

Court No. - 7**Case :-** WRIT - B No. - 16 of 2024**Petitioner :-** Maiku @ Maiku Lal**Respondent :-** Deputy Director Of Consolidation , Ayodhya And Others**Counsel for Petitioner :-** Nazim Ali Siddique**Counsel for Respondent :-** C.S.C.,Mohan Singh**Hon'ble Saurabh Lavania,J.**

Heard Sri Nazim Ali Siddique, learned counsel appearing for the petitioner and Sri Hemant Kumar Pandey, learned State counsel appearing for the respondent Nos. 1 to 3.

By means of this petition, the petitioner has prayed for the following main reliefs:-

"(i) Issue a writ, order or direction in the nature of certiorari thereby quashing the impugned judgment and order dated 03.11.2023 passed by the Deputy Director of Consolidation, Ayodhya in Revision No. 2456 of 2023 U/S 48 U.P.C.H. Act Computerized Case No. 2022540423000000174, Maiku Versus Gram Sabha and others and the judgment and order dated 25.05.2023 passed by the Consolidation Officer Rudauli, District Ayodhya in Case No. 119/Bajdayra/ 2023, State Versus Maiku as contained in Annexure nos. 1 and 2 respectively to this writ petition.

(ii) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondent no.2 to expunge the forged entry of the alleged order dated 29.03.2005 passed in Case No.465 of 2005 and correct the record within the time bound period as may be fixed by this Hon'ble Court.

(iii) Issue a writ, order or direction in the nature mandamus thereby restraining the respondents from interfering in the peaceful possession of the petitioner over the land in question in any manner whatsoever."

The claim of the petitioner is based upon the Asami lease/patta executed in the year 1975. Admittedly, at relevant time, the land in issue i.e. Gata No. 982 Kha (old Gata No. 456/1-0-0) and Gata No. 1149 (old Gata No. 606/1-5-10) situated in Village- Jakhauli, Pargana and Tehsil- Rudauli, District- Faizabad (now Ayodhya) was Varg-3 land and during consolidation proceedings, it was recorded as khalian and pasture land, respectively, in the revenue records.

The law related to rights based upon Asami lease/patta is settled, as would appear from the following judgments.

(1) In the case of *Hari Ram v. Collector, 2004 SCC OnLine All 838*, this Court observed as under:-

"12. Section 133A of the Act mentions four clauses of *asami*. *Asami* leases in the present writ petitions are referable to Section 133(c) which is with regard to persons who have been admitted by the Land Management Committee as a lessee of land described in Section 132. Chapter VIII of the Act deals with the tenure. Section 184 provides that an *asami* may surrender his holding by giving a notice in writing to the Land Management Committee. Section 186 deals with abandonment. Section 190 deals with extinction of the interest of *bhumidhar* with non-transferable rights. Sub-section (2) of Section 190 also provides that provisions of sub-section (1) shall apply *mutatis mutandis* to *asamis* also. Section 190 is extracted below:

"190. *Extinction of the interest of a (bhumidhar with non-transferable rights).*—(1) Subject to the provisions of (Section 172), the interest of a (*bhumidhar* with non-transferable rights) in a holding or any part thereof shall be extinguished:

(a) when he dies having no heir entitled to inherit in accordance with the provisions of this Act;

(b) when the holding has been declared as abandoned in accordance with the provisions of Section 186;

(c) when he surrenders his holding or part thereof;

[(cc) when the holding or part thereof has been transferred, let out or used in contravention of the provisions of this Act;

(d) when the land comprised in the holding has been acquired under any law for the time being in force relating to the acquisition of land;

(e) when he has been ejected in accordance with the provisions of this Act; or

(f) when he has been deprived of possession and his right to recover possession is barred by limitation.

13. Section 191 provides that extinction of the right, title and interest of a *bhumidhar* shall operate to extinguish the interest of any *asami* holding under him. Section 192 provides one more contingency in which interest of an *asami* in his holding shall be determined. Section 194 provides that Land Management Committee is entitled to take possession of land when the *asami* has been ejected or his interest otherwise extinguished under the provisions of this Act. Section 194 of the Act is extracted below:

"194. *Land Management Committee to take over land after extinction of interest therein.*—The (Land Management Committee) shall be entitled to take possession of land comprised in a holding or part thereof if:

(a) the land was held by a *bhumidhar*, and his interest in such land is extinguished under clause (a) or clause (aa) of Section 189 or clause (a). clause (b), clause (c), clause (cc) or clause (e) of Section 190.

(b) [***]

(c) the land being land falling in any of the classes mentioned in Section 132, was held by an *asami* and the *asami* has been ejected or his interest therein have otherwise extinguished under the provisions of this Act.”

14. Section 197 provides for admission of land mentioned in Section 132. Section 198 provides for preference. Section 198 sub-clause (4) empowers the Collector to cancel a lease. Section 198(7) provides for consequences after cancellation of the lease. Section 200 provides that no *asami* shall be liable to ejectment from his holding except as provided in this Act. Section 202 of the Act, which is heavily relied by counsel for the petitioners, provides for procedure of ejectment of *asami*. Section 202 of the Act is quoted below:

“202. *Procedure of ejectment of asami.*— Without prejudice to the provisions of Section 338, an *asami* shall be liable to ejectment from his holding on the (suit of the (Gaon Sabha) or the land holder as the case may be) on the ground or grounds:

(a) mentioned in Section [* * *], 191 or 206;

(b) that he:

(i) belongs to any of the classes mentioned in clauses (a), (b), (c), (e), (g) or (i) of sub-section (1) of Section 21, or sub-section (2) of the said section, or in clause (c) or (d) of Section 133, or

(ii) has acquired the rights of an *asami* under the Uttar Pradesh Land Reforms (Supplementary) Act, 1952;

and that he holds the land from year to year or for a period which has expired or will expire before the end of the current agricultural year,]

(c) that he belongs to the class mentioned in (clause (d) of sub-section (1) of Section 21) and the mortgage has been satisfied (or the amount owing under the mortgage has, whether or not it has become payable thereunder, been deposited in Court,)

(d) that he (is an *asami* under Section 11) and the right to maintenance allowance does not any longer subsist;

(e) that he belongs to the class mentioned in (clause (h) of (sub-section (1) of Section 21) or clause (b) of Section 133 and that:

(i) the land holder wishes to bring the land under his personal cultivation and in cases where the lease is for a fixed term such term has expired, or

(f) that he (is an *asami* under Section 13) and the period mentioned in clause (a) of sub-section (2) of (the said section) has expired;

(g) that there is an unsatisfied decree of arrears of rent outstanding against him and such decree can be executed by ejectment.”

15. Section 204 provides consequences of failure to institute a suit for ejectment under Section 202. Section 220 provides for application for payment of rent and ejectment in default of an *asami*. Sections 221 and 222 provides for notice to *asami* and in the event of failure to comply with the notice, order for payment of amount and in default for ejectment of *asami* from the holding.

16. The thrust of submissions of counsel for the petitioners is that except by way of suit under Section 202, there is no other method or

procedure for ejectment of *asami*. The submission, first to be considered, is as to whether Section 202 is the only provision under which *asami* can be evicted. Further submission raised by the counsel for the petitioner is that even if lease is determined under Rule 176A of the Rules for eviction a suit is required to be filed under Section 202 of the Act. Before proceeding further, it is also necessary to note Rule 176A of the Rules which has been substituted in the Rules *vide* notification dated 1st November, 1975. Section 230 empowers the State Government to make rules for the purpose of carrying into effect the provisions of Chapter VIII. Rule 176A has been framed for the purposes of carrying into effect the provisions of Chapter VIII of the Act. Rule 176A of the Rules, as substituted on 1st November, 1975, is extracted below:

“176A. (1) On receipt of the list in Z.A. Form 57B with the order of the Assistant Collector in-charge of the Sub-Division, the Chairman of the Land Management Committee shall call the person whose selection for allotment of land has been approved by the Assistant Collector in-charge of the Sub-Division and shall furnish to him a certificate in Z.A. Form 58 and shall get a counterpart in Z.A. Form 58A executed by him. If the land sought to be allotted is a land referred to in Section 132, the person concerned shall be furnished with a certificate in Z.A. Form 59 and shall be asked to execute a counterpart in Z.A. Form 59D:

Provided that no lease shall be made to an *asami* for a period exceeding five years.

(2) It shall be lawful for the Assistant Collector-in-charge of the Sub-Division to determine at any time the lease in favour of an *asami* and upon such determination, the *asami* shall not be entitled to any compensation.

(3) Every order of determination of lease under sub-rule (2) shall be effective from the commencement of the agricultural year following the date of the order.

(4) Where the decision of the Land Management Committee regarding admission to any land is not approved by the Assistant Collector-in-charge of the Sub-Division, steps will be taken afresh for settlement of such land in accordance with the procedure laid down in sub-rule (1) read with Rules 173 to 176A. All contracts relating to a lease, licence or allotment of land shall be executed in duplicate. One copy of the contract shall be given to the lessee, licensee or allottee and the other copy shall be retained by the Land Management Committee for record.”

17. As noted above. Section 202 provides that an *asami* shall be liable to ejectment from his holding on the suit of the Gaon Sabha or the land holder on the ground as mentioned therein. Under clause (b) the suit can be filed on the ground that *asami* holds the land from year to year or for a period which has expired or will expire before the end of the current agricultural year. In the present writ petition all the leases are claimed to have been granted by the Land Management Committee after the date of vesting as contemplated under sub-section (c) of Section 133. The suit under Section 202 cannot be brought with regard to leases granted after the date of vesting except on the ground as mentioned in Section 202(b). It is also relevant to note Section 206

which provides ejectment of *asami* on suit of Gaon Sabha for using land for any purpose other than a purpose connected with agriculture, horticulture or animal husbandry. Thus, Section 202 is not the only section under which suit for ejectment can be brought nor contains the only grounds on which *asami* can be ejected. A perusal of various provisions contained in Chapter VIII of the Act also indicates that Land Management Committee can take possession from an *asami* in different other contingencies. Section 194 provides that Land Management Committee is entitled to take possession of land held by an *asami* when the *asami* has been ejected or his interest therein have otherwise extinguished. From Section 194, it is clear that if the right of an *asami* have been extinguished, the Land Management Committee can take possession of the land without institution of suit. For carrying out the provisions of Section 194, Rules have been framed. Rule 172 read with Rule 154 of the Rules give the procedure under which declaration will be made by Assistant Collector that the interest of the *asami* has been extinguished. Rule 172(3) provides that possession shall be delivered to the Land Management Committee on behalf of the Gaon Sabha in accordance with the procedure laid down in Rule 154. Provisions of Section 194 of the Act read with Rules 172 and 154 of the Rules, thus, make it clear that there are other circumstances and contingencies in which possession from *asami* can be taken apart from ejectment of *asami* as contemplated under Section 202 of the Act. The contention of the petitioners' counsel that for taking possession from an *asami*, suit under Section 202 of the Act is necessary to be filed in all circumstances, thus, cannot be accepted. For example, if the holding has been abandoned by the *asami*, there is no necessity of filing a suit under Section 202 of the Act for ejectment.

18. Rule 176A of the Rules is a rule, which has been substituted in the Rules by notification dated 1st November, 1975. Proviso to sub-rule (1) provides that no lease shall be made to an *asami* for a period exceeding five years. The intention of the provisions is clear that lease should be granted to *asami* for a period of five years. The object of provisions contained in Chapter VII pertaining to grant of lease by Land Management Committee is a provision which has been enacted to give effect to constitutional mandate as contained in Article 39(b) of the Constitution. The object contained in Article 39(b) is distribution of material resources of the community to best subserve the common hood. The restriction of five years of an *asami* lease is only for the purpose that lease be again granted after five years to best subserve the common hood. Section 198 of U.P. Zamindari Abolition and Land Reforms Act sub-clause (1) provides for order of preference in admitting persons to land under Sections 195 and 197 of the Act. The object can be illustrated by taking an example, *asami* lease is granted to a *bhumidhar* or *asami* residing in the circle holding land less than 1.26 hectares for a period of five years. After expiry of period of five years the person who was granted *asami* lease has added in his holding and possesses land more than 1.26 hectares, hence he will go out of the preferred categories and when the next step will be taken for granting lease some more deserving persons may be there who can be granted the lease. The object of limiting the lease for five years is to subserve the common hood and the exercise of settling the land is to be repeated after expiry of the lease considering the field of abilities at the time of exercise. Sub-rule (2) of Rule 176A is a provision which empowers the

Assistant Collector to determine *at any time* the lease in favour of an *asami*. From the materials brought on the record, it is not clear as to whether leases granted to the petitioners were for a fixed period or whether from year to year. There being no material on the record to establish that leases granted to the petitioners were for the fixed period, the *asami* leases granted to the petitioners are assumed to be leases from year to year. Sub-rule (2) of Rule 176A empowers the Assistant Collector to determine at any time the lease. The determination can be done by the Assistant Collector even before expiry of the period of lease. From the provisions of the Act and the Rules, it is clear that prior to Rule 176A there was no provision in the Rules for determining the lease. The leases are granted to an *asami* with the previous approval of the Assistant Collector in-charge. In the present case we are concerned only with the grant of lease under Section 197 which refers to Section 132 of the Act. The power thus to be exercised by the Assistant Collector under sub-rule (2) of Rule 176A is with regard to only above categories of leases.

19. Sri A.P. Tewari and Sri S.B. Singh, learned counsel for the petitioners, contended that power under Rule 176A can be exercised only during the period lease subsists and after expiry of the period power under Rule 176A cannot be invoked.

20. As observed above, there is no material on the record to suggest that leases were for a fixed period. *Asami* leases of the petitioners have been taken to be year to year and in the present Case leases being year to year, for determination of the lease orders are required to be passed. However, the words “at any time” used in sub-rule (2) of Rule 176A are wide enough to exercise the power when the lessee continues with the lease. There is no provision in the Act or the Rules that after expiry of the period of lease, lease shall automatically stand determined and right extinguished. There being no provision in the Act and Rules for automatic determination or extinction of the right for determining the rights, a decision has to be taken. In above view of the matter, the arguments of the petitioners' counsel cannot be accepted that in the facts of the present case power under Rule 176A could not have been exercised by the Assistant Collector. Rule 176A(2) uses the word “determine”. After determination of the lease the right which flows from the lease will naturally be extinguished. As noted above, Section 194(c) uses two phrases, namely, *asami* has been ejected or his interest therein have otherwise extinguished. This provision also makes it clear that Land Management Committee can take over land from *asami* either when he has been ejected or his interest therein have otherwise extinguished. The word “otherwise extinguished” used in sub-clause (c), as noted above, can also take in its purview the extinction of the lessee's right by determination of the lease under Rule 176A(2). The exercise of power under Rule 176A is for carrying out the purpose of the Act which rule has been framed under Section 230 for carrying out the provisions of Chapter VIII.

21. The submission remains to be considered is as to whether power under Rule 176A(2) can be exercised by Assistant Collector without notice and opportunity to the lessee although sub-rule (1) of Rule 176A does not mention issuing any notice to the lessee.

22. Sub-rule (2) being enabling provision empowering the Assistant Collector to determine the lease A determination has to be in

consonance with the principles of natural justice. The determination of lease will adversely affect the rights of the lessee, hence affording an opportunity has to be read into the provision. Rule 172 which provides the procedure for declaration of tenure holder's right as contemplated under Section 194 also provide for issuing a notice to tenure holder. From very nature of the power given under Rule 176A(2) the notice to the lessee is necessary. Thus, it is held that the Assistant Collector before determining the lease under Rule 176A(2) has to give a notice to the lessee and pass orders after giving notice. Sub-rule (3) of Rule 176A also makes it clear that determination of lease shall amount to extinction of rights of the lessee, which shall be effective from the commencement of the agricultural year following the date of the order. Sub-rule (3) of Rule 176A, as quoted above, also makes it explicit that order of determination will become effective from the commencement of agricultural year following the date of the order. The above provision negates the argument of the petitioners that even after determination of the lease suit under Section 202 of the Act has to be necessarily filed. After determination of the lease under sub-rule (2) of the Rule 176A, there is no necessity of filing a suit for ejectment and if the submission raised by the petitioner's counsel is to be accepted that suit has to be filed after determination, the said suit will only delay the delivery of possession and fresh settlement of *asami* lease which cannot be the object of the Legislature.

23. From above said discussions, it is held that rights of *asami* can be extinguished by determination of the lease under Rule 176A(2). It is further found that after determination of the lease there is no necessity of filing a suit under Section 202 of the Act for ejectment of the *asami* and the possession of the *asami* can be taken by Land Management Committee in accordance with the Rules from the commencement of agricultural year following the date of the order. It is further held that before determination of the lease under sub-rule (2) of Rule 176A, a notice is required to be given by the Assistant Collector to the lessee."

(2) Relevant paragraphs of the case of *Kalika Prasad and Others vs. State of U.P. through Principal Secretary, Revenue and Others* reported in *2016 SCC OnLine All 4023* are as under:-

"14. Rule 176-A of the Rules framed under the Act (hereinafter referred to as the 'Rules'), as it stands today w.e.f. 1.11.1975, provides that no Assami lease shall be made for period exceeding five years. Therefore, in case of period of lease not being specified, it shall be treated as one on year to year basis with the maximum period of five years. Thus, the lease granted to the petitioner by way of Assami Patta automatically after expiry of the period as mentioned therein or utmost after five years from the date of initial grant.

15. This Court in the case of *Hari Ram v. Collector*, (2004) 97 RD 360 observed that where there is no material on record to establish the period of Assami lease it shall be assumed to be lease from year to year only. This decision has been followed with approval by this Court in *Ashok Kumar v. State of U.P.*, (2011) 5 AWC 5026 : (2011) 7 ADJ 748 so after the date of vesting the land would be treated as public

utility land as detailed in section 132 of the Act and managed by Land Management Committee.

16. In *Keliri Singh v. State of U.P. through Collector, Mathura*, (2007) 102 RD 872 it has been provided that the holder of Assami lease is liable to eviction in summary manner after expiry of period of lease by expunging the name from the revenue records.

17. In *Nasir Hasan v. District Deputy Director of Consolidation/Collector, Bijrtor*, (2009) 108 RD 17 this Court relying upon various decisions of the Apex Court held that where someone complains of denial of opportunity of hearing, he must show if opportunity was given him what plausible cause he would have taken to defend himself. Thus, it was held that as the petitioner was unable to justify continuance of possession after expiry of Assami lease, he was not entitle to any relief on account of denial of opportunity. In other words, notice or opportunity of hearing is not an empty formality and would not be necessary if the person complaining of denial of opportunity of hearing has no cause to show or even if shown it would not ultimately alter the result.

18. similar view was expressed in *Chhotti v. State of U.P.*, (2010) 109 RD 240 that Assami lease holder has no right to continue in possession on the expiry of lease and his name is liable to be expunged from revenue records. No opportunity of hearing is necessary when nothing plausible has been stated about the defence which may also change the outcome.

19. In the instant case also the Assami lease of the petitioner stands determined by the Statute itself *i.e.* by virtue of Rule 176-A of the Rules on the expiry of five years from the date of initial grant. So, the same stands determined with efflux of time. Therefore, there was no necessity for any fresh determination and the petitioners are liable for eviction by expunging of their names in the revenue records for which even notice or opportunity of hearing would have been an empty formality as the petitioners are unable to justify their continuance in possession over the land in dispute after expiry of the lease period. As such, the argument advanced by learned Counsel for petitioners that neither any notice nor any opportunity has been given, hence the impugned order is violative of principles of natural justice, has got no force because petitioners have got no right over the land in question after the expiry of five years from the date of grant of patta as they are assami patta holders.

20. Further, the argument raised by learned Counsel for petitioners that the lease of the petitioners cannot be cancelled without invoking the provisions as provided under section 198 (4) of the U.P.Z.A. & L.R. Act has got no force because provisions of section 198(4) of the Act for cancellation of the lease comes into play only when the land is being given by way of patta to any person by the Gaon Sabha/Land Management Committee whereas the same has no applicability because as per the petitioners case they have been granted Assami Patta by the erstwhile Zamin-dar prior to vesting, so afer the expiry of five years from its grant, the land is public utility land as per section 132 of the Act and managed by the Gaon Sabha."

(3) In the case of *Bhagwat and Ors. vs. State of U.P. and Ors.*; *MANU/UP/2525/2018*, this Court observed as under:-

"15. At this stage, it would be relevant to refer to the provisions of Rules, 1952. Rules 172, 174, 175, 176, 176-A of the Rules, 1952 read as under:-

"172. Section 230 (2)(i)-(1) An application under section 194 for declaration of the extinction of tenure-holder's rights shall be filed in the Court of the Assistant Collector in-charge of the Sub-Division by the Land Management Committee in whose local jurisdiction the extinction has occurred. Where on the application of the Land Management Committee or on facts coming to his notice otherwise, the Assistant Collector is satisfied that there is a prima facie, case for declaration of the extinction of the tenure holder's rights under section 194, he shall issue a proclamation in Z.A. Form 57 and where the tenure-holder is alive, a copy of the proclamation shall be served on him in person asking him to show cause why the declaration in question should not be granted.

(2) The Assistant Collector shall, on the date fixed in the proclamation, and after personal service, if required, has been effected, proceed to make such inquiry as he deems necessary.

(3) If after inquiry, he comes to the conclusion that a declaration in favour of the Land Management Committee should be made, he shall make a declaration to that effect and specify the number of the plots with their respective areas of which the Committee is entitled to take a possession. The possession shall then be delivered to the Committee on behalf of the [Gaon Sabha] in accordance with the procedure laid down in Rule 154.

173. Sections 195, 197 and 198: Admission to land.-Whenever the Land Management Committee intends to admit any person to land under section 195 or 197, it shall announce by beat of drum in the circle of the Gaon Sabha in which the land is situate at least seven days before the date of meeting for admission of land, the number of plots, their areas and the date on which admission thereto is to be made.

174. On the said date, a meeting of the committee shall be held to select persons for admission to land as sirdar or asami as the case may be. A list of all the persons who are present and who express their desire to be admitted to the land shall be prepared in Z.A. Form 57-A. The list shall be drawn up separately in respect of the land to be settled to a sirdar and land to be settled to an asami. The names of the persons shall be arranged in the list in the order of preference laid down in section 198.

175. If the number of applicants does not exceed the number intended to be settled on the land in respect of which announcement has been made under Rule 173, the Committee shall examine the eligibility of the person included in the list in Z.A. Form 57-A and take a decision regarding the plots of land to be settled with each such person. The Committee shall in the same meeting announce the names of the persons selected for settlement of land and also the revenue or rent to be fixed for the land proposed to be settled. If the number of applicants belonging to the categories mentioned in clauses (c), (d) and (e) of

sub-section (1) of section 198 is more than the number with whom land is intended to be settled, the list of applicants shall be placed before a meeting of the residents of the village called by the Land Management Committee and such of the applicants shall be selected for allotment as are considered to be the most suitable on merits on the basis of a consensus be arrived at the meeting so convened. If such a consensus cannot be arrived at, the Land Management Committee shall draw lots to determine the person or persons with whom the land should be settled.

[176. (1) After selecting the person or persons for admission to the land in accordance with Rule 175, the Committee shall prepare-

- (a) a list of persons so selected in Z.A. Form 57-B;
- (b) a certificate of admission to land in Z.A. Form 58; and
- (c) a counter part in Z.A. Form 58-A.

(2) The documents referred to in clauses (a) and (b) of sub-rule (1) shall be duly signed by the Chairman of the Land Management Committee but the document referred to in clause (c) shall be signed by the person so selected for admission of land.

(3) The document referred to in sub-rule (1) shall then be forwarded to the Assistant Collector-in-charge of the Sub-Division along with-

- (a) a copy of the proceedings of the meeting of the Committee in which the decision to settle land was taken; and
- (b) a certificate from the Lekhpal concerned to the effect that the particulars of the land mentioned in the list are correct, and that the admission to the land is in accordance with the provisions of the Act and the Rules.

(4) The Assistant Collector in-charge of the Sub-Division shall, on receipt of the documents, referred to in sub-rule (3) scrutinize the decision taken by the Committee and if he is satisfied that the decision of the Committee is in accordance with the Act and the rules made thereunder, he shall record his approval on the list in Z.A. Form 57-B and return the papers to the Land Management Committee within a week of its receipt from the Chairman with the direction that the possession may be delivered to the lessees and the report of the mutation be submitted to the Supervisor Kanungo by the lekhpal immediately after delivery of possession.

(5) If the Assistant Collector in-charge of the Sub-Division finds that the whole or part of the decision taken by the Committee is not in accordance with the provisions of the Act and Rules, he shall record his disapproval on the list in Z.A. Form 57-B and return the papers to the Chairman.]

[176-A. (1) On receipt of the list in Z.A. Form 57-B with the order of the Assistant Collector in-charge of the Sub-Division, the Chairman of the Land Management Committee shall call the person whose selection for allotment of land has been approved by the Assistant Collector in-charge of the Sub-Division and shall furnish to him a certificate in Z.A. Form 58 and shall get a counter part in Z.A. Form 58-A executed by him. If the land sought to be allotted is a land referred to in section 132, the person concerned shall be furnished with a certificate in Z.A.

Form 59 and shall be asked to execute a counterpart in Z.A. Form 59-D:

Provided that no lease shall be made to an asami for a period exceeding five years.

(2) It shall be lawful for the Assistant Collector in-charge of the Sub-Division to determine at any time the lease in favour of an asami and upon such determination, the asami shall not be entitled to any compensation.

(3) Every order of determination of lease under sub-rule (2) shall be effective from the commencement of the agricultural year following the date of the order.

(4) Where the decision of the Land Management Committee regarding admission to any land is not approved by the Assistant Collector in-charge of the Sub-Division, steps will be taken afresh for settlement of such land in accordance with the procedure laid down in sub-rule (1) read with Rules 173 to 176-A. All contracts relating to a lease, licence or allotment of land shall be executed in duplicate. One copy of the contract shall be given to the lessee, licensee or allottee and the other copy shall be retained by the Land Management Committee for record.]"

18. So far as the objection of the petitioners that M/s. J.K. Synthetics Ltd. was not a person aggrieved and therefore, was not competent to file the application under section 198 (4) of the Act, 1950 is concerned, this submission of the learned Counsel for the petitioner is completely misconceived for the reason that the land in question had originally been allotted to M/s. J.K. Synthetics Ltd. in the year 1976 and therefore, whether they failed to fulfill the terms and conditions of paragraphs 3 and 4 of the lease deed and in the absence thereof what would be its effect is quite another matter. But if the land originally allotted to them is subsequently allotted to the petitioners without cancelling the patta of M/s. J.K. Synthetics Ltd., for purposes of present writ petition, it cannot be said that they were not the person aggrieved and, therefore, it must be held that they were the persons aggrieved within the meaning of the term as used in section 198 (4) of the Act, 1950.

19. There is another aspect of the matter if, for a moment it is to be accepted that M/s. J.K. Synthetics Ltd. had not fulfilled the terms and conditions of paragraphs 3 and 4 of the lease executed between them and the Nagar Palika, Gautam Budh Nagar, it cannot be assumed by legal fiction that the land would automatically vest in the State Government because the language used in the lease deed in paragraph 5 is that the lessor shall have the option, to reenter upon the demised land and for that it shall forfeit 1/4th amount of the price paid for the land and be entitled to return 3/4th of the amount. Thus, the language of paragraph 5 clearly demonstrates that the factum of re-entry was based solely on the part of the lessor to re-enter the land. There is nothing on record to show that this option had been exercised by the lessor, namely, the Governor and, therefore, in the absence of anything on record to show that such an option had been exercised it cannot be assumed by way of legal fiction that the State Government had reentered upon the land in dispute extinguishing the rights of M/s. J.K. Synthetics Ltd.

20. Reference may also be made to the provisions of Rule 176-A of the Rules, 1952. The proviso to the said Rule clearly and unambiguously lays down that no lease be made to an asami for a period exceeding five years. Sub-section (2) thereof, further lays down that it would be lawful for the Assistant Collector Incharge of the sub division to determine such lease any time and upon such determination, the asami shall not be entitled to any possession. A bare reading of sub-section (2) shows that it relates to a situation where the period of five years had not yet expired and there may be an instance requiring determination of lease granted to the asami and if this power is exercised by the Assistant Collector Incharge of the sub division he may determine the lease granted in favour of the asami. The provision of subsection (2) to section 176-A comes into play if the term of the lease has expired by efflux of time of five years. The proviso to subsection (1) of section 176-A, however, clearly prescribes the time period of five years during which the lease shall be valid and emphatically declares that no lease shall be made to an asami for a period exceeding five years. There is no provision under section 176-A which may provide for extension of the time period of five years, which implies that the lease would determine automatically by fiat of law on expiry of the period of five years by efflux of time. Even assuming for a moment that the lease had been granted to the petitioners through the resolution dated 26.11.1994 and 18.8.1995 that lease would stand expired on the expiry of five years thereafter. Therefore, the petitioners would have no right, as of today, to maintain this writ petition questioning the impugned order of the Additional Collector cancelling the resolution. The petitioners as of today, are rank trespassers over the land in dispute.

21. This Court has to consider another aspect of the matter that even if, it is assumed for a moment that there was a valid lease granted in favour of the petitioners under the Resolution dated 26.11.1994 and 18.8.1995 but as of today, the impugned orders if, set aside would have effect of restoring the petitioners to their original position as lease holders. Dos is not permissible in view of the fact that the patta would have automatically come to an end on the expiry of 5 years from the date of its grant and, therefore, in any case, no such relief can be granted to the petitioners in this writ petition which would have the effect of nullifying the statutory consequences of the proviso to section 176-A of the Act, 1990 and thereby perpetuate an illegality.

22. For reasons aforesaid, I do not find any illegality or infirmity in the impugned orders. The writ petition lacks merit and is accordingly, dismissed.

The original records provided by Sri Rajesh Singh, learned Standing Counsel shall be returned to him."

(4) In the case of *Sanjay Kumar and Others vs. State of U.P. and Others* reported in *2020 SCC OnLine All 13*, this Court observed as under:-

"11. The only other aspect, which requires consideration is whether the petitioners are entitled to the benefit of Section 76 of the U.P. Revenue Code, 2006 as has been contended, they or their predecessor, being recorded as asamis. The petitioners in effect claim benefit of Section 76(1)(dd), which reads as follows:—

“[(dd) every person who was an asami in possession of land not covered by Section 77 of this Code, immediately before the date of the commencement of this Code and had been recorded as such in Class 3 of the annual register (khatauni) of 1407 Fasli:

Provided that where the land in possession of a person, together with any other land, held by him in Uttar Pradesh exceeds the ceiling area determined under the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960, the rights of a Bhumidhar with non-transferable rights shall accrue in favour of such person in respect of so much area of the first mentioned land, as together with such other land held by him, does not exceed the ceiling area applicable to him, and the said area shall be demarcated in the prescribed manner in accordance with the principles laid down in the aforesaid Act;]”

The crucial words in the provision aforesaid are “an asami in possession”.

12. It is no doubt true that the petitioners were recorded as asami but in view of what has been stated above, especially in view of Rule 176A(1), the asami rights over plot no. 347, automatically came to an end in 1993. The petitioners or their predecessor-in-interest thereafter, ceased to be asami. A wrong entry in the revenue records, in my considered opinion, does not entitle petitioners to the benefit of Section 76(1)(dd) of the Code. Any other interpretation will render the provision itself, absurd. The construction of the provision relied upon, cannot be held to mean that even a person recorded wrongly, illegally and without any right, as an asami, is also entitled to the benefit, thereof.

13. The benefit claimed is available to and has been extended to or is available only to a person who was an asami on the date the Revenue Code was enforced i.e. 11.02.2016. As noted above, the asami rights of the petitioners' predecessor extinguished in 1993, in accordance with the proviso to Rule 176-A of the U.P. Zamindari Abolition and Land Reforms Rules. No doubt the entry of asami should have been corrected, thereafter. But even if a wrong revenue entry continued, the same, by itself, cannot make the petitioners asamis on the relevant date i.e. 11.02.2016, which right stood extinguished by operation of law, long back.

14. It is relevant to note that proceedings under Section 198(4) of the U.P. Zamindari Abolition and Land Reforms Act were instituted against all the allottees. It appears that a revision was filed by the petitioners' predecessor-in-interest, which was allowed on the ground that the name of an asami had been expunged without issuing any notice to him. It appears that thereafter, the notice has been issued and the impugned orders came to be passed after hearing, also petitioners' predecessor-in-interest.

15. There is no requirement for initiation of proceedings under Section 198(4) of the U.P. Zamindari Abolition and Land Reforms Act as against an asami. The lease of an asami can be terminated at any time in accordance with the provisions contained in Rule 176A of the U.P. Zamindari Abolition and Land Reforms Rules. It appears that the name of the petitioners, predecessor-in-interest was also incorporated in the proceedings under Section 198(4), because the lease approved on 15.01.1988 was with regard to both asamis and bhumidhars with non-

transferable rights. However, mention of the wrong section or a wrong provision of law will not render the proceedings against the petitioners or their predecessor-in-interest void or vitiated.

16. In view of the foregoing and since the limitation provided for cancellation of a lease granted to a bhumidhari with non-transferable rights, does not apply in the case of an asami lease, the writ petition is without merit and is, hereby, dismissed."

(5) Relevant paragraphs of the case of *Mahendra Singh vs. Board of Revenue and Others* reported in *2019 SCC OnLine All 3532* are as under:-

"6. The provisions of Section 198(9) of the U.P. Zamindari Abolition and Land Reforms Act, reads thus:

"198. Order of preference in admitting persons to land under Sections 195 and 197.-(1).....x.....x

(9) Where any person has been admitted to any land specified in Section 132 as a sirdar or bhumidhar with non-transferable rights at any time before the said date and such admission was made with the previous approval of the Assistant Collector in charge of the sub-division in respect of the permissible area mentioned in Sub-section (3), then notwithstanding anything contained in other provisions of this Act or in the terms and conditions of the allotment or lease under which such person was admitted to that land, the following consequences, shall, with effect from the said date ensue, namely:

(a) the allottee or lessee shall be deemed to be an asami of such land and shall be deemed to be holding the same from year to year, and the allotment or lease of the land to the extent mentioned above shall not be deemed to be irregular for the purposes of sub-section (4).

(b) the proceedings, if any, pending on the said date before the Collector or any other court or authority for the cancellation of the allotment or lease of such land, shall abate."

7. Sri. Vishnu Kumar, learned Standing Counsel has refuted the aforesaid submission of the learned counsel for the petitioner and contended that the provisions of Section 198(9) of the U.P. Zamindari Abolition and Land Reforms Act, are not attracted to the facts of the present case.

8. A perusal of the provisions of sub-section (9) of Section 198 of the Act shows that for the said provision to be attracted, the first condition is that the person, who claims benefit must have been admitted to any land specified in Section 132 as a sirdar or bhumidhar with non-transferable rights at any time before 10.11.1980 (as mentioned in sub-section (6) of Section 198) with the previous approval of the Assistant Collector, in charge of the sub-division in respect of the permissible area mentioned in Sub-section (3). If all the said conditions are fulfilled, the consequence that would ensue are detailed in clauses (a) and (b) of sub-section (9) of Section 198. It is clearly mentioned in clause (a) of sub-section (9) (supra) that the allottee or lessee shall be deemed to be an asami of such land and shall be deemed to be holding the same from year to year, but the allotment or lease of the land shall not be deemed to be irregular for the purposes of sub-section (4), that

may entitle the Collector to enquire into its validity or cancel the allotment and the lease by virtue of sub-section (4).

9. In this matter, it is neither the petitioner's case nor evidence to that effect forthcoming that the petitioner was admitted as a sirdar or a bhumidhar with non transferable rights. He was admitted as an asami on a asami patta. It is another matter that on the basis of certain subsequent orders, he may have been recorded as bhumidhar with non-transferable rights in proceedings under Section 122-B(4-F), but that does not entitle him to the benefit of sub-section (9) of Section 198, where the essential condition is that the person who claims benefit should have been admitted as sirdar or bhumidhar with non-transferable rights. The provision is clearly not available to a person who has entered on a asami patta over land that is public utility land under Section 132 of the U.P. Zamindari Abolition and Land Reforms Act.

10. Sri. Pradeep Kumar Rai, learned counsel for the petitioner has further placed reliance upon the provisions of Section 197 U.P. Zamindari Abolition and Land Reforms Act, that read to the following effect:

“197. Admission to land mentioned in Section 132.- (1) The Land Management Committee with the previous approval of the Assistant Collector in charge of the Sub-Division shall have the right to admit any person as asami to any land falling in any of the classes mentioned in Section 132 where-

- (a) the land is vacant land,
 - (b) the land is vested in the Land Management Committee, or
 - (c) the land has come into the possession of the Land Management Committee under Section 194 or under any other provision of this Act.
- (2) Notwithstanding anything contained in any other provisions of this Act, the right to admit any person as asami of any tank, pond or other land, covered by water shall be regulated by the rules made under this Act.”

11. He submits that the Land Management Committee is empowered with the previous approval of the Additional Collector, in-charge of the Sub-Division, to admit any person as asami of any land falling in any of the classes mentioned in Section 132, subject to conditions specified in sub-clauses (a) and (b), and that these in this case, are all fulfilled. It is not disputed that the petitioner was admitted as an asami way back in the year 1983, after an approval of the Competent Authority. The question is whether those asami rights would entitle him to the protection of sub-section (9) of Section 198 of the U.P. Zamindari Abolition and Land Reforms Act. That clearly in the opinion of this Court, not available to the petitioner.

12. On the other hand, the reasoning, on which the Authorities below have proceeded to expunge the name of the petitioner from the revenue records, is founded on Rule 176-A(1) of the U.P. Zamindari Abolition and Land Reforms Rules.

13. Rule 176-A(1) of the U.P. Zamindari Abolition and Land Reforms Rules, 1952, reads thus:

“176-A(1) On receipt of the list in Z.A. Form 57-B with the order of the Assistant Collector in-charge of the Sub-Division, the Chairman of the Land Management Committee shall call the person whose selection for allotment of land has been approved by the Assistant Collector in-charge of the sub-division and shall furnish to him a certificate in Z.A. Form 58 and shall get a counterpart in Z.A. Form 58-A executed by him. If the land sought to be allotted is a land referred to in Section 132, the person concerned shall be furnished with the certificate in Z.A. Form 59 and shall be asked to execute a counterpart in Z.A. Form 59-D.

Provided that no lease shall be made to an Asami for a period exceeding five years.

(2) It shall be lawful for the Assistant Collector in-charge of the sub-division to determine at the time the lease in favour of an Asami and upon such determination, the Asami shall not be entitled to any compensation.”

(emphasis by Court)

14. The proviso to sub-section (1) of Section 176-A shows that a person, who has been given a lease as an asami shall have rights that would not enure beyond a period of five years. Thus, an asami patta, of a particular land that is public utility land, would be self determinative by lapse of time.

15. In the opinion of this Court, there is no provision under the law by which a person admitted to a public utility land envisaged under Section 132 of the U.P. Zamindari Abolition and Land Reforms Act, like pasture land (charagah) as an asami can hold rights beyond a period of five years. The Authorities below have, therefore, rightly expunged the name of the petitioner from the revenue records. There is no manifest illegality or error apparent that may call for interference by this Court with the orders impugned."

A perusal of judgment passed in the case of ***Mahendra Singh*** (supra) indicates that in the said case, the allotment of asami patta was over the pasture land (Charagah) and this Court after considering the relevant statutory provisions i.e. Section 197 and 198A of U.P. Zamindari Abolition and Land Reforms Act (in short "Act of 1950") as also Rule 176-A(1) and Rule 176-A(2) of the U.P. Zamindari Abolition and Land Reforms Rules, 1952 (in short "Rules of 1952") dismissed the writ petition holding that there is no provision under the law by which a person admitted to a public utility land envisaged under Section 132 of the Act of 1950, like pasture land (Charagah) as an asami can hold rights beyond a period of five years.

(6) Relevant paragraphs of the case of ***Kiran vs. State of U.P. and Ors.*** reported in ***MANU/UP/3725/2019*** are as under:-

"9. The proceedings under section 33/39 of the U.P. Land Revenue Act for correction of papers, which are instituted on a report of the Lekhpal. The Sub Divisional Officer referring to the proviso to section 176A(1) of the U.P. Zamindari Abolition and Land Reforms Rules has held that an asami lease cannot be for a period greater than five years.

10. Since, a period greater than five years had elapsed from the grant of asami lease to the petitioners. Their terms had comes to an end by efflux of time. Therefore, the names of the petitioners were liable to be and were ordered to be expunged.

11. He has also referred to the power conferred by sub-rule (2) of Rule 176-A of the U.P. Zamindari Abolition and Land Reforms Rules, which grants the Assistant Collector in charge of a Sub Division, namely the Sub Divisional Officer, to determine, at any time, the lease in favour of an asami.

12. The Revisional Court while dismissing the revisions on merits has also observed that the revisions were highly time barred and no cogent explanations have been given to explain the delay of almost six years in filing them.

13. The contention of Counsel for the petitioners that their lease has been cancelled in proceedings under section 33/39 of the U.P. Land Revenue Act, which is not permissible, cannot be accepted. No question of cancelling the lease arose because, the lease in accordance with proviso to Rule 176-A(1) of the U.P. Zamindari Abolition and Land Reforms Rules can only be for five years.

14. Admittedly, the lease was granted in the year 2000. It thereafter, necessarily expired by efflux of time in 2005. The question of cancellation of a lease arise only during its term and not after such term has expired by lapse of its term, automatically.

15. Since, the term of an asami lease granted to the petitioners had expired, the Sub Divisional Officer committed no illegality in directing expunging the name of the lessee.

16. The other contention that the order passed by the Sub Divisional Officer was ex parte, also does not improve the petitioners case because admittedly, they had filed revisions and which were dismissed after hearing them and after considering their cases. Under the circumstances, the defect, if any in the order passed by the Sub Divisional Officer stands cured.

17. The only other point, which survives for consideration is the plea taken by the petitioner that since they have continued in possession during the period of the lease and even thereafter, they cannot be evicted because of the protection provided by section 122B (4F) of the U.P. Zamindari Abolition and Land Reforms Act.

18. Even this contention cannot be accepted because the powers conferred under the said sections are to be exercised against a person, who has occupied land belonging to the Gaon Sabha or a local authority " otherwise then in accordance with the provisions of this Act" as is clearly mentioned in sub-section (1) of section 122B (4F) of the Act.

19. Admittedly, the petitioners have granted an asami lease. Therefore, they had entered into possession in accordance with the provisions of

the U.P. Zamindari Abolition and Land Reforms Act and not, otherwise.

20. For this reason alone, the benefit of sub-section (4-F) of section 198 of the Act is not available to the petitioners."

(7) In the case of *Irshad Ahmad and Others vs. State of U.P. and Others* reported in **2019 SCC OnLine All 4937**, this Court observed as under:-

"6. Sri Rajesh Srivastava, learned Standing Counsel, countering these submissions has firstly contended that the Patta which was executed in favour of the petitioners was clearly referable to Section 197 of the 1950 Act since undisputedly the land which was leased fell within the ambit of the categories enumerated in Section 132 of that Act. In view of the above, Sri Srivastava submitted that the lease in question must be recognised as being for a maximum period of five years in light of the provisions made in Rule 176-A. According to Sri Srivastava, the provisions of Section 76(dd) of the 2006 Code can have no application since land which is covered under Section 77 of the 2006 Code is specifically excluded from the protection extended under Section 76(dd). Section 77 of the 2006 Code, it becomes pertinent to note, is *pari materia* to Section 132 of the 1950 Act. In support of the submissions noted above both the learned counsels have firstly placed reliance upon the decision rendered in *Hari Ram v. Collector* wherein a question arose with respect to the procedure which is liable to be followed for cancellation of a lease granted under the 1950 Act. Dealing with the contention which was addressed there a learned Judge of the Court held that a lease granted under the aforementioned Act need not be determined only by way of filing of a suit under Section 202 of the 1950 Act. It held that the right of an Asami could be extinguished by determination of the lease under Rule 176-A(2). The relevant observations as made in that decision are extracted hereinbelow:—

"21. As observed above, there is no material on the record to suggest that leases were for a fixed period. Asami leases of the petitioners have been taken to be year to year and in the present case leases being year to year, for determination of the lease orders are required to be passed. However, the words "at any time" used in Sub-rule (2) of Rule 176A are wide enough to exercise the power when the lessee continues with the lease. There is no provision in the Act or the Rules that after expiry of the period of lease, lease shall automatically stand determined and right, extinguished. There being no provision in the Act and Rules for automatic determination or extinction of the right for determining the rights, a decision has to be taken. In above view of the matter, the arguments of the petitioners' counsel cannot be accepted that in the facts of the present case power under Rule 176A could not have been exercised by the Assistant Collector. Rule 176A(2) uses the word "determine". After determination of the lease the right which flows from the lease will naturally be extinguished. As noted above, Section 194(c) uses two phrases, namely, asami has been ejected or his interest therein have otherwise extinguished. This provision also makes it clear that Land Management Committee can take over land from asami either when he has been ejected or his interest therein have otherwise extinguished. The word "otherwise extinguished" used in Sub-clause (c), as noted above, can also take in its purview the extinction of the

lessee's right by determination of the lease under Rule 176A(2). The exercise of power under Rule 176A is for carrying out the purpose of the Act which rule has been framed under Section 230 for carrying out the provisions of Chapter VIII.....

24. From abovesaid discussions, it is held that rights of asami can be extinguished by determination of the lease under Rule 176A(2). It is further found that after determination of the lease there is no necessity of filing a suit under Section 202 of the Act for ejectment of the asami and the possession of the asami can be taken by Land Management Committee in accordance with the Rules from the commencement of agricultural year following the date of the order. It is further held that before determination of the lease under Sub-rule (2) of Rule 176A, a notice is required to be given by the Assistant Collector to the lessee.”

Sri Srivastava learned Standing Counsel has additionally placed reliance upon two other judgments rendered by learned Judges of the Court in *Ashok Kumar v. State of U.P.* and *Ram Naresh v. State of U.P.*

Undisputedly the lease made in favour of the petitioners was one that is directly traceable to the provisions of Section 197 of the 1950 Act. That provision contemplates the grant of lease to persons as Asamis on any land falling within the ambit of Section 132. Section 132 enumerates the classes of land which are reserved for public utility and on which ordinarily no Bhumidhari rights can accrue. The lease which is granted under Section 197 must consequently be understood bearing in mind the character of the land to which the person is admitted. The lease granted in favour of the petitioners was made out on Z.A. Form 59D which reads thus:

Z.A. Form 59-D

[See Rule 176-A and Para 39]

Model Form

To be executed from asami

I..... son of..... resident of..... Village..... division.....
Tahsil..... district..... have taken lease of land of Bhumi
Prabandhak Samiti in the position of asami at annual land revenue/rent
under that term and condition that if the land will be required for
public purpose its lease or licence will be terminated with the date of
commencement of agricultural year of the next expiration period. The
annual land revenue/rent oh the above mentioned land will/shall be due
at under mentioned date, i.e. Rs. on..... date.....
Rs..... on..... date. Name of village..... Pargana.....
Tahsil..... District..... Khasra no. of lands Area Boundary.

Dated.

Signature Asami

7. As is evident from the form of the lease, although no specific tenure thereof is fixed, it is clearly provided therein that the lease or license would stand terminated the moment it be found that the land is required for a public purpose. Viewed in that context it is manifest that the lease cannot be understood or recognised as being one in perpetuity. Coupled with this is the provision made in Rule 176-A of the 1952 Rules. The proviso to Rule 176-A clearly prescribes that no

lease made in favour of an Asami would exceed a period of five years. It is in this backdrop that the decisions rendered by the Court in *Ashok Kumar* and *Ram Naresh* assume significance.

8. In *Ashok Kumar* the submission which was addressed was that since the lease had been terminated without affording an opportunity of hearing, the order of termination was liable to be set aside and the matter remanded. While negating this submission, the learned Judge observed that since the lease itself would come to an end statutorily and by efflux of time in light of Rule 176A, no prejudice stood caused to the lease holder even if a notice had not been issued. The following observations as entered in *Ashok Kumar* and which are relevant for deciding the present writ petition are extracted hereinbelow:—

“7. In the instant case, the petitioner in paragraph No. 4 has clearly mentioned that he is a class-III lessee. It is on the strength of the said lease that the petitioner got his name mutated during consolidation operations. In the opinion of the Court, the mere recording of the name of the petitioner does not give him a right higher than that which has been fixed under the Statute. The petitioner claims himself to be a lessee as defined under Section 133(c) of the U.P. Zamindari Abolition & Land Reforms Act. Section 132 of the Act provides that no-one shall acquire rights of a Bhumindari tenant in respect of such land. The petitioner, therefore, cannot claim himself to be a bhumindar of the land in dispute nor can his name continue to be recorded as such. Any continuance of entry would, therefore, not confer any title beyond the period for which the lease existed. For this, the proviso to Rule 176-A would be relevant which prescribes the period of the lease. Earlier, the lease was for a period of 9 years which came to be restricted to 5 years after the amendment w.e.f. 1.11.1975. Prior to that the period of letting out to a asami was 9 years as per sub-Rule 2 of Rule 171-A. This aspect has been noted in para 28 of *Ramdeo's case* (supra).

8. Where the Statute itself has determined the period of lease then in the opinion of the Court, no fresh determination is required. If the person has unauthorizedly held over the land, he can be ejected by either taking recourse to summary proceedings or to any other mode after putting him to notice. The ratio of the case of *Hari Ram*, therefore, has to be understood in the aforesaid context.

9. Similarly in the decision in the case of *Ramdeo*, the Court further came to the conclusion that a summary procedure is also provided under Section 212-A of the U.P. Zamindari Abolition & Land Reforms Act. While dealing with the provisions of the U.P. Land Revenue Act, this Court further held in para 5 of *Ramdeo's* decision (supra) that the only procedure available for the determination of a lease is Section 202, cannot be accepted.

10. The opportunity to the petitioner for establishing his right as against the period prescribed for subsistence of the lease was available before this Court as well. It is not the case of the petitioner that the lease was either extended to the petitioner or was granted to the others afresh. The petitioner has not placed any material indicating extension of the lease or otherwise being continued under any law for the time being in force. Further the amendment in the Rules as pointed out herein above, the period of lease stood reduced to 5 years. Even that

period has expired. The petitioner, therefore, cannot continue as an asami beyond the said statutory period.

11 Faced with this situation and having noticed the decisions in the case of *Hari Ram* herein above, this Court in paras 6 to 8 in the case of *Chhotti v. State of U.P.*, held as under:—

“6. As by virtue of the aforesaid rule maximum period the lease is five years and petitioner has not stated anything in this writ petition that in case opportunity of hearing is provided to him, what plausible cause he will be able to show hence it is not appropriate to remand the matter for fulfilment of useless formality of opportunity of hearing. The proceedings in which impugned order was passed were in fact under Rule 176-A(2).

7. At this juncture reference may also be made to the Authority in *Hari Ram v. Collector*, wherein it has been held that for eviction of asami it is not necessary to file suit under Section 202 of the Act and it may be done by passing orders under Section 33/34/39 of U.P.L.R. Act also.

8. Accordingly, there is no merit in the writ petition hence it is dismissed.”

The giving of an opportunity would, therefore, be an empty formality. It would be appropriate to explain that this concept of opportunity was held to be available on the facts of *Hari Ram's case* where the period of lease was not known and which was noted in para 19 of the said case.”

9. In *Ram Naresh* a learned Judge dealing with an identical Assami lease in which no tenure was fixed held as follows:—

“17. Grant of Assami lease is altogether different from admission of any person as Bhumidhar with non-transferable rights on the land of the Gaon Sabha other than the land specified in Section 132 of the Act for which allotment is made under Section 195 of the Act in accordance with the preference provided in Section 198. The procedure for cancellation of lease provided under Section 198(4) of the Act is in connection with and related to the grant of lease on Gaon Sabha land other than those specified under Section 132 of the Act as bhumidhar with non-transferable rights. The said procedure as such is not applicable to Assami lease covered by Section 197 of the Act.

18. In view of the above, the submission that the Assami lease granted to the petitioner continues as it has not been cancelled under Section 198(4) of the Act has no substance. The Assami lease of the petitioner stands determined with efflux of time.

19. In *Kehri Singh v. State of U.P. through Collector, Mathura*, 2007 (5) adj 262, it has been provided that the holder of Assami lease is liable to eviction in a summary manner after expiry of period of lease by expunging the name from the revenue records, after providing opportunity of hearing.

.....

22. A similar view was expressed in *Chhotti v. State of U.P.*, 2009 (910) adj 761, that Assami lease holder has no right to continue in possession on the expiry of lease and his name is liable to be expunged from revenue records. No opportunity of hearing is necessary when

nothing plausible has been stated about the defence which may also change the outcome.

23. In the instant case also the Assami lease of the petitioner stands determined by the Statute itself i.e. by virtue of Rule 176-A of the Rules on the expiry of five years from 17.8.1992. Therefore, there was no necessity for any fresh determination and the petitioner was liable for eviction by expunging of his name in the revenue records for which even notice or opportunity of hearing would have been an empty formality as the petitioner is unable to justify his continuance in possession over the land in dispute after expiry of the lease period.”

10. Both these decisions have principally held that even if the Asami lease does not specify a particular tenure, in light of the provisions made in Rule 176-A, it would be deemed to have come to an end on the expiry of a period of five years. It was further held that once the period of five years expires, there is no necessity for any fresh determination of rights and that the name of the leaseholder would be liable to be expunged from the revenue record without even a notice or an opportunity of hearing. This the learned Judge held since, it was opined that the following of such a procedure would clearly be an empty formality. Once these legal principles are borne in mind, it is manifest that the lease of the petitioner, irrespective of whether it had been abandoned or not, would come to an end on the expiry of five years. It is not the case of the petitioners that the lease was either extended or freshly made thereafter. The petitioners appear to have merely continued on the strength of the interim order which was granted on this writ petition.

11. The Court then proceeds to deal with the argument addressed on the basis of Section 186 of the 1950 Act. While it is true that Section 186 deals with a case of abandonment and clearly provides that once the lease holders responds, the proceedings must be dropped, that does not in the considered view of this Court detract from the fundamental issue which has been raised and considered, namely, the tenure of the lease. Irrespective of whether there was in fact abandonment, there was no right inhering in the petitioner to occupy the land in question beyond the maximum period prescribed in Rule 176-A."

(8) In the judgment passed in the case of *Feku vs. Deputy Director of Consolidation and Others* reported in **2023 SCC OnLine All 387**, this Court observed as under:-

"13. Relevant provisions for adjudication of above referred issue are mentioned hereinafter:

(A) Section 122-B(4-F) of Act, 1950:

“(4-F) Notwithstanding anything in the foregoing subsections, where any agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe is in occupation of any land vested in a Gaon Sabha under Section 117 (not being land mentioned in Section 132) having occupied it from before May 13, 2007 and the land so occupied together with land, if any, held by him from before the said date as

bhumidhar, sirdar or asami, does not exceed 1.26 hectares (3.125 acres), then no action under this section shall be taken by the Land Management Committee or the Collector against such labourer; and he shall be admitted as bhumidhar with non-transferable rights of that land under Section 195 and it shall not be necessary for him to institute a suit for declaration of his rights as bhumidhar with non-transferable rights in that land. Explanation. - The expression "agricultural labourer" shall have the meaning assigned to it in Section 198."

(B) Section 131 of Act, 1950:

"131. Bhumidhar with non-transferable rights.- Every person belonging to any of the following classes shall be called a bhumidhar with non-transferable rights and shall have all the rights and be subject to all the liabilities conferred or imposed upon such bhumidhars by or under this Act, namely-

(a) every person admitted as a sirdar of any land under Section 195 before the date of commencement of the Uttar Pradesh Land Laws (Amendment) Act, 1977 or as a bhumidhar with non-transferable rights under the said section on or after the said date;

(b) every person who in any other manner acquires on or after the said date, the rights of such bhumidhar under or in accordance with the provisions of this Act;

(c) every person who is, or has been allotted any land under the provision of the [Uttar Pradesh Bhoodan Yagna Act, 1952](#).

(d) with effect from July 1, 1981 every person with whom surplus land is or has been settled under Section 26-A or subsection (3) of Section 27 of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960."

(C) Rule 176-A of U.P. Zamindari Abolition and Land Reforms Rules, 1952 (hereafter referred to as "Rules, 1952"):

"176-A. (1) On receipt of the list in Z. A. Form 57-B with the order of the Assistant Collector in-charge of the Sub-Division, the Chairman of the Land Management Committee shall call the person whose selection for allotment of land has been approved by the Assistant Collector in-charge of the Sub-Division and shall furnish to him a certificate in Z.A. Form 58 and shall get a counterpart in Z.A. Form 58-A executed by him. If the land sought to be allotted is a land referred to in Section 132, the person concerned shall be furnished with a certificate in Z. A. Form 59 and shall be asked to execute a counterpart in Z. A. Form 59-D:

Provided that no lease shall be made to an asami for a period exceeding five years.

(2) It shall be lawful for the Assistant Collector-in-charge of the Sub-Division to determine at any time the lease in favour of an asami and upon such determination, the asami shall not be entitled to any compensation.

(3) Every order of determination of lease under sub-rule (2) shall be effective from the commencement of the agricultural year following the date of the order.

(4) Where the decision of the Land Management Committee regarding admission to any land is not approved by the Assistant Collector-in-charge of the Sub-Division, steps will be taken afresh for settlement of such land in accordance with the procedure laid down in sub-rule (1) read with Rules 173 to 176-A. All contracts relating to a lease, licence or allotment of land shall be executed in duplicate. One copy of the contract shall be given to the lessee, licensee or allottee and the other copy shall be retained by the Land Management Committee for record.”

(D) Section 9-A(2) of Act, 1953:

“(2) All cases which are not disposed of by the Assistant Consolidation Officer under sub-section (1), all cases relating to valuation of plots and all cases relating to valuation of trees, wells or other improvements, for calculating compensation therefor, and its apportionment amongst co-owners, if there be more owners than one, shall be forwarded by the Assistant Consolidation Officer to the Consolidation Officer, who shall dispose of the same in the manner prescribed.”

14. I have carefully perused the Patta issued in favour of father of petitioner (Annexure-7 to the writ petition). Said Patta was issued to father of petitioner on 30.06.1971 as an Asami only on yearly rent basis. Therefore, Rule 176-A of Rules, 1952 becomes relevant. As referred above, proviso to it has specifically provided that no lease shall be made to an Asami for a period exceeding five years. Petitioner has not brought on record any document in support of his contention that Patta issued to his father as an Asami was extended after five years, i.e., after 30.06.1976 (Patta was issued on 30.06.1971). Further, taking note that land in question was mentioned in revenue record under the category of Class-III and while rejecting application filed by petitioner under Section 9-A(2) of Act, 1953 it was directed to be recorded as a land of Gaon Sabha as Banjar under the category of Class-V, therefore, the very basis of claim of petitioner that he was occupying land in question as Pattedar, is not available to him.

15. In order to take benefit of Section 122-B (4-F) of Act, 1950 the essential condition is that petitioner has occupied land in question before 13th May, 2007 as an Asami. However, as discussed above, since life of Patta issued in favour of father of petitioner already came to an end after expiry of five years, i.e., on 30.06.1976, therefore, above referred essential condition was not available to petitioner and he cannot claim that on the given date, i.e., on 13th May, 2007, he was already admitted as Bhumidhar with non-transferable right and that by virtue of long possession of land he may be declared Bhumidhar with transferable right also.

16. A Coordinate Bench of this Court in *Ashok Kumar v. State of U.P.*, 2011 (7) ADJ 748 in similar circumstances has held as under:

“7. In the instant case, the petitioner in paragraph No. 4 has clearly mentioned that he is a class-III lessee. It is on the strength of the said lease that the petitioner got his name mutated during consolidation operations. In the opinion of the Court, the mere recording of the name of the petitioner does not give him a right higher than that which has been fixed under the Statute. The petitioner claims himself to be a lessee as defined under Section 133 (c) of the U.P. Zamindari

Abolition & Land Reforms Act. Section 132 of the Act provides that no-one shall acquire rights of a Bhumindari tenant in respect of such land. The petitioner, therefore, cannot claim himself to be a bhumindar of the land in dispute nor can his name continue to be recorded as such. Any continuance of entry would, therefore, not confer any title beyond the period for which the lease existed. For this, the proviso to Rule 176-A would be relevant which prescribes the period of the lease. Earlier, the lease was for a period of 9 years which came to be restricted to 5 years after the amendment w.e.f. 1.11.1975. Prior to that the period of letting out to a asami was 9 years as per sub-Rule 2 of Rule 171-A....”

17. Another Coordinate Bench in *Chandan Prasad v. State of U.P.*, Neutral Citation No. 2016 : ADC : 149796 has held as under:

“The only other contention that survives for consideration is the contention that the lessees become bhumidhar with transferable rights, upon the expiry of 10 years from the date of allotment, in accordance with Section 131-B of the Act. Even this submission is completely misconceived. It is only a bhumidhar with non transferable rights which can become a bhumidhar with transferable rights upon the expiry of 10 years from the date of the allotment. This section does not apply to an asami, as was the status of the petitioners' predecessor-in-interest.”

18. In view of above discussion, since petitioner has not satisfied requisite condition to take advantage of Section 122-B(4-F) of Act, 1950, therefore, reliance placed by learned counsel for petitioner on Supreme Court's judgment in *Manorey alias Manohar* (supra) and this Court's judgment in *Chhidda* (supra) would not help him in any manner.

19. As discussed above, since Patta issued to father of petitioner does not exist in law after five years of its allotment, i.e., from 30.06.1976, therefore, in view of *Ashok Kumar* (supra) and *Chandan Prasad* (supra) petitioner has no right to be declared as Bhumidhar with non-transferable right and application filed by petitioner under Section 9-A(2) of Act, 1953 was rightly rejected by Consolidation Officer and appeal and revision thereof was also rightly rejected. Learned counsel for petitioner is not able to show any illegality or irregularity in impugned orders.

20. The writ petition lacks merit and is accordingly dismissed."

It is apparent from the above indicated authorities that based upon Asami lease/patta, no right can be claimed by the allottee.

Admittedly, the claim of the petitioner is based on Asami lease/patta and taking note of above indicated legal position, this Court finds no merit in this petition. It is accordingly ***dismissed***.

Order Date :- 9.1.2024

Arun/-