

Court No. - 31

Case :- WRIT - C No. - 1002401 of 1985

Petitioner :- Smt.Shanti Devi

Respondent :- District Judge Gonda And Others.

Counsel for Petitioner :- Pramod Kumar,S.K. Srivastava,U S Sahai

Counsel for Respondent :- C.S.C.,Pradeep Agrawal

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Mohd. Arif Khan Senior Advocate assisted by Sri U. S. Sahai Advocate, the learned counsel for the petitioner and Sri Kuldeep Pati Tripathi, the learned Additional Advocate General assisted by Sri Arya Shreshtha Tiwari, the learned Additional Chief Standing Counsel.
2. Briefly stated, the facts pleaded in the Writ Petition are that the State Government had issued a notification dated 19.04.1954 under Section 4 of the Forest Act, 1927 for constituting certain lands as a reserved forest. The petitioner filed objections before the Forest Officer stating that he was the Seerdar of the land in question and the erstwhile Zamindar Rani Kaneez Bakar had executed a lease-deed in her favour on 06.05.1951 for cultivation purpose. Some *Mahua* trees were existing on the land in dispute, which had been sold to the petitioner for a sale consideration of Rs.2,000/-.
3. The Forest Settlement Officer passed an order dated 13.04.1957 stating that the owner of the land had executed a patta in favour of the petitioner on 06.07.1951, hence the proceedings were dropped and the land was released in favour of the lessee.
4. The Forest Department challenged the order by filing an appeal which was allowed and the matter was remanded.

5. After remand, the petitioner's objections were turned down by means of an order dated 13.05.1959. The petitioner again filed an appeal, which was dismissed by means of order dated 26.09.1961. The petitioner filed a revision before the State Government, which was referred to the Tribunal / District Judge, Gonda and was registered as Civil Revision No. 37 of 1973. The District Judge allowed the revision by means of an order dated 24.08.1973 and the matter was again remanded to the Forest Settlement Officer.
6. After remand, the Forest Settlement Officer passed an order dated 23.06.1982, whereby the petitioner's objection has been rejected again. The petitioner filed a Misc. Revenue Appeal No.11 of 1982 which was rejected by means of a judgment and order dated 28.02.1985 passed by the District Judge, Gonda.
7. The petitioner has filed the instant Writ Petition seeking quashing of the judgment and order dated 23.06.1982 passed by the Forest Settlement Officer, Gonda in Case No.1129 under Section 6 of the Forest Act and the judgment and order dated 28.03.1985 passed by the District Judge, Gonda in Misc. Revenue Appeal No.11 of 1982.
8. The State has filed a counter affidavit denying that any lease had actually been executed in favour of the petitioner by ex-Zamindar Rani Kaneez Bakar on 14.07.1951. Sale of *Mahua* trees by Rani Kaneez Bakar to the petitioner has also been denied.
9. The petitioner has filed a rejoinder affidavit and a copy of a registered lease-deed dated 14.07.1951 executed by Rajkumari Kaneez Bakar in favour of the petitioner Smt. Shanti Devi granting lease-hold rights in respect of 123.95 acres land situated in Mauja Pure Datai, Mohal Birhara, Pargana and District Gonda along with the trees existing on it on a rental of Rs.374 and 6 aanna per year with effect from year 1358 Fasli. It is recorded in the lease-deed that the possession of the land was handed over to Smt. Shanti Devi with effect from 20.01.1951 and mutation of her name had also been carried out. The lease-deed further states that the Lessee will have all

the rights generation after generation in respect of the leased land and the trees existing thereon and that the rent would be payable in two installments, half after Kharif crop in the month of Kwaar and half after Rabi crop in the month of Vaishakh. This lease-deed was registered in the office of Sub-Registrar on 07.09.1951.

10. It has further been stated in the rejoinder affidavit that Smt. Shanti Devi has paid Rs.240.63 towards lease-rent through a treasury challan, a copy whereof has been annexed with the rejoinder affidavit.
11. The State has filed a supplementary counter affidavit annexing therewith a copy of the relevant extract of Khatauni for the year 1356 Fasli (i.e. 01.07.1948 to 30.06.1949, before commencement of U.P. Zamindari Abolition and Land Reforms Act) and a note is written on it that *Zeeman spasht nahi hai* i.e the class of the land is not clear. Land bearing Gata Nos. 225/22.43, 228/2-11.80 acre, 302/4-37.5 acre, 379/5-70.40 acre, 940/1-13.10 acre and 980-20.40 acre were recorded in the name of Gram Panchayat as 'Banjar Deegar'. The petitioner claims to have obtained lease-hold rights in respect of the land in question through the lease-deed dated 06.07.1951, which was registered on 07.09.1951 and in the Khatauni for the year 1359 Fasli (i.e. 01.07.1951 to 30.06.1952), land bearing Gata Nos.379/5-44.23 acre, 225/1-23.79 acre, 228/3-11.68 acre and 302-35.85 acre was mentioned as Imaarti Jungle and it was recorded in the name of the petitioner - Smt. Shanti Devi. However, in the revenue records relating to the years 1377-1379 Fasli, Gata Nos.379/5-42.74, 225/1-23.79, 228/3-11.68, 302/1-33.22 acre, 940/1-12.90 and 980-18.50 acre are recorded as *Jungle*. The name of Forest Range Officer is recorded in revenue records in basic year Khatauni and the same continued to be recorded even after consolidation.
12. A supplementary rejoinder affidavit has been filed by the petitioner annexing therewith copies of Khataunis for the year 1359 Fasli and 1362 Fasli in which the land bearing Gata No.379/5 area 44-23 was recorded in the name of the petitioner Smt. Shanti Devi.

13. A copy of the statement of Anand Prakash, husband of the petitioner Smt. Shanti Devi has also been annexed with the supplementary rejoinder affidavit, wherein he stated that her wife Smt. Shanti Devi is the Seerdar of the land in question, which she had taken on lease in the year 1950-51 from Zamindar Rani Kaneez Bakar. At that time he was posted as District Engineer, Gonda. The leased land measures 150 acres. He stated that he and his wife had gone to Lucknow to meet the Manager of the Zamindar for taking this land. The Zamindar herself had talked to his wife and had agreed to give the land on lease and under her orders, the lease-deed was executed at Gonda and it was signed by the Zamindar and was accepted by the petitioner. Thereafter, four leases were admitted in Tehsil Gonda and a single document in respect of three leases was executed. It was done because the revenue payable in respect of these leases exceeded Rs.100 and its registration was mandatory. Therefore, the lease-deed was presented by the petitioner in the Registrar's Office and it was executed by the Zamindar's Manager in the capacity of her power of attorney holder. Thereafter, the Manager, Zildar and Amin demarcated the land in presence of Patwari and handed over its possession and since then, he started making efforts to make the land cultivable. Under supervision of his employee Chaudhary Harbans Singh, who used to manage the land, the first crop of Arhar was sown in the year 1360 Fasli and thereafter the second crop of Lahi was sown. After that, the Forest Department restrained them and the petitioner lost possession of the land.
14. The petitioner's husband Anand Prakash further stated that there were about 43 trees of *Mahua* on the land, which were purchased for Rs.2,000/-. This amount was paid through a cheque, which was encashed. Receipt for the amount was issued by Manager Atahar Hussain Nakvi. **He further stated that the Tahsildar had passed an order for mutation and it was carried out in the Khatauni.** He also stated that he got Rs.1,000/- per year for two years as value for *Mahua* crop but thereafter he was restrained by the Forest Department and since then he neither got value of *Mahua* crop nor

possession of the trees. He stated that value of the trees would have been approximately Rs.300/- to Rs.350/- per tree. The witness stated that his wife (the petitioner) was suffering from Blood Pressure and Gout and was not in a position to give her statement. In cross-examination, the petitioner's husband stated that the petitioner was present at Gonda and she had gone to manage the land occasionally. The land was in Mauja Pure Datai, which was about 20 miles away from Gonda. The petitioner had gone to the land with her husband once or twice in the year 1951-52 but she never went there on her own. The petitioner did not observe Parda. He could not tell whether any dense Jungle was standing on the land in dispute at the time of making the statement. As far as he knew, there was no dense forest and the land was cultivable. The Forest Department had taken possession from the petitioner in 1954-55 after issuance of the notification. A few months after execution of the lease-deed, a deal for the trees was entered into separately. This negotiation was held in April 1951 for the first time. However, he did not get any of the trees cut down as he did not need its timber. He further stated that Arhar and Laahi crops were sown only once in the year 1360 Fasli. His Manager Harbans Singh used to keep accounts of expenses incurred in sowing the crop and as the Manager had died, he could not get any of the documents.

15. A copy of the statement of Shri S. M. Atahar Hussain Nakvi has also been annexed with the supplementary rejoinder affidavit. This statement had been recorded through Commission executed by Sri. Ravindra Kumar Srivastava Advocate Commissioner. He stated that Birhara State was not in District-Gonda but it was in District Barabanki. No village forming a part of Birhara State fell in District-Gonda. Mauja Pure Datai is situated in District Gonda. Proprietor of this Mauja was Smt. Rani Kaneez Bakar D/o Raja Abdul Hasan, Talukdar Riyasat Birhara, District Barabanki. **Rani Kaneez Bakar had executed a registered power of attorney in his favour but he did not have the original power of attorney because he had handed over the charge of all the documents.** A copy of the power of attorney

dated 31.05.1976 available on the paper book was admitted by this witness. He stated that 3-4 lease-deeds were executed in favour of the petitioner in respect of land situated in Pure Datai but he did not remember as to whether the lease-deeds had been registered or not. Thereafter, he said that he was remembering that out of the lease-deeds, one lease-deed was registered in the Registrar's Office. After execution of the lease-deed, possession was handed over to the petitioner and lease-rent was taken from her. Value of the trees existing on land was also taken. In his cross-examination, **Atahar Hussain Nakvi stated that Rani Kaneez Bakar was a Parda Nasheen lady and as per his knowledge, she had never gone to any Registrar's Office or to any Court.** Power of attorney was registered in the Registrar's Office at Lucknow and he himself had taken her to the Registrar's Office. He did not remember as to how many sale deeds had been executed in favour of the petitioner and he did not remember area of land leased or the number of trees existing on the land. The trees were scattered and the land was vacant. The compensation of trees was perhaps Rs.2,000/- and receipt in this regard has been given. Perhaps, the compensation of trees had been taken before execution of the lease-deed. No mention of payment of compensation of trees was made in the lease-deed. However, he denied his signatures on the rent receipt.

16. The petitioner has annexed with the supplementary rejoinder affidavit a copy of a letter dated 21.07.1952 sent by the Manager of the Lessor to the petitioner's husband Anand Prakash, stating that he had received a cheque of Rs.280/- from the petitioner's husband, which was being returned because it was a crossed cheque and he did not have an account in Imperial Bank and secondly, the Lessee was liable to pay Rs.560/- for the year 1359 Fasli and there was no use in paying only a part of the rent. It is written in that letter that Pure Datai and Kunderkala are owned by two different proprietors. Pure Datai belongs to Rani Kaneez Bakar and her account is in Central Bank, Gonda. Kunderkala belongs to Rani Kaneez Ali and her account is in Imperial Bank, Gonda.

17. The Manager of the Zamindar sent another letter to the petitioner's husband stating that he had received a cheque of Imperial Bank in the name of Rani Kaneez Ali and it was a crossed cheque while the bank account was in the Imperial Bank and it was in the name of Mohd. Ameer Haider Khan Maharaj, Kumar of Mahmoodabad. The Manager demanded a crossed cheque in the name of Maharaj Kumar Mohd. Ameer Haider Khan.
18. The petitioner further claims that she had paid Rs.2,000/- to Rajkumari Kaneez Bakar towards price of unspecified number of existing upon land bearing Gata Nos.375, 940, 980, 302 and 228, along with 204 *Mahua* trees existing on plot No.225 on 21.06.1951 through a cheque dated 19.06.1951 drawn on Imperial Bank.
19. The petitioner has annexed a copy of a Treasury challan dated 18.03.1954 regarding payment of Rs.399.03 towards land revenue for the year 1361 Fasli for lands situated in Village Kashhra, Kunderkala and Pure Datai. The challan mentions that the petitioner had paid 88 Rupees 8 annas for village Kashhra, 55 Rupees 2 annas for Village Kunderkala and 255 Rupees 6 annas and 03 paisa for Village Pure Datai.
20. Sri Mohamad Arif Khan Senior Advocate , the learned Counsel for the petitioner, has submitted that the lease-deed was executed on 06.07.1951 and it was registered on 07.09.1951 for the reason that the three lease-deeds executed earlier had not been registered. As the lease-deeds had been executed prior to enactment of U.P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as 'The U.P.Z.A.L.R. Act'), the petitioner became a Seerdar of the leased land under Section 19 (iv) of the U.P. Z.A.L.R. Act. The trees existing on the land were cut down and the land became cultivable. The petitioner had paid rent to the proprietor/Government.
21. Learned counsel for the petitioner has further submitted that the land was recorded as 'Banjar Deegar' and it did not vest in the State upon

abolition of Zamindari. Therefore, Section 3 of the Forest Act will not apply to this land.

22. The learned counsel for the petitioner also submitted that while passing the impugned order, the Forest Settlement Officer has not followed directions issued by the District Judge in the remand order.
23. In support of his submissions, the learned Counsel for the petitioner has relied upon the judgments in the cases of **Committee of Management Versus Deputy Direction of Education**: 2006 LCD 1328, **Jyoti Bhushan Mishra and another Versus Divisional Forest Officer, Gonda North, Gonda and another**: (2006) LCD 989 and **Raghunath Singh Versus State of U.P.**: 1966 RD 337.
24. Per contra, Sri. Arya Shreshth Tiwari, the learned Additional Chief Standing Counsel representing the Forest Department of the State of U.P., has submitted that the District Judge had set aside the earlier order dated 30.05.1959 passed by the Forest Settlement Officer and the order dated 26.09.1961 passed by the Additional Commissioner, Faizabad Division on the ground that both the authorities were required to answer the question whether Smt. Shanti Devi had acquired any Seerdari rights in respect of four plot Nos.940/1, 980, 379/5 and 302 by virtue of the lease-deed referred to above and in respect of the other two plots on account of being in cultivatory possession thereof since before the abolition of Zamindari and they had failed to discuss the oral and documentary evidence available on record.
25. Sri. Tiwari has submitted that the petitioner's claim is based on the lease-deeds executed in the year 1951 and entry of her name in the revenue records. The petitioner has not produced the original lease-deed or its certified copy at any stage of the proceedings. Although it is recorded in the revisional order dated 24.08.1973 passed by the District Judge that the revisional Court had seen the original Pattas, it is also mentioned therein that none of the four original lease-deeds had been filed to support the petitioner's contention. Mere production of the original lease-deeds for perusal of the revisional

Court without bringing it on record of the case will not be sufficient to prove the claim based on the lease-deeds.

26. Sri. Arya Shreshth Tiwari has filed elaborate written submissions and the submissions have been supported by the judgments in the cases of **Mahendra Lal Jaini Versus State of U.P.**: 1962 SCC OnLine SC 55, **State of U.P. Versus IV Additional District Judge**: 2012 SCC OnLine All 709, **State of U.P. Versus Kamal Jeet Singh**: 2017 SCC OnLine All 4733, **Wali Mohd. Versus Ram Surat**: (1989) 4 SCC 574, **Vishwa Vijay Bharati Versus Fakhrul Hassan**: (1976) 3 SCC 642, **Ram Awadh Versus Deputy Director of Consolidation**: 1985 RD 363 = 1985 SCC OnLine All 430, **Gurmukh Singh and Ors. Versus Dy. Director of Consolidation/ A.D.M. (F. and R.) and Ors.**, 1997 RD 276, **Ram Awadh Versus Collector/District Deputy Director of Consolidation**: (2011) 113 RD 712 = 2011 SCC OnLine All 2641, **S. Saktivel Versus M. Venugopal Pillai**: (2000) 7 SCC 104 and **Vidhyadhar Versus Manikrao**: (1999) 3 SCC 573.
27. Now I proceed to adjudicate the dispute involved in the case in light of the pleadings and submissions advance on behalf of the parties, referred to above.
28. The petitioner claims her title on the basis of the lease-deed dated 06.07.1951 executed by Rajkumari Kaneez Bakar in respect of plot nos. 940 area 13-10, Plot no. 980 area 25-50, Plot No. 379/5 area 49-50 and plot no. 302 area 35-85, totaling to 123 acres 95 decimal situated in village Poore Datai. A perusal of the lease-deed dated 06.07.1951 shows that it was presented for registration by the petitioner on 14.07.1951 and its execution by the lessor was acknowledged by her power of attorney holder Sri. Syed Mohd. Atahar Hussain Naqvi on 06.09.1951. However, there is no documentary evidence on record to prove the due execution of a power of attorney in favour of Sri. Syed Mohd. Atahar Hussain Naqvi. Sri S. M. Atahar Hussain Naqvi had stated that Rani Kaneez Bakar had executed a registered power of attorney in his favour but he did not have the original power of attorney because he had handed over the charge of all the documents. He further stated that Rani

Kaneez Bakar was a Parda Nasheen lady and as per his knowledge, she had never gone to any Registrar's Office or to any Court. Thus the execution of a power of attorney by Rani Kaneez Bakar and its registration could not be proved.

29. The lease-deed dated 06.07.1951 states that the lessor had already given 124 acres 95 decimal land on lease to the petitioner in the year 1358 Fasli (01.07.1950 to 30.06.1951), and had handed over its possession with effect from 20.01.1951, but it makes no mention of the consideration for the lease granted in the year 1358 Fasli. There is no evidence regarding any payment of consideration for the lease granted in the year 1358 Fasli. Therefore, the leases allegedly granted in the year 1358 Fasli were void for want of consideration. Moreover, no registered lease-deed was executed prior to 06.07.1951 and, therefore, the same was not admissible in evidence.
30. The lease-deed dated 06.07.1951 mentions the consideration to be rent amounting to Rs.374 and 6 annas per year, which was payable in two installments, half (i.e.187 Rupees and 3 annas) after Kharif crop in the month of Kwaar and half after Rabi crop in the month of Vaishakh. The petitioner claims to have paid Rs.240.63 towards rent of the leased land through a treasury challan dated 13.07.1953. A copy of the challan has been filed with the rejoinder affidavit and it shown that in the column titled "Full particulars of the remittance and of authority (if any)", it mentions – "L.R. of 13607 of V. Pure Datai Distt Gonda". The column titled "Head of account" mentions "L.R. of Distt. Gonda". The treasury challan does not make a mention of any plot number and the quantum of the amount paid through it does not correspond to the amount payable as lease-rent under the lease-deed dated 06.07.1951 – either annually or six-monthly. Therefore, the entries made in this treasury challan dated 13.07.1953 do not correspond to the lease-deed dated 06.07.1951 and it does not prove that the petitioner had paid any rent to the owner of the land Rajkumari Kaneez Bakar.

31. The petitioner has annexed with the supplementary rejoinder affidavit a copy of a letter dated 21.07.1952 sent by the Manager of the Lessor to the petitioner's husband Anand Prakash, stating that he had received a cheque for Rs.280/- from the petitioner's husband, which was being returned because it was a crossed cheque and he did not have an account in Imperial Bank and secondly, the Lessee was liable to pay Rs.560/- for the year 1359 Fasli and there was no use in paying only a part of the rent. It is written in that letter that Pure Datai and Kunderkala are owned by two different proprietors. Pure Datai belongs to Rani Kaneez Bakar and her account was in Central Bank, Gonda. Kunderkala belongs to Rani Kaneez Ali and her account was in Imperial Bank, Gonda. This letter does not mention the plot numbers in respect of which the lease-rent was demanded and it is not a proof of payment of lease-rent by the petitioner. The amount of rent mentioned in this letter also does not correspond to the lease-rent mentioned in the lease-deed dated 06.07.1951.
32. The Manager of the Zamindar had sent another letter to the petitioner's husband stating that he had received a cheque of Imperial Bank in the name of Rani Kaneez Ali and it was a crossed cheque while the bank account was in the Imperial Bank and it was in the name of Mohd. Ameer Haider Khan Maharaj Kumar of Mahmoodabad. The Manager demanded a crossed cheque in the name of Maharaj Kumar Mohd. Ameer Haider Khan. However, there is nothing on record to establish that Rani Kaneez Bakar had demanded any rent from the petitioner or that the petitioner had paid any rent to the Rani Kaneez Bakar.
33. In absence of proof of payment of any consideration under the lease-deed dated 06.07.1951, the petitioner cannot claim any right on the basis of the lease-deed.
34. The petitioner has annexed a copy of a challan dated 18.03.1954 regarding payment of Rs.399.03 towards land revenue for the year 1361 Fasli for lands situated in Village Kashhra, Kunderkala and Pure Datai. The challan mentions that the petitioner had paid 88

Rupees 8 annas for village Kashhra, 55 Rupees 2 annas for Village Kunderkala and 255 Rupees 6 annas and 03 paisa for Village Pure Datai. The challan does not mention any plot numbers in village Pure Datai in respect of which the lease-rent was paid and the amount of 255 Rupees 6 annas and 03 paisa does not correspond to the lease-rent mentioned in the lease-deed dated 06.07.1951. Thus this copy of challan dated 18.03.1954 does not establish payment of lease-rent under the lease-deed dated 06.07.1951.

35. The petitioner Smt. Shanti Devi did not appear as a witness to prove her own case. As she did not get herself examined, there was no occasion for her cross-examination. The petitioner's husband Anand Prakash had stated in his statement that she was not a Parda Nasheen lady. She did not come forward to get her statement recorded merely because she was suffering from Blood Pressure and Gout. This was no reason for the petitioner not coming forward to get her statement recorded and, in any case, her statement could have been recorded on commission like another witness S.M. Atahar Hussain Nakvi.
36. Both the learned Courts below have drawn an adverse inference from the petitioner's abstaining from appearing as a witness to prove her case. In this regard, it will be relevant to refer to the provision contained in Section 114 of the Evidence Act, 1872 and illustration (g) appended thereto, which provides as follows: -

*“**114. Court may presume existence of certain facts.**—The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.*

Illustrations

The Court may presume—

** * **

(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

** * *”*

37. In **Vidhyadhar versus Manikrao**: (1999) 3 SCC 573, the Hon'ble Supreme Court held that: -

“17. Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council....”

38. Non-appearance of the petitioner to prove her case and to offer her to be cross-examined raises a presumption against the genuineness of the case set up by her.
39. As the petitioner has failed to establish due execution of the lease-deed dated 06.07.1951 and payment of consideration under the lease-deed dated 06.07.1951, she cannot claim any rights on the basis of this lease-deed.
40. The petitioner did not lead any evidence in respect of her claim of being in cultivatory possession of two other plots since before the abolition of Zamindari and no evidence in this regard has been placed even before this Court. Therefore, this plea cannot be accepted.
41. The petitioner further claims that she had paid Rs.2,000/- to Rajkumari Kaneez Bakar towards price of the trees existing upon land bearing Gata Nos.375, 940, 980, 302 and 228 along with 204 *Mahua* trees existing on plot No.225 on 21.06.1951 through a cheque dated 19.06.1951 drawn on Imperial Bank. The petitioner claims to have acquired rights in respect of the land in question through a registered lease-deed dated 06.07.1951 for an agreed consideration of rent amount to Rs. Rs.374 and 6 aanna per year but she claims to have purchased the trees existing on the land for a sale consideration of Rs.2,000/- through an oral arrangement, without execution of any deed of sale. In this regard, it would be appropriate to refer to Section 92 of the Evidence Act, 1872, which reads as thus: -

“92. Exclusion of evidence of oral agreement.—When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.”

42. The learned Additional Chief Standing Counsel has placed before this Court a judgment of the Hon’ble Supreme Court in the case of **S. Saktivel versus M. Venugopal Pillai**: (2000) 7 SCC 104, wherein it was held that: -

“5...A perusal of the aforesaid provision shows that what Section 92 provides is that when the terms of any contract, grant or other disposition of property, or any matter required by law to be reduced in the form of a document, have been proved, no evidence of any oral agreement or statement is permissible for the purpose of contradicting, varying, adding or subtracting from the said written document. However this provision is subject to provisos (1) to (6) but we are not concerned with other provisos except proviso (4), which is relevant in the present case. The question then is whether the defendant-appellant can derive any benefit out of proviso (4) to Section 92 for setting up oral arrangement arrived at in the year 1941 which has the effect of modifying the written and registered disposition. Proviso (4) to Section 92 contemplates three situations, whereby:

(i) The existence of any distinct subsequent oral agreement to rescind or modify any earlier contract, grant or disposition of property can be proved.

(ii) However, this is not permissible where the contract, grant or disposition of property is by law required to be in writing.

(iii) No parol evidence can be let in to substantiate any subsequent oral arrangement which has the effect of rescinding a contract or disposition of property which is registered according to the law in force for the time being as to the registration of documents.

6. In sum and substance what proviso (4) to Section 92 provides is that where a contract or disposition, not required by law to be in writing, has been arrived at orally then subsequent oral agreement modifying or rescinding the said contract or disposition can be substantiated by parol evidence and such evidence is admissible. Thus if a party has entered into a contract which is not required to be reduced in writing but such a contract has been reduced in writing, or it is oral, in such situations it is always open to the parties to the contract to modify its terms and even substitute by a new oral contract and it can be substantiated by parol evidence. In such kind of cases the oral evidence can be let in to prove that the earlier contract or agreement has been modified or substituted by a new oral agreement. **Where under law a contract or disposition is required to be in writing and the same has been reduced to writing, its terms cannot be modified or altered or substituted by oral contract or disposition. No parol evidence will be admissible to substantiate such an oral contract or disposition. A document for its validity or effectiveness is required by law to be in writing and, therefore, no modification or alteration or substitution of such written document is permissible by parol evidence and it is only by another written document the terms of earlier written document can be altered, rescinded or substituted.** There is another reason why the defendant-appellant cannot be permitted to let in parol evidence to substantiate the subsequent oral arrangement. The reason being that the settlement deed is a registered document. The second part of proviso (4) to Section 92 does not permit leading of parol evidence for proving a subsequent oral agreement modifying or rescinding the registered instrument. **The terms of registered document can be altered, rescinded or varied only by subsequent registered document and not otherwise.** If the oral arrangement as pleaded by the appellant, is allowed to be substantiated by parol evidence, it would mean rewriting of Ext. A-1 and, therefore, no parol evidence is permissible.

(Emphasis added)

43. In this regard, it would be relevant to refer to the definition of ‘immovable property’ contained in Section 2(6) of the Registration Act, 1908, which is as follows: -

*“(6) “immovable property” includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and **things attached to the earth**, or permanently fastened to anything which is attached to the earth, **but not standing timber**, growing crops nor grass;*

44. A Constitution Bench judgment of the Hon’ble Supreme Court in **Shantabai versus State of Bombay**: AIR 1958 SC 532 = 1958 SCC OnLine SC 20, held that: -

“23. Now it will be observed that “trees” are regarded as immoveable property because they are attached to or rooted in the earth. Section 2(6) of the Registration Act expressly says so and, though the Transfer of Property Act does not define immoveable property beyond saying that it does not include “standing timber growing crops or grass”, trees attached to earth (except standing timber) are immoveable property, even under the Transfer of Property Act, because of Section 3(26) of the General Clauses Act. In the absence of a special definition, the general definition must prevail. Therefore, trees (except standing timber) are immoveable property.”

24. Now, what is the difference between standing timber and a tree? It is clear that there must be a distinction because the Transfer of Property Act draws one in the definitions of “immoveable property” and “attached to the earth”; and it seems to me that the distinction must lie in the difference between a tree and timber. It is to be noted that the exclusion is only of “standing timber” and not of “timber trees”.

Timber is well enough known to be—

“wood suitable for building houses, bridges, ships etc., whether on the tree or cut and seasoned.” (Webster's Collegiate Dictionary).

Therefore, “standing timber” must be a tree that is in a state fit for these purposes and, further, a tree that is meant to be converted into timber so shortly that it can already be looked upon as timber for all practical purposes even though it is still standing. If not, it is still a tree because, unlike timber, it will continue to draw sustenance from the soil.”

45. It is relevant to note that the petitioner’s husband Anand Prakash had stated that he got Rs.1,000/- per year for two years as value for *Mahua* crop, which establishes that the trees standing on the land were fruit bearing trees and were not standing timber.
46. As the land had allegedly been transferred to the petitioner through a registered lease-deed and trees existing on the land, which were also immovable property, had not been transferred through that registered

lease-deed, the subsequent transfer of the trees existing on the land amounts to variance of the terms of the registered lease-deed dated 06.07.1951 and this could only be made through another registered transfer deed and it could not be done orally.

47. The petitioner claims that she had paid Rs.2,000/- to Rajkumari Kaneez Bakar towards price of the trees existing upon land bearing Gata Nos.375, 940, 980, 302 and 228 along with 204 *Mahua* trees existing on plot No.225 on 21.06.1951 through a cheque dated 19.06.1951 drawn on Imperial Bank, but there is no proof that this amount had actually been credited to the bank account of Rajkumari Kaneez Bakar. Therefore, the petitioner's contention regarding payment of consideration for the trees existing on the land in dispute could not be established.
48. So far as the claim of the petitioner based on revenue entries is concerned, firstly, it is well settled law that the revenue entries do not confer any title. In **Sawarni versus Inder Kaur**, (1996) 6 SCC 223, the Hon'ble Supreme Court was pleased to lay down that: -

“Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question.”

49. The aforesaid principle was reiterated by the Hon'ble Supreme Court in **Bhimabai Mahadeo Kambekar versus Arthur Import & Export Co.**, (2019) 3 SCC 191 in the following words: -

“6. This Court has consistently held that mutation of a land in the revenue records does not create or extinguish the title over such land nor has it any presumptive value on the title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. (See Sawarni v. Inder Kaur (1996) 6 SCC 223, Balwant Singh v. Daulat Singh (1997) 7 SCC 137 and Narasamma v. State of Karnataka (2009) 5 SCC 591.

50. As the petitioner could not establish the due execution of the lease-deed dated 06.07.1951, the mere mutation of her name in the revenue

records will not confer any rights upon her in respect of the land in dispute.

51. Secondly, the petitioner is claiming rights on the basis of entry of her name as hereditary tenant in the Khatauni of 1359 Fasli having one years' period of cultivation, which entry was allegedly incorporated in the Khatauni of 1359 Fasli on the basis of a registered lease-deed dated 06.07.1951. Both the learned Court's below have concurrently held that the entry in revenue records was not made in accordance with the procedure prescribed for the same and holding the entry to be illegal, both the Courts have rejected the petitioner's claim. The Khatauni of 1359 Fasli (01.07.1951 to 30.06.1952) relates to a period prior to 01.07.1952 – the date of enforcement of the U.P.Z.A.L.R. Act. The Petitioner did not produce any copy of extract of Khasra to establish her possession.
52. Before abolition of Zamindari, the rights and interest of the cultivators (Tenants) and proprietors (Landlords/Zamindars) were governed by the provisions of the United Provinces Tenancy Act, 1939 and the records of rights, title, rent, crop etc. of cultivators and proprietors were maintained as Khasra, Khatauni and Khewat respectively as prescribed by the Land Records Manual. Prior to enactment of U.P. Z.A.L.R. Act, 'Khewat' was the record of rights of Zamindars and 'Khasra' maintained under Chapter V of Land Record Manual was the record of all non-Zamindari abolition entries. The map and khasra for the area where the Zamindari Abolition Act does not apply are contained in Chapter A-V. Para 60 under Chapter V and Para A-60 under Chapter A-V provide forms of Khasra, which have some differences due to the difference of rights and interest of the cultivators, because under the U.P. Tenancy Act, 1939, the rights of cultivators were not transferable and it was only the proprietor i.e. Landlord who were the owner of the land.
53. In **Wali Mohd. versus Ram Surat**: (1989) 4 SCC 574, the Hon'ble Supreme Court held that: -

“4... The said section deals with the question as to who is entitled to take or retain possession of the land in question. The plain language of the aforesaid clause (i) of sub-section (b) of

*Section 20 of the said Act suggests that this question has to be determined on the basis of the entry in the Khasra or Khatauni of 1356 Fasli Year prepared under Sections 28 and 33 respectively of the U.P. Land Revenue Act, 1901. An analysis of the said section shows that under sub-section (b) of Section 20 the entry in the Khasra or Khatauni of the Fasli Year 1356 shall determine the question as to the person who is entitled to take or retain possession of the land. It is, of course, true that **if the entry is fictitious or is found to have been made surreptitiously then it can have no legal effect as it can be regarded as no entry in law** but merely because an entry is made incorrectly that would not lead to the conclusion that it ceases to be an entry. It is possible that the said entry may be set aside in appropriate proceedings but once the entry is in existence in the Khasra or Khatauni of Fasli Year 1356, that would govern the question as to who is entitled to take or retain possession of the land to which the entry relates.*

*5. It was submitted by learned counsel for the appellants that if the entry was not correct, it could not be regarded as an entry made according to law at all and the right to take or retain possession of the land could not be determined on the basis of an incorrect entry. He placed reliance on the decision of this Court in *Bachan v. Kankar* (1972) 2 SCC 555. In that judgment the nature of the entries in Khasra or Khatauni is discussed and it is also discussed as to how this entry should be made. This Court held that **entries which are not genuine cannot confer Adhivasi rights**. It has been observed that an entry under Section 20(b) of the said Act, in order to enable a person to obtain Adhivasi rights, must be an entry under the provisions of law and entries which are not genuine cannot confer Adhivasi rights. In that judgment it has been stated that the High Court was wrong when it held that though the entry was incorrect, it could not be said to be fictitious. That observation, however, has to be understood in the context of what follows, namely, that an entry which is incorrectly introduced into the records by reason of ill-will or hostility is not only shorn of authenticity but also becomes utterly useless without any lawful basis. This judgment, in our view, does not lay down that all incorrect entries are fictitious but only lays down that a wrong entry or incorrect entry which has been made by reason of ill-will or hostility cannot confer any right under Section 20(b) of the said Act. This decision is clarified by a subsequent judgment of this Court in *Vishwa Vijay Bharati v. Fakhrul Hassan* [(1976) 3 SCC 642 : AIR 1976 SC 1485 : 1976 Supp SCR 519], where it has been held as follows: (SCC p. 645, para 14)*

“It is true that the entries in the revenue record ought, generally, to be accepted at their face value and courts should not embark upon an appellate inquiry into their

correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent, entries. The distinction may be fine but it is real. The distinction is that one cannot challenge the correctness of what the entry in the revenue record states but the entry is open to the attack that it was made fraudulently or surreptitiously. Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title.”

(Emphasis added)

54. In **Vishwa Vijay Bharati versus Fakhrul Hassan**: (1976) 3 SCC 642, the Hon’ble Supreme Court reiterated that: -

“14. It is true that the entries in the revenue record ought, generally, to be accepted at their face value and courts should not embark upon an appellate inquiry into their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent, entries. The distinction may be fine but it is real. The distinction is that one cannot challenge the correctness of what the entry in the revenue record states but the entry is open to the attack that it was made fraudulently or surreptitiously. Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title.”

55. In **Ram Awadh versus Deputy Director of Consolidation**: 1985 RD 363 = 1985 SCC OnLine All 430, this Court held that: -

“7. ...The provisions of para A71 of Land Record Manual enjoins a duty upon the Lekhpal to make entry in the following manner:—

“A-71(3): If a person other than the one recorded in Col. 4 or 5 is found to be in actual occupation of the plot at the time of the partial, his name shall be recorded in the, remarks column as “baquabza” so and so. All such entries shall be made in red ink and in cases in which Court order regarding them are not received during the year, they shall be repeated in the same ink in the past year's Khasra, if possession is found to continue and treated as new entries so that they may be checked by the inspecting officers. Such entries shall in no case be made in black ink. In case the person recorded in column 5 of the Khasra is Asami holding land in lieu of maintenance allowance, the Qabiz will be recorded with the words “Dar Asami” before the name of such person in the remarks column of the Khasra by the Supervisor Qanungo.”

8. In AIR 1968 SC 466 Smt. Sonawati v. Sri Ram, their Lordships of the Supreme Court have also emphasised that the entry of Qabiz should be in red ink.

9. A learned single Judge of this Court in 1982 RD 1 Ganga Ram v. D.D.C. has also emphasised that the entry in the remarks column should be in red ink. Therefore, I think that the revisional Court has patently erred in placing reliance upon the revenue entries in favour of the contesting opposite party and has wrongly commented that whether the entry is in black ink or red ink would not matter for its evidenciary value. Since the entries in favour of the contesting opposite party was not made strictly in accordance with the rules, the revisional Court was not justified in placing reliance upon the same with a view to confer tenancy right upon the contesting opposite party Ram Deo.”

56. In **Gurmukh Singh and Ors. Vs. Dy. Director of Consolidation/ A.D.M. (F. and R.) and Ors.**: 1996 SCC OnLine All 823 = 1997 RD 276, it was held that: -

“5 . Para A-60 of the U.P. Land Records Manual provides that the Khasra shall be prepared in Form P-3 given thereunder. Para A-80 provides that the Lekhpal while on partial in the village shall keep with him a book or memorandum of facts of possession in cases of the Chapter mentioned in Para A-72 (ii) and A-72 (iii). He shall make inquiries regarding nature of the land in dispute and he shall at the same time record the number of the plots. Para A-8D provides that after completing the Kharif or Rabi or said partial of a village each page of the memorandum in Form P.A. 24 shall be signed by the Lekhpal. Para A-81A provides that the Lekhpal shall inform the Chairman, the Land Management Committee and all tenure-holders of the village including the persons concerned with the entries made in the memorandum delivered to the Supervisor Kanungo. Para A-102C provides that the entries shall be valid if they are made in accordance with the provisions of the Land Records Manual.

6. It is clear from Para A-102C of the Land Records Manual that the entries will have no evidentiary value if they are not made in accordance with the provisions of Land Records Manual. There is presumption of correctness of the entries provided it is made in accordance with the relevant provision of Land Records Manual...”

57. In **Ram Awadh versus Collector/District Deputy Director of Consolidation**: (2011) 113 RD 712 = 2011 SCC OnLine All 2641, the

well settled law that where the law prescribes a manner for doing a thing, it can be done in that manner alone or not at all, was reiterated in the following words: -

“10. It is also equally well settled that the procedure prescribed in law cannot be avoided, inasmuch as, if it is required to be done in a particular manner then it should be done in that manner alone and not otherwise. Reference may be had to the decisions noticed in the case of Prof. Ramesh Chandra v. State of U.P. [2007 (4) ESC 2339 (All) (DB).] , (Para graph 27) extracted below:

“.....(Vide Taylor v. Taylor (1876) 1 Ch. D. 426., Nazir Ahmed v. King Emperor AIR 1936 PC 253, Deep Chand v. State of Rajasthan AIR 1961 SC 1527, Patna Improvement Trust v. Smt. Lakshmi Devi AIR 1963 SC 1077, State of Uttar Pradesh v. Singhara Singh AIR 1964 SC 358, Nika Ram v. State of Himachal Pradesh (1972) 2 SCC 80, Ramchandra Keshav Adke v. Govind Joti Chavare (1975) 1 SCC 559, Chettiam Veettil Ammad v. Taluk Land Board (1980) 1 SCC 499, State of Bihar v. J.A.C. Saldanna (1980) 1 SCC 554, A.K. Roy v. State of Punjab (1986) 4 SCC 326, State of Mizoram v. Biakchhawna (1995) 1 SCC 156, J.N. Ganatra v. Morvi Municipality Morvi (1996) 9 SCC 495, Babu Verghese v. Bar Council of Kerala (1999) 3 SCC 422, and Chandra Kishore Jha v. Mahavir Prasad (1999) 8 SCC 266.”

58. The year 1359 Fasli denotes the period from 01.07.1951 to 30.06.1952 and entry in the Khatauni of 1359F was claimed to be on the basis of a lease-deed dated 06.07.1951, which was registered on 07.09.1951. Any entry on the basis of a transaction effected after commencement of the Fasli year could only be made in furtherance of a mutation order passed by a competent authority, the particulars whereof should be mentioned in the remarks column of Khatauni, whereas no such particulars are mentioned in the Khatauni in the present case. This establishes that the entry of the petitioner's name in the main column of Khatauni of 1359 Fasli has been made contrary to the established procedure of law and it appears to be fictitious. Para 102-B of Land record Manual provides that if the Lekhpal fails to comply with any of the provision contained in para

89A, the entries in remarks column of the Khasars will not be deemed to have been made in the discharge of his official duty.

59. In Khewat of 1345 Fasli and in Khatauni of 1356 Fasli the land in dispute was entered as waste land and in 1359 Fasli and 1360 Fasli Khatauni name of petitioner had been entered alongwith existing entry of Imarati Jangal, without mentioning particulars of the orders under which the mutation was affected. The entry of the name of the petitioner in the Khatauni of 1359 Fasli has not been made in accordance with the procedure prescribed by law and both the Courts below have rightly recorded a finding of fact that the entry of the petitioner's name in the Khatauni is fictitious, it has no evidentiary and probative value and it confers no right upon the petitioner.
60. The learned Counsel for the petitioner has also submitted that the land was recorded as Banjar or waste-land and it did not vest in the State upon abolition of Zamindari. This submission of the learned Counsel for the petitioner is also without any force, as would be apparent from a bare perusal of the statutory provision contained in Section 6 (1) of the U.P.Z.A.L.R. Act, which reads follows: -

“6. Consequences of the vesting of an estate in the State.—
When the notification under Section 4 has been published in the Gazette, then, notwithstanding anything contained in any contract or document or in any other law for the time being in force and save as otherwise provided in this Act, the consequences as hereinafter set forth shall, from the beginning of the date of vesting, ensure in the area to which the notification relates, namely:

(a) all rights, title and interest of all the intermediaries—

(i) in every estate in such area including land (cultivable or barren), groveland, forests whether within or outside village boundaries, trees (other than trees in village abadi, holding or grove), fisheries, tanks, ponds, waterchannels, ferries, pathways, abadi sites, hats, bazars and melas [other than hats, bazars and melas held upon land to which clauses (a) to (c) of sub-section (1) of Section 18 apply], and

(ii) in all sub-soil in such estates including rights, if any, in mines and minerals, whether being worked or not,

shall cease and be vested in the State of Uttar Pradesh free from all encumbrances;”

(Emphasis added)

61. The word “Intermediary” occurring in Section 6 (1) of the U.P.Z.A.L.R. Act has been defined in Section 3 (12) of the Act as follows: -

(12) “intermediary” with reference to any estate means a proprietor, under-proprietor, sub-proprietor, thekedar, permanent lessee in Avadh and permanent tenure-holder of such estate or part thereof;

62. Thus the land in question, which was recorded in the Khewat and Khatauni as waste land, had vested in the State upon abolition of Zamindari. In such circumstances on account of the entry of land in dispute as waste land in 1356 F and afterwards the entry of Imarti Jangal, the State Government has the authority to notify it as a reserved forest and the aforesaid submission of the learned Counsel for the petitioner to the contrary is liable to be rejected
63. The learned Counsel for the petitioner has drawn attention of the Court towards the provisions of Forest Act to contend that land forming part of a holding of any tenure holder cannot be reserved as a Forest.
64. The words ‘Forest’ and ‘Forest Land’ are defined in sub sections (b) and (c) of Section 38A of the Forest Act, 1927, as it applies to the State of Uttar Pradesh, which read as follows: -

“38-A. Definition.—In this Chapter unless there is anything repugnant in the subject or context:

** * **

(b) ‘Forest’ means a tract of land covered with trees, shrubs, bushes or woody vegetation whether of natural growth or planted by human agency, and existing or being maintained with or without human effort, or such tract of land on which such growth is likely to have an effect on the supply of timber, fuel, forest produce, or grazing facilities, or on climate, steam-flow, protection of land from erosion, or other such matters, and shall include—

(i) land covered with stumps of trees of a forest;

(ii) land which is part of a forest or lies within it or was part of a forest or was lying within a forest on the first day of July, 1952;

(iii) such pasture land, waterlogged or cultivable or non-cultivable land, lying within, or adjacent to, a forest, as may be declared to be a forest by the State Government.

(c) ‘Forest land’ means a land covered by a forest or intended to be utilized as a forest;”

65. Section 3 of the Forest Act as it applies to U.P., provides that: -

*“3. **Power to reserve forests**—The State Government may constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.”*

66. The learned Counsel for the petitioner has relied upon a judgment rendered by a Division Bench of this Court in **Jyoti Bhushan Mishra versus Divisional Forest Officer**: 2006 SCC OnLine All 2022 = (2006) 100 RD 613, wherein it was held that the land comprised in any holding or grove or in any village abadi could not be notified as reserve forest under Section 4 of the Indian Forest Act. However, in that case, it was undisputed that the original tenure holders were the bhumidhars and the land in question was their holding and the disputed land was never notified under Section 20 of the Indian Forest Act. In the present case, the petitioner’s rights as Seerdar are seriously disputed and a Notification under Section 20 was issued on 17.09.1970. Therefore, the judgment in the case of **Jyoti Bhushan Mishra** (Supra) would not apply to the facts of the present case.

67. The petitioner has filed a third Supplementary Affidavit before this Court stating that she has procured the Khewat of 1345 Fasli, wherein the name of Rajkumari Kaniz Baquar was recorded as Zamindaria. The petitioner is raising claim in respect of land bearing Gata Nos. 225/22.43, 228/2-11.80 acre, 302/4-37.5 acre, 379/5-70.40 acre, 940/1-13.10 acre and 980-20.40 acre. In the copy of Khewat annexed with the third Supplementary Affidavit, lands bearing Gata Nos. 225/24-63 and 228/13-10 are recorded as “*partee kadeem*” i.e.,

old waste land. The type of land is recorded as “*banjar kabile jaraat*” i.e., barren or waste land which may be made cultivable. Lands bearing Gata nos. 302/35-85, 379/71-34, 940/13-28 and 980/20-50 are recorded as “*banjar mazkoor*” i.e. barren or waste lands, as aforesaid. From the aforesaid entries made in the Khewat filed by the petitioner herself, the lands in question were waste lands and the same could be reserved as Forest Land under provisions of the Forest Act.

68. In **Raghunath Singh versus State of Uttar Pradesh**: 1961 RD 337 = 1961 SCC OnLine All 57, placed by the learned Counsel for the petitioner, a Division Bench of this Court held that: -

“12...the power of the State Government to constitute any land as a reserved forest is circumscribed by three conditions as laid down in Sec. 3. Firstly, it can constitute such forest land or waste land to be a reserved forest as is the property of Government. Secondly it can do so if the proprietary rights in the land vest in the Government, or thirdly where it (the Government) is entitled to the whole or any part of the forest produce of any land. The sections of the Act after Sec. 3 prescribe the manner in which any land can be constituted a reserved forest.

* * *

17.Bhumidhars possess the right also to transfer by sale or otherwise lands held by them as such. There are, no doubt, restrictions on this power in certain directions still the basic fact remained that they can deal with the lands held by them as their property. The right of disposal also belonged to them. This right assured to them under sec. 152 of the Zamindari Abolition and Land Reforms Act will entitle a bhumidhar to affect alienations. As a matter of fact, section 161 allows to the bhumidhars and Seerdars to effect exchange of lands held by them. A bhumidhar can make a mortgage also so long as he does not part with possession. In certain conditions a bhumidhar and Seerdar also can transfer lands by way of lease. It is true that the law has not recognised any restricted right to transfer in favour of these persons but the limitations on that power do not dislodge the conclusion that the plots are really their, property. The State Government may in view of the abolition of the right, title, and interest of the intermediary and the vesting of the same in the State claims superior rights in the lands but for the purpose of Sec. 3 of the Forest Act a bhumidhar and similarly a Seerdar, must in our opinion be held to possess, the lands, as

their property. They should further be deemed to possess proprietary rights also in them. These tenure holders are for all practical purposes entitled to the plots as their property while the right to exclusive possession and the right of disposal essential incidents proprietary rights also belonged to them.”

69. However, in **Mahendra Lal Jaini versus State of U.P.:** 1962 SCC OnLine SC 55, the Hon’ble Supreme Court held that: -

*“29. It is next urged that even if Sections 38-A to 38-G are ancillary to Chapter II, they would not apply to the petitioner's land, as Chapter II deals inter alia with waste land or forest land, which is the property of the Government and not with that land which is not the property of the Government, which is dealt with under Chapter V. That is so. **But unless the petitioner can show that the land in dispute in this case is his property and not the property of the State, Chapter II will apply to it.** Now there is no dispute that the land in dispute belonged to the Maharaja Bahadur of Nahen before the Abolition Act and the said Maharaja Bahadur was an intermediary. Therefore, the land in dispute vested in the State under Section 6 of the Abolition Act and became the property of the State. It is however, contended on behalf of the petitioner that if he is held to be a bhumidhar in proper proceeding, the land would be his property and therefore Chapter V-A, as originally enacted, if it is ancillary to Chapter II would not apply to the land in dispute. We are of opinion that there is no force in this contention. **We have already pointed out that under Section 6 of the Abolition Act all property of intermediaries including the land in dispute vested in the State Government and became its property. It is true that under Section 18, certain lands were deemed to be settled as bhumidhari lands, but it is clear that after land vests in the State Government under Section 6 of the Abolition Act, there is no provision therein for divesting of what has vested in the State Government.** It is, however, urged on behalf of the petitioner that he claims to be the proprietor of this land as a bhumidhar because of certain provisions in the Act. There was no such proprietary right as bhumidhari right before the Abolition Act. The Abolition Act did away with all proprietary rights in the area to which it applied and created three classes of tenure by Section 129; bhumidhar, Seerdar and asami, which were unknown before. **Thus bhumidhar, Seerdar and asami are all tenure-holders under the Abolition Act and they hold their tenure under the State in which the proprietary right vested under Section 6. It is true that bhumidhars have certain wider rights in their tenure as compared to Seerdars; similarly Seerdars have wider rights as compared to asamis, but nonetheless all the three are mere tenure-holders-with varying***

*rights under the State which is the proprietor of the entire land in the State to which the Abolition Act applied. It is not disputed that the Abolition Act applies to the land in dispute and therefore the State is the proprietor of the land in dispute and the petitioner even if he were a bhumidhar would still be a tenure-holder. Further, the land in dispute is either waste land or forest land (far it is so for not converted to agriculture) over which the State has proprietary rights and therefore Chapter II will clearly apply to this land and so would Chapter V-A. It is true that a bhumidhar has got a heritable and transferable right and he can use his holding for any purpose including industrial and residential purposes and if he does so that part of the holding will be demarcated under Section 143. It is also true that generally speaking, there is no ejectment of a bhumidhar and no forfeiture of his land. He also pays land revenue (Section 241) but in that respect he is on the same footing as a Seerdar, who can hardly be called a proprietor because his interest is not transferable except as expressly permitted by the Act. Therefore, the fact that the payment made by the bhumidhar to the State is called land revenue and not rent would not necessarily make him a proprietor, because Seerdar also pays land-revenue, though his rights are very much lower than that of a bhumidhar. It is true that the rights which the bhumidhar has to a certain extent approximate to the rights which a proprietor used to have before the Abolition Act was passed; but it is clear that rights of a bhumidhar are in many respects less and in many other respects restricted as compared to the old proprietor before the Abolition Act. For example, the bhumidhar has no right as such in the minerals under the subsoil. Section 154 makes a restriction on the power of a bhumidhar to make certain transfers. Section 155 forbids the bhumidhar from making usufructuary mortgages. Section 156 forbids a bhumidhar, Seerdar or asami from letting the land to others, unless the case comes under Section 157. Section 189(aa) provides that where a bhumidhar lets out his holding or any part thereof in contravention of the provisions of this Act, his right will be extinguished. **It is clear therefore that though bhumidhars have higher rights than Seerdars and asamis, they are still mere tenure-holders under the State which is the proprietor of all lands in the area to which the Abolition Act applies.** The petitioner therefore even if he is presumed to be a bhumidhar cannot claim to be a proprietor to whom Chapter II of the Forest Act does not apply, and therefore Chapter V-A, as originally enacted, would not apply : (see in this connection, *Mst Govindi v. State of Uttar Pradesh* [AIR [1952] All 88] . As we have already pointed out Sections 4 and 11 give power for determination of all rights subordinate to those of a*

proprietor, and as the right of the bhumiidhar is that of a tenure-holder, subordinate to the State, which is the proprietor of the land in dispute, it will be open to the Forest Settlement Officer to consider the claim made to the land in dispute by the petitioner, if he claims to be a bhumidhar. This is in addition to the provision of Section 229-B of the Abolition Act. The petitioner therefore even if he is a bhumidhar cannot claim that the land in dispute is out of the provisions of Chapter II and therefore Chapter V-A, even if it is ancillary to Chapter II, would not apply. We must therefore uphold the constitutionality of Chapter V-A, as originally enacted, in the view we have taken of its being supplementary to Chapter II, and we further hold that Chapter II and Chapter V-A will apply to the land in dispute even if the petitioner is assumed to be the bhumidhar, of that land.”

(Emphasis added)

70. Following **Mahendra Lal Jaini** (Supra), a coordinate Bench of this Court held in **State of U.P. versus IV Additional District Judge**, 2012 SCC OnLine All 709, that: -

“30. Thus, it will be seen that the Supreme Court has laid down that bhumidhars have certain wider rights in their tenure-holding as compared to Seerdars. Similarly, Seerdars have wider rights as compared to Asamis, but nonetheless all three are mere tenure-holders with holding rights over the land, the proprietary right whereof is with the State. The Apex Court has gone on to hold that although Bhumidhars have higher rights than Seerdars and Asamis, they are still mere tenure-holders under the State, which is proprietor of all lands in the area to which Abolition Act applies i.e. Act, 1950. Petitioner even if presumed to be bhumidhar cannot claim to be proprietor of the land to whom Chapter II of the Forest Act does not apply.”

71. In the following paragraphs of the judgment in the case of **State of U.P. versus IV Additional District Judge** (Supra), this Court referred to the Division Bench judgment of in the case of **Raghu Nath Singh** (Supra) relied upon by the learned Counsel for the petitioner: -

“26. Conclusion so drawn by this Court is well supported by a Division Bench judgment of this Court in the case of Raghu Nath Singh v. The State of Uttar Pradesh, reported in 1960 (RD) 337, wherein after reproducing the provisions of Act, 1927, it has been explained as follows:

“A careful examination of the provisions of the Indian Forest Act would show that the power of the State

Government to constitute any land as a reserved forest is circumscribed by three conditions as laid down in Section 3. Firstly, it can constitute such forest land or waste land to be reserved forest as is the property of Government. Secondly it can do so if the proprietary rights in the land vest in Government, or thirdly where it (the Government) is entitled to the whole or any part of the forest produce of any land. The Sections of the Act after Section 3 prescribe the manner in which any land can be constituted a reserved forest.”

27. The Division Bench has further held that the action of the State Government in constituting the leased lands as reserved forest can be upheld, if any, of the three conditions are proved to exist.

28. In respect of the land in question with the enforcement of the Act, 1950, proprietary rights have vested in the State Government. It is admitted on record that most of the land qua which notification under Section 4 of Act, 1927 had been issued was forest and waste land. Therefore, condition No. 1, as pointed by the Division Bench stands satisfied.”

72. In **State of U.P. versus Kamal Jeet Singh**, 2017 SCC OnLine All 4733, a Division Bench of this Court held that: -

*“23. As regard the third question, the assertion of the private respondents is that the land included in holding of a tenure-holder cannot be declared as reserved forest as such notifications under the Forest Act are without jurisdiction. As noted above, **Section-3 gives power to the State Government to constitute any forest land or waste land, which is the property of the Government or over which the Government has proprietary right as the reserved forest.** Section 4 contemplates issue of notification with regard to land which is to be declared as reserved forest. Emphasis has been laid with regard to amended provision of Section 3 as substituted by the U.P. Act, 23 of 1965, on the basis of the amended definition, it has been submitted that the land which comprised of any holding or grove or in any village abadi cannot be declared as reserved forest. The Division Bench of this Court in *Om Singh v. State of U.P.*, 1980 All LJ 78 summary of cases (77), had considered the provisions of Forest Act, 1927, including amended Section 3 of Forest Act. The Division Bench in the aforesaid case has held that even according to the amended definition, the third category of land, namely, “or any other land not being land for the time being comprised in any holding or any village abadi” does not control the first two categories, namely, forest land or waste land Section-3 covers forest land and waste land irrespective of whether the same comprise in a holding or not. The forest land or waste land, if it comprised in a holding, can*

always be declared as reserved forest exercising the powers under Section 3. The provision of Section 3 of the Forest Act cannot be read to the effect that a forest land or waste land included in any holding cannot be declared reserved forest. The said interpretation will run contrary to the object of Forest Act. A tenure-holder may have a forest land or waste land in his holding but if the said holding is to be excluded from declaration of reserved forest, the same will become beyond the power of the State to declare it reserved forest. The provision of Section 11 of Forest Act which contemplates that the land included under Section 4, even if it belongs to a claimant, can be acquired under Land Acquisition Act, clearly contemplates that the forest land or waste land included in the holding of tenure-holder can also be included in reserved forest.

24. The word “forest land” has not been defined under the Forest Act. The definition of forest land was added by Section 38(b) by U.P. Act No. 23 of 1965. Section 38A(b) defines forest and Sub-section (c) defines forest land which are quoted below:

“Section 38A(b) “forest” means a tract of land covered with trees, shrubs, bushes or woody vegetation whether of natural growth or planted by human agency, and existing or being maintained with or without human effort, or such tract of land on which such growth is likely to have an effect on the supply of timber, fuel, forest produce, or grazing facilities, or on climate, stream-flow, protection of land from erosion, or other such matters and shall include:

(i) land covered with stumps of trees of a forest;

(ii) land which is part of a forest or was lying within a forest on the first day of July, 1952 ;

(iii) such pasture land, waterlogged or cultivable or non-cultivable land, lying within, or adjacent to, a forest as may be declared to be a forest by the State Government;

(c) “forest land” means a land covered by a forest or intended to be utilised as a forest.”

25. The definition of word “forest” is very wide which also includes a tract of land - covered with trees, shrubs, bushes or woody vegetation whether of natural growth or planted by human agency. Section 38A(b)(iii) further clarifies that cultivable or non-cultivable land, lying within, or adjacent to, a forest may be declared to be a forest by the State Government. The word “claimant” has also been defined in Section 38A(a) which is extracted below:

“(a) ‘Claimant’ as respects any land means a person claiming to be entitled to the land or any interest therein acquired, owned, settled or possessed or purported to have been acquired, owned, settled or possessed whether under, through or by any lease or licence executed prior to the commencement of the U.P. Zamindari Abolition and Land Reforms Act, 1950, or under and in accordance with any provision of any enactment. Including the said Act.”

26. The word “forest” came for consideration before the Apex Court in T.N. Godauarman Thirumulkpad v. Union of India, (1997) 2 SCC 267. The Apex Court said that the word ‘forest’ must be understood according to its dictionary meaning and will not only include forest as understood in the dictionary sense but also any area recorded as the forest in the Government record irrespective of the ownership. In paragraph 4. It was laid down by the Apex Court:

“4. The word “forest” must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 20(1) of the Forest Conservation Act. The term “forest land” occurring in Section 2, will not only include “forest” as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership.”

27. Thus, if any area of land is in nature of forest and is recorded in the tenure of any tenure-holder or in the name of intermediary/proprietor thekedar (as before abolition of zamindari), the land can be declared as reserved forest irrespective of the ownership of land. Under Indian Forest Act, 1927, power is given to declare the forest land/waste land as reserved forest irrespective of its ownership. Thus, even if forest land or waste land is included in a tenure-holder's tenure, there is no prohibition in any law from declaring the said land as forest land. The third category apart from forest land and waste land which has been added by the U.P. Act 23 of 1965, i.e., any other land (not being land for the time being comprised in any holding or grove or in any village abadi] refers to any other land other than forest land or waste land. Thus, if the land is neither forest nor waste land, the same cannot be declared as reserved forest if it is comprised in any holding or grove or in village abadi. Thus, in fact the U.P. Act 23 of 1965 added one more category of land which can be declared apart from forest or waste land. The scope of Section 3 as applicable in U.P. after U.P. Act 23 of 1965 is wider than the original Section 3 of the Forest Act. This view has already been expressed by the

Division Bench in Om Singh v. State of U.P., 1980 Ald. 78 summary of cases (73).

28. From the above discussion, it is clear that forest land or waste land included in holding of a tenure-holder can also be declared as reserved forest and there is no prohibition even in amended Section 3 vide U.P. Act 23 of 1965. The prohibition which has been created by amended Section-3 is with regard to only any other land not being land for time being comprised in any holding or grove or in any village abadi. The words not being land for the time being comprised in any holding or grove or any village abadi do not control the word forest land or waste land used in Section 3. A Constitution Bench of the Apex Court considered the provisions of Indian Forest Act, 1927, in Mahendra Lal Jaini v. State of Uttar Pradesh, 1962 SCC OnLine SC 55 : AIR 1963 SC 1019. The Apex Court laid down in paragraph 29 as under: "29. It is next urged that even if Sections 38A to 38C are ancillary to Chapter II, they would not apply to the petitioner's land, as Chapter II deals inter alia with waste land or forest land, which is the property of the Government, which is dealt with under Chapter V. That is so. But unless the petitioner can show that the land in dispute in this case is his property and not the property of the State. Chapter II will apply to it. Therefore, the land in dispute vested in the State under Section 6 of the Abolition Act and became the property of the State. It is however, contended on behalf of the petitioner that if he is held to be a Seerdar in proper proceeding, the land would be his property and therefore, Chapter V-A, as originally enacted, if it is ancillary to Chapter II would not apply to the land in dispute. We are of opinion that there is no force in this contention. We have already pointed out that under Section 6 of the Abolition Act all property of intermediaries including the land in dispute vested in the State Government and became its property. It is true that under Section 18, certain lands were deemed to be settled as holder of lands, but it is clear that after land vests in the State Government under Section 6 of the Abolition Act, there is no provision therein for divesting of what has vested in the State Government. It is, however, urged on behalf of the petitioner that he claims to be the proprietor of this land as a bhumidhar, or Seerdar because of certain provisions in the Act. There was no such proprietary right as bhumidhari right before the Abolition Act. The Abolition Act did away with all proprietary rights in the area to which it applied and created three classes of tenure by Section 129; bhumidhar, Seerdar and asami, which were unknown before. Thus, bhumidhar, Seerdar and asami are all tenure-holders under the Abolition Act and they hold their

tenure under the State in which the proprietary right vested under Section 6.”

(Emphasis added)

73. Thus the law is settled beyond doubt that waste land included in holding of a tenure-holder can also be declared as reserved forest and the submission to the contrary made by the learned Counsel for the petitioner cannot be accepted.
74. The learned Counsel for the petitioner has relied upon the judgment in the case **Committee of Management Versus Deputy Direction of Education**: 2006 LCD 1328, in which a Division Bench of this Court had relied upon a decision of the Hon’ble Supreme Court in **Dhirajlal Girdharlal versus CIT**: 1954 SCC OnLine SC 46, wherein it was held that: -

“8. ...It is well established that when a court of fact acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material and thereby an issue of law arises.”

75. However, the aforesaid proposition of law has no application to the facts of the present case, where the findings of the Courts below are based on relevant material and the same do not suffer from any perversity or illegality, as is apparent from the discussion made in the preceding paragraphs.
76. Thus even if the petitioner had become a lessee of the land through the lease-deed dated 06.07.1951 – which she could not establish, the State continued to be the proprietor of the land in question, which was recorded as waste land in the Khewat, and the State had the power to notify the land as a reserve forest.
77. In view of the foregoing discussion, I am of the considered view that the impugned judgment and order dated 23.06.1982 passed by the Forest Settlement Officer, Gonda in Case No.1129 under Section 6 of the Forest Act and the judgment and order dated 28.03.1985 passed by the District Judge, Gonda in Misc. Revenue Appeal No.11 of 1982 do not suffer from any illegality or infirmity warranting any

interference by this Court. The Writ Petition filed challenging the validity of the aforesaid orders lacks merits and the same is **dismissed**. The parties will bear their own costs of litigation.

78. Before parting with the case, the Court puts on record its appreciation for the assistance provided by the learned Counsel for the parties in this case, specially the assistance provided by the learned Additional Chief Standing Counsel for the State Sri. Arya Shreshth Tiwari, who has placed the relevant provisions of the law in an elaborate manner and has his submissions with relevant case-laws, enabling the Court to arrive at this decision.

(Subhash Vidyarthi J.)

Order Date: 01.07.2024

-Amit K-