed a writ petition before a Division Bench of this Court bearing Writ-C No. 8078 of 2022, a fact informed by Sri Dubey but not disclosed by the petitioner in the petition or in the rejoinder affidavit filed.

60. Thus, all the contentious issues, questions will be considered by the respective forum seized of the matter. In this view of the matter, this Court is only to see the mutation order and its validity. Till date neither the sale certificate of the private respondent no. 2 has been set aside and the property in question stands acquired, hence, the land in question cannot remain in absentia in revenue records rather the mutation has to be done.

61. It will also be relevant to mention that the core issue before this Court is to test the validity of the mutation order passed in summary proceedings, hence, keeping this in mind, this Court will refrain from giving any categorical finding lest it may affect the rights of the parties as they are litigating in different forums and courts.

62. Whether the petitioner has any right to challenge the auction sale once the stage to redeem, under Section 13 (8) of the Act of 2002, has passed. What would be the effect of the pending application of the petitioner filed under Section 17 of the Act of 2002 along with an application under Section 5 of the Limitation Act wherein the delay has yet not been condoned is for the Debt Recovery Tribunal to determine.

63. Who would be entitled to receive compensation in respect of the land which has been acquired is also not a question to be determined by this

Court in the instant proceedings rather would be seen by the Competent Authority of the NH Act of 1956.

64. In the aforesaid background, if the impugned order is examined, it would be found that on the basis of Sale Certificate the mutation order has been passed. Any contentious question can be adjudicated in the appropriate forum. The view taken by the Revisional Authority is not patently illegal which may persuade this Court to intervene. The decision of the Apex Court in State of *Jitendra Singh Vs. State of Madhya Pradesh and Others*; 2021 SCC Online SC 802 and of a Coordinate Bench of this Court in Smt. *Kalawati Vs. Board of Revenue and 6 Others decided on 05.04.2022* had laid the contours for interference in mutation cases by this Court. Since, the case of the petitioner does not fall within the said exceptions as mentioned in *Kalawati (Supra)*, hence, the case of indulgence is not made out.

65. In so far as the decision cited by learned counsel for the petitioner *Ram Bhajan (Supra)* wherein the issue was regarding the revisional powers exercised under Section 48 of the U.P. C.H. Act, 1953. In the said case, it was held that where a simplicitor remand is made by an Authority that in itself is an interlocutory order and a revision may not be maintainable under Section 48 of the Act of 1953, however, in the instant case, the facts are quite different, inasmuch as, the matter has been remanded to take note of various aspects including the rights of private respondent no. 2 viz. a viz the Bank and the petitioner and thus it cannot be termed as a simplicitor order of remand. For the said reason also, it cannot be said that the remand order passed in the instant proceedings is

interlocutory in nature, hence, the said decision is also of no help to the petitioner.

66. The learned counsel for the petitioner has also relied upon a decision of ***Shiv Kumar (Supra)*** which is in respect of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, however, the provisions of the LARA act are a little different to the Act of 1956 and in the instant case, it is the provisions of the Act of 2013 are applicable.

67. In the case of ***Ajay Kumar Srivastava (supra)***, a Division Bench of this Court had noticed the provisions of the NH Act, 1956 and noticed the provisions of the said Act and upheld the earlier decision by another Division Bench of the Court in ***Vipin Agrawal Vs. Union of India in Writ-C No. 10958 of 2018*** which related the rights of the parties to receive compensation in context with the provisions of the NH Act, 1956. In the said case, it was noticed that the subsequent purchaser after issuance of the notification under the NH Act, 1956 does not get a right to contest nor does he have a right to receive compensation. This as noticed above would be seen and considered by the Competent Authority of the National Highway Authority of India.

68. The petitioner has also relied upon the decision of ***Rana Shiv Ambar Singh (Supra)*** in context with the Section 73 of the Transfer of Property Act. The rights of a mortgagee in terms of the Section 73 of the Transfer of Property Act, 1973 are different to the rights of the parties which arise in terms of the Act of 2002 and for the said reason, the said decision does not come to the aid of the petitioner.

69. In light of the above, the issue regarding compensation in pursuance of the land which stood acquired is to be considered by the Competent Authority in terms of the NHAI Act, 1956. The impact of proceedings under the Act of 2002 would be considered appropriately by Debt Recovery Tribunal concerned where the petitioner has filed an application under Section 17 along with delay condonation application and as informed the delay has yet not been condoned. In so far as the mutation order is concerned, as noticed above, it is only an order in summary proceedings and would be subject to the orders passed by the regular Forum which would bind the parties.

70. In light of the aforesaid detailed discussion, this Court does not deem appropriate to interfere in the mutation order, accordingly, petition is devoid of merits and is *dismissed*. In the aforesaid facts and circumstances, there shall be no orders as to costs.

Order Date :- 31st January, 2024

Asheesh

(Jaspreet Singh, J.)