

Neutral Citation No. - 2024:AHC-LKO:2805

Court No. - 7

Case :- WRIT - C No. - 1597 of 2022

Petitioner :- Om Prakash Misra And Others

Respondent :- Addl. Commissioner (Administration) Ayodhya
Division Ayodhya And Others

Counsel for Petitioner :- Shikhar Anand

Counsel for Respondent :- C.S.C., Anand Dubey, Mohan
Singh, Prashant Dubey

Hon'ble Saurabh Lavania, J.

1. Heard learned counsel for the petitioner, Shri Hemant Kumar Pandey, learned Standing Counsel for State-respondents no.1, 2 & 5, Shri Mohan Singh, learned counsel for respondent no. 4/Gaon Sabha, and Shri Anand Dubey & Shri Prashant Dubey, learned counsels for the private- respondent no. 3.

2. By means of the present petition, the petitioners have assailed the order dated 29.05.2018, Annexure No. 2 to the petition, passed by the respondent no.2/Sub Divisional Magistrate, Bheeti, District Ambedkar Nagar in Case No. T-20170446705572 (Shreeprakash Vs. Jashraj and Ors.) registered under Section 144 of U.P. Revenue Code, 2006 (hereinafter referred to as "Code, 2006").

3. Vide order dated 29.05.2018, the respondent no. 2 allowed the application dated 11.08.2017 for recall of order dated 10.08.2017 preferred by the respondent no.3/Shree Prakash on 27.10.2017 and also the application dated 29.05.2018 for recall of order dated 10.08.2017 preferred by the the respondent no.4/Gaon Sabha and set aside the order dated 10.08.2017, whereby the restoration application dated 20.04.2016 preferred by one Shree Prakash (respondent no. 3)

on 26.07.2016 was dismissed for want of prosecution, and also set aside the final order dated 22.12.1990, Annexure No. 3 to the petition, passed in Suit No. 218/273/66/252 instituted by the predecessors-in interest of the petitioners under Section 229-B of U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as "Act of 1950") and posted the matter for disposal of application for restoration of case dated 20.04.2016 preferred on 26.05.2016 by the respondent no.3.

4. The petitioners have also assailed the order dated 27.09.2021, Annexure No. 1 to the petition, passed by respondent no. 1/Additional Commissioner (Administration), Ayodhya Division, Ayodhya, whereby respondent no.1 dismissed the revision registered as Case No. 02224 of 2018 (Jashraj and Ors. Vs. Shreeprakash and Ors.), under Section 333 of Act of 1950 filed by the petitioners challenging the order dated 29.05.2018.

5. Assailing the impugned order(s) dated 27.09.2021 and 29.05.2018 passed by the respondents no. 1 and 2, respectively, submissions of learned counsel for the petitioners are as under:

(i) The application of respondent no. 3/Shree Prakash, a villager, for recall of the order dated 22.12.1990 itself was not maintainable as name of the respondent no. 3 was never indicated in the revenue records and as such in allowing the said application for recall of order dated 10.08.2017, the respondent no. 2 committed patent illegality particularly without availability of records of regular suit instituted under Section 229-B of the Act of 1950.

(ii) The application dated 29.05.2018 was preferred by respondent no.4/Gaon Sabha Pakri with the prayer to recall the order dated 10.08.2017 and as such in this view of the matter in setting aside the

final order dated 22.12.1990, whereby the suit instituted under Section 229-B of the Act of 1950 was decreed, the respondent no. 2 committed patent illegality and irregularity in passing the order dated 29.05.2018.

(iii) The final order dated 22.12.1990 in the case instituted under Section 229-B of the Act of 1950 was passed on merits as such the restoration application itself was not maintainable more particularly when the Gaon Sabha filed its written statement and was heard by the authority concerned.

(iv) As per the impugned order dated 29.05.2018 passed by the respondent no. 2, the application for restoration/recall of final order dated 22.12.1990 preferred on 26.05.2016 was to be heard on 04.06.2018 and being so, in setting aside the order dated 22.12.1990, the respondent no. 2 committed illegality.

(v) The judgment of the Trial Court in a regular suit no. 97 of 1983 (Jashraj Mishra and Ors. Vs. Gaon Sabha) is also favourable to the petitioners and as per the same, the predecessors-in interest of petitioners were entitled to the relief sought in the suit instituted under Section 229-B of the Act of 1950 and accordingly, the final order dated 22.12.1990 passed by the competent authority under the Act of 1950 in the said suit declaring the right over the property in issue is just and proper, and as such no fruitful purpose would be served in re-hearing the case/matter.

(vi) One Chandra Prakash Mishra approached this Court by means of **Writ Petition No. 9047 (M/B) of 2015 in re: Chandra Prakash Mishra Vs. State Of U.P. Thru Prin. Secy. Revenue Civil Sectt.Lko.& Ors.**, which was dismissed on **30.09.2015**. The order dated 30.09.2015 on reproduction reads as under:

"The petitioner seeks a mandamus to the Collector and District Magistrate, Ambedkar Nagar to review/recall an order dated 22 December 1990 passed by the Sub-Divisional Magistrate under Section 229-B of the U P Zamindari Abolition and Land Reforms Act, 1950. The Statute provides remedies in the form of an appeal and revision. An appeal is provided in respect of an order passed under Section 229-B of the Act in Section 331 of the Act. Hence, the petition is thoroughly misconceived and cannot be entertained.

The petition is, accordingly, dismissed.

There shall be no order as to costs."

(vii) The remedy as available under the statute namely the Act of 1950 was not availed by Chandra Prakash Mishra, the petitioner of the said writ petition, and the application for restoration dated 20.04.2016 was preferred on 26.07.2016 by respondent no. 3/Shree Prakash, son of said Chandra Prakash Mishra.

(viii) The allegation in the application of respondent no. 3/Shree Prakash for recall of order dated 22.12.1990, which are to the effect that pradhan was in collusion with plaintiffs of the suit instituted under Section 229-B of the Act of 1950 and for this reason ultimately the prayer sought in the said suit was allowed, are completely misconceived, incorrect and false.

(ix) Based upon the supplementary affidavit filed on 15.10.2023, it has been stated that since the fasli year 1359, the petitioners are in possession of the land.

6. Based upon the aforesaid, the learned counsel for the petitioners states that the interference of this Court is required in the impugned orders.

7. On the other hand, Shri Hemant Kumar Pandey, learned Standing Counsel for State-respondents no.1, 2 & 5, Shri Mohan Singh, learned counsel for respondent no. 4/Gaon Sabha and Shri Anand Dubey, learned counsel for the private- respondent no. 3, on the basis of averments made in the counter affidavit(s) filed by the respondent(s), submitted that:

(i) The land, in issue, i.e. Gata Nos. 399, 401, 410 and 411 was recorded in the revenue records as 'Jungle Dhak' which relates to Shreni (V)(kh)(2) and over this land, no right can be claimed or granted under the law and with regard to the land of such nature even the claim based on plea of adverse possession would not be sustainable.

(ii) The land i.e. Gata Nos. 399, 401, 410 and 411 was 'Jungle Dhak'. In this regard, reliance has been placed by learned counsel for the respondents on the para 4 the counter affidavit filed by the private respondent no. 3 dated 16.05.2022, which on reproduction reads as under:

"That the father of the petitioners had filed a case under section-229-B of U.P. Z.A. & L.R. Act-1950 for declaration of Bhumidhar of lands numbers 399 measuring 3 Beegha 15 Biswa, 401 measuring 1 Beegha 15 Biswa, 410 measuring 1 Beegha, 411 measuring 10 Biswa (hereinafter referred to as lands in dispute) situated at Pakri Nagaupur, Pargana Minjhaura, Tehsil Akbarpur, District Faizabad. It is worth while to state here that the above lands were recorded as Dhak Jungle in the revenue record. A true photo copy of CH-41 is enclosed here with as Annexure No.-CA-1 to this affidavit."

(iii) With regard to nature of land, reliance has also been placed on paras 4 to 7 of the counter affidavit filed by State dated 04.12.2023, which are extracted herein-under.

4. That it is necessary to mention that in the revenue records of Gram Pakari, Nagaunpur, Pargana Minjhaura, Tahsil- Bhithi, District- Ambedkarnagar of the khatauni of the fasali year 1430-1435, with respect to khata no. 134, in the land of gata no. 399 mi/0.9490 hectares and gata no. 401mi/0.4430 hectare and gata no. 410mi/0.253 hectare and gata no. 411mi/0.126 hectare is mentioned at present in the name of Rajnarayan s/o Ramraj and dependents of khatedaar late Sri Jaisraj s/o Ramraj namely Vijayprakash and Omprakash as bhumidhars with transferable rights. It would be necessary to mention that in the revenue records of Gram Pakari Nagaunpur, the land of gata no. 399, the old gata no. 1041mi rakaba 07-Bigha 05biswa and gata no. 401 having old gata no. 1043 rakaba 10 biswa 07 dhur and 1045 rakaba 01 bigha 14 biswa 14 dhur and gata no. 410 with old gata no. 1046mi rakaba 03 bigha 02 biswa has originated from the land recorded as forest land (Jungle Dhak). The copy of the relevant extract of the Khatauni of 1430 to 1435 fasali and 1359 fasali along with khasra are being filed collectively as Annexure no. CA-1 to the present counter affidavit.

That further the land with respect to gata no. 411 having old gata no. 1032 rakaba 06 bigha 04 biswa 18 dhur is recorded as Naveen parti which is clear from the records of Jot Akaar Patra 41 and 45. The copy of Jot Akaar Patra is annexed herewith as Annexure No. CA-2 to the present affidavit.

5. That further it is necessary to mention that the records of 1356 fasali of the village Pakari, Nagaunpur, Pargana Minjhaura, Tahsil- Bhithi, District- Ambedkarnagar is not available in the revenue records. The copy of the report is being submitted as Annexure no. CA-3 to the present affidavit.

That the land of khatauni 1359 fasali of the aforesaid village with respect to khata no. 282 of gata no. 1032, 1041, 1043,1045 and 1046 is mentioned as forest land (Jungle Dhak) in the revenue record and the land with respect to gata no. 411 rakaba 06 bigha 04 biswa 17 dhur is recorded as Naveen parti and the old the gata no. of the same is mentioned as 1032 in the

khatauni of 1359 fasali as forest land (Jungle Dhak) reserved as protected land for public use.

6. That it would be relevant to mention that father of petitioner no. 1 & 2 namely late Jaisraj and petitioner no. 3 namely Rajnarayan filed a suit for perpetual injunction before the court of Munsif Magistrate Akbarpur Faizabad as Civil Suit no. 97 of 1983 namely Jaisraj vs Gaon Sabha Pakari, Nagaunpur and it was decreed on 13.02.1986 and on the said basis a suit was filed before the court of Assistant Collector First Faizabad under Section 229-B of the UPZALR Act 1950 which was decreed on 22.12.1990 and the land vested as forest land (Jungle Dhak) of gata no. 399 rakba 03 bigha 15 biswa and with respect to gata no. 401 rakba 01 bigha 15 biswa and gata no. 410 rakba 01 bigha and gata no. 411 rakba 10 biswa was declared as bhoomidhar. It would be relevant to mention at this juncture that the petitioners did not disclosed before any concerned forum where the controversy was adjudicated that the land with respect to khatoni 1359 fasali vested with the forest as per chakbandi aakaar patra 41 & 45 and was recorded as forest land (Jungle Dhak).

(iv) In the rejoinder affidavit(s) filed by the petitioner dated 19.12.2023 and 24.09.2023, the facts related to nature of land indicated in the counter affidavit(s) filed by the respondent no.3 and State have not been specifically denied. A vague assertion has been made based upon the judgment of trial Court and judgment passed in the case instituted under Section 229-B of the Act of 1950.

(v) Aforesaid facts itself speak in volume that the order dated 22.12.1990 passed in regular suit instituted under Section 229-B of the Act of 1950 is a collusive order.

(vi) No right can be claimed over the property of Gaon Sabha in the manner in which the predecessors-in interest of the petitioners have obtained.

(vii) Findings recorded by the trial Court with regard to agricultural land in a suit seeking decree of perpetual injunction is not liable to be taken note of in the suit for declaration of right instituted under Section 229-B of the Act of 1950 as the Civil Court has no jurisdiction to declare a right over the agricultural land/Gaon Sabha land and only revenue Court is having the jurisdiction to the same. This issue has been dealt with by this Court in various pronouncements including the case of **Jai Singh Vs. Bachchu Lal & 17 Ors.**, reported in (2019)ILR 10All1395, subsequently followed by the judgments passed in **Ramesh Chandra And Others. Vs. Krishna Kumar and Others**, reported in 2021 (151) RD 323, and **Uma Mukerji Vs. Board of Revenue Allahabad and Ors.**, reported in (2010) ILR 8 All 410.

(viii) Every villager/member of Gram Panchayat has a right of user of Gaon Sabha land/property and accordingly he would be an aggrieved person if the Gaon Sabha land/property is encroached or usurped and as such the application for restoration of case/recall of final order dated 22.12.1990 passed in the suit instituted under Section 229-B of the Act of 1950 is maintainable. On this, reliance has been placed on following judgments.

(a) In the case of **Chotey Lal and Ors. Vs. Up-Zila Adhikari/Sub-Divisional Magistrate and Ors.**, reported in MANU/UP/1187/2004, this Court observed as under:

"11. The objections on locus standi raised by the respondents are without any substance in the present case. The petitioner is admittedly a member of the Gaon Sabha. The land of Gaon Sabha being a public property, if is being transferred by it in favour of a private body for extraneous reasons and for no benefit of the Gaon Sabha, then it means that the Gaon Sabha has failed to safeguard its interest and perform its statutory duty in accordance with law. Then under the said circumstances, this wrongful

action can be challenged by any member of the Gaon Sabha in the public interest. More so, as per the record, it is found in paragraph 7 of the Annexure CA 3, that the petitioner had been dispossessed vide order dated 30.9.1989 before the exchange made in favour of respondent No. 3 from the land in question earlier under proceedings 122B of the U.P.Z.A. and L.R. Act, 1952. The law on locus standi has been enlarged by Hon'ble the Supreme Court in the case of S.P. Gupta v. Union of India, AIR 1982 SC 149 and in the case of Bangalore Medical Trust v. B.S. Muddappa and Ors., AIR 1991 SC 1902. Thus, the petitioners have all the right to challenge the proceedings of transfer of the land in question as members of Gaon Sabha before the courts below."

(b) In the case of **Ghanshyam Verma and Ors. Vs. State of U.P. and Ors.**, reported in (2021) ILR 7All 629, this Court observed as under:

20. In the present case the proceedings were drawn against the opposite party No. 5 with respect to 'Naveen Parti' land which is vested in Gaon Sabha, however, the notice was withdrawn on the ground that the opposite party No. 5 did not encroach over the land. Every member of Gram Panchayat has a right of user over Gaon Sabha land subject to the provisions of law in this regard, which is for the benefit of its members. It is also the duty of every member not only not to encroach but also to see that it is not encroached upon by others to protect the interest of the Gaon Sabha. The petitioners being members of the Gaon Sabha and the land being 'Naveen Parti' vested in Gaon Sabha, which they allege to have been encroached upon would be 'person aggrieved' from the order of the Assistant Collector by which the notice issued to the alleged encroacher has been withdrawn as by encroachment of Gaon Sabha land the benefits which the members of the Gaon Sabha may be legally entitled to receive, would be deprived of that entitlement.

(ix) Even if it is presumed that records pertaining to final order dated 22.12.1990 were not available before the respondent no. 2 and in absence of records of the case, the respondent no. 2 has set aside the

order dated 22.12.1990, this Court may not interfere in the impugned order as interfering in the impugned order on this ground would be a futile exercise and mere formality for the reason that the property, in issue was recorded as 'Jungle Dhak' and this fact has not been disputed in specific terms by the petitioners in the petition as also in the affidavit(s) filed in response to the counter affidavit(s).

(x) The possession is not in issue, the issue is as to whether based upon the possession, the petitioners or the predecessors-in-interest of the petitioners could claim the rights over the Gaon Sabha land or the State land. The law is settled in this regard further, rights cannot be claim even on the plea of adverse possession over the Gaon Sabha land.

(xi) On the issue of claiming rights over the Gaon Sabha land and land recorded as 'Jungle Dhak', Shri Hemant Kumar Pandey, learned State Counsel placed reliance on the following judgments.

(a) In the case of **Ayodhya Vs. D.D.C. and Ors.**, reported in **2021 (3) ADJ 673**, this Court observed as under:

"12. It is settled proposition of law that one cannot mature rights by adverse possession on Gaon Sabha land. A Division Bench of this court considered it in Sumit Kumar Tyagi Versus State of U.P. and others; 2002 SCC OnLine All 399; 93 RD 623, the relevant paragraphs 11 and 12 of which are extracted below:-

"11. It is not understandable as to how some one can mature rights by adverse possession if his name is not recorded continuously for a period of ten years in the revenue records. The judgment further shows that the learned DGC (Revenue) had argued that on account of the amendments made in U.P.Z.A. & L.R. Act in 1976 and 1977, the period of limitation prescribed thereunder for filing a suit against Gaon Sabha had been removed altogether and, consequently, no rights could accrue on Gaon Sabha land by adverse possession. Reliance had also been

placed on a decision rendered by the Allahabad High Court in Chattar Singhv. Sahayak [1979 RD 226.] where this point had been examined threadbare and it was held that on account of amendments in the Act, no sirdari rights can accrue over Gaon Sabha land by adverse possession. However, the Board of Revenue brushed aside this argument and allowed the Second Appeal and decreed the suit and declared the plaintiff to be bhumbidar of the land in dispute. To say the least, the Board of Revenue could not have brushed aside an authority of High Court where this point had been specifically decided. The period of limitation for filing a suit by the Gaon Sabha has been amended several times and in such a manner that no one can mature rights over the Goan Sabha land by adverse possession. The last amendment which was made by U.P. Land Laws (Amendment) Act, 1976, before expiry of the period then prescribed for filing of the suit, reads as follows:

"For Section 210 of the principal Act, the following section shall be substituted and be deemed always to have been substituted, namely, "210. If a suit for eviction from any land under Section 209 is not instituted by a bhumidhar, Sirdar or asami, or a decree for eviction obtained in any such suit is not executed by him, within the period of limitation provided for the institution of such suit or the execution of such decree, as the case may be, the person taking or retaining possession shall:--

(i) where the land forms part of the holding of a bhumidhar or sirdar, become a sirdar of such land, and the rights, title and interest of an asami, if any, in such land shall be extinguished;

(ii) Where the land forms part of the holding of an asami, on behalf of the Goan Sabha, become an asami thereof holding from year to year."

12. The result of this amendment was that the effect of non-filing of the suit by the Gaon Sabha as contemplated in Section 209(1) (b) of the Act, which was provided in sub-section (iii) of Section 210, was taken away. It has been held by several decisions of this court that after the aforesaid amendment a person in possession for 12 years over the property of a Gaon Sabha would not acquire sirdari rights. It has been further held that the effect of amendment having been given retrospective effect means that a trespasser even from July, 1952, could not acquire sirdari rights

on the land belonging to Gaon Sabha (See Bhurey v. Board of Revenue, 1984 Revenue Decision 294, and Chatar Singh v. Sahayk Sanchalak, Chakbandi, U.P. Lucknow, 1979 Revenue Decision 226.) It is, therefore, obvious that the petitioner could not have matured any kind of rights over the Goan Sabha land. However, the Board of Revenue by a strange process of reasoning held that the petitioner had matured rights by adverse possession and had consequently become sirdar and thereafter bhumidar of the land."

13. Similar view has been taken by this court in Rizwan and another Versus Deputy Director of Consolidation, Saharanpur and others; (2003) 6 AWC 5065; (2003) 95 RD 714. The relevant paragraphs 5, 6 and 7 are reproduced below:-

"5. In the above fact-situation, the questions that boil down for consideration are (1) whether a person in unauthorised possession of Gaon Sabha property could acquire anybhumidhari right on grounds of adverse possession, and (2) whether an order passed by the authorities in a proceeding under Section 122B of the U.P.Z.A. and L.R. Act which culminated in dropping of proceedings could amount to a declaration of bhumidhari rights?

6. As regards the first question, reference may be made to amendment in Section 210 of the U.P.Z.A. and L.R. Act made by the U.P. Land Laws (Amendment) Act, 1976. The amendment having a bearing on the answer of the first question, may be excerpted below:

"For Section 210 of the Principal Act, the following section shall be substituted and be deemed always to have been substituted, namely:

"210. If a suit for eviction from any land under Section 209 is not instituted by abhumidhar, sirdar or asami, or a decree for eviction obtained in any such suit is not executed by him, within the period of limitation provided for the institution of such suit or the execution of such decree, as the case may be, the person taking or retaining possession shall:

(i) where the land forms part of the holding of a bhumidhari or sirdari become asirdar of such land, and the

rights, title and interest of an asami. If any, in such land shall be extinguished;

(ii) where the land forms part of the holding of an asami, on behalf of the Gaon Sabha, became an asami thereof holding from year to year."

*7. The amendment aforesaid leaves no manner of doubt that it has been given retrospective effect the necessary Implication of which is that a person having been in unauthorised possession even from the date of enforcement of the U.P.Z.A. and L.R. Act, i.e., since, 1st July, 1952, would not acquire any bhumidhari right on Gaon Sabha property. The necessary consequence that flows from this amendment in essence is that even if a person had been in actual possession for 12 years or more and even if suit under Section 209 of the U.P.Z.A. and L.R. Act had not come to be filed, any person in occupation thereof cannot acquire bhumidhari rights on the land belonging to Gaon Sabha. In the perspective of the amendment aforesaid made in Section 210 of the U.P.Z.A. and L.R. Act, the forceful contention pressed on behalf of the petitioners who have not adduced any documentary evidence to bolster up their rights or possession prior to the date of vesting otherwise in accordance with law and have merely relied upon varg 4 entry besides oral evidence in vindication of their bhumidhari rights, will not have any cutting edge and falls to the ground. The view I am taking respecting question No. 1 is fortified by a Division Bench of this Court in *Likhi Ram Moola v. State of U.P.*, 2000 (1) AWC 521 : 2002 (93) RD 126, in which the question raised before the Division Bench resembled the question involved in the instant petition."*

(b) In the case of Sharad Kumar Dwivedi Vs. State of U.P. Thru. Prin. Secy. Revenue Lko. And Ors., reported in (2022) ILR 7 All 1080, this Court observed as under:

*"42. This Court in *Gyanendra Singh Vs. Additional Commissioner, Agra Division, Agra*, 2003 (95) RD 286 has held that the land recorded as 'Jangal Dhak' is a forest land and is a public utility land and same cannot be transferred by way of lease, sale etc and no bhumidhari rights shall accrue in respect of the said land. These lands are saved under Section 132 of the U.P.Z.A. & L.R. Act, 1950. This Court considering the*

provisions of Section 132 of the U.P.Z.A. & L.R. Act, 1950 held that lands recorded as 'Jangal Dhak' are covered by the lands enumerated under Section 132 U.P.Z.A. & L.R. Act, 1950 and the same cannot be transferred in favour of anyone.

43. This Court defined in the said judgment that "Jangal Dhak" means "Dhaka Forest". Dhaka is a kind of small tree having large leaves. It has been held that the entry of the land as "Jangal Dhak" would mean that it is a forest land and forest is beneficial for human life and environment. Therefore, the land in the category of "Jangal Dhak" is a public utility land, in respect of which no bhumidhari right can accrue. Paragraphs 7 and 8 of the said judgement read as under:-

"7.The sub-clause (3) of Section 132 includes land held for a public purpose on which bhumidhari rights shall not accrue. The aforesaid three plots being recorded as "Dhaka Jangal" were covered by land as enumerated in Section 132 and lease of bhumidhari rights with non-transferable right cannot be granted on the said plots. No error has been committed by the courts below in cancelling the lease granted in favour of the petitioners. The submission of petitioners is that other persons have also been granted lease of "Dhaka Jangal", hence petitioners have been discriminated in so far as the lease of other persons have not been cancelled and the petitioners have only been singled out for cancellation. The counsel for the petitioners has raised the submission based on discrimination. As noted above, lease of "Dhaka Jangal" is not permissible in accordance with Section 132 of U.P. Zamindari Abolition and Land Reforms Act and the fact that leases were granted to certain other persons cannot validate the lease of the petitioners which was in violation of Section 132 of U.P. Zamindari Abolition and Land Reforms Act. The plea of discrimination is not available in a case where the benefit which was taken by other persons cannot be said to be in accordance with law. Apex Court in Chandigarh Administration v. Jagjit Singh, (1995) 1 SCC 745, held that mere fact that the respondent has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination in case the order in favour of other persons is found to be contrary to law or not warranted in the facts of this case. Following was laid down in paragraph 8:

"8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over and over again. The illegal/unwarranted action must be correct, if it can be done according to law indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent authority to repeat the illegality; the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law....."

(c) In *Raj Narain v. Deputy Director Of Consolidation, Lucknow Camp At Unnao And Others*, reported in MANU/UP/1003/1982, this Court held that:

"4.....The effect of the abolition of zamindari by U.P Act No. 1 of 1951 is to vest all Banjar lands in the State Government. Such lands were tRelevant portion of the judgment passed in

the case of Sharad Kumar Dwivedi in PIL No. 7472 of 2021 decided on 05.7.2022 is reproduced below:

"42. This Court in Gyanendra Singh Vs. Additional Commissioner, Agra Division, Agra, 2003 (95) RD 286 has held that the land recorded as 'Jangal Dhak' is a forest land and is a public utility land and same cannot be transferred by way of lease, sale etc and no bhumidhari rights shall accrue in respect of the said land. These lands are saved under Section 132 of the U.P.Z.A. & L.R. Act, 1950. This Court considering the provisions of Section 132 of the U.P.Z.A. & L.R. Act, 1950 held that lands recorded as 'Jangal Dhak' are covered by the hereafter vested in the Gaon Sabha vide Maharaj Singh v. State of U.P, (1977) 1 SCC 155 : AIR 1976 SC 2602. It was thus not open to the Gaon Sabha to divest itself of any land merely at will. It was for this reason that a check was placed on the powers of the Gaon Sabha, namely, that it could file a compromise only with the permission of the Sub-Divisional Officer. But even a Sub-Divisional Officer cannot, without any good ground, allow any property vested in the State to go away to any private individual. In the instant case we may assume that the Sub-Divisional Officer and the Gaon Sabha acted bona fide in the belief that the petitioner has perfected his rights on the basis of long possession, but this view of theirs was rendered erroneous on account of the retrospective amendment of the law by the legislature. Under S. 210 of the U.P Act No. 1 of 1951 adverse rights can be acquired only in respect of a holding of a Bhumidhar and not against land held as Banjar by Gaon Sabha....

(d) In the case of **Rizwan And Another v. Deputy Director Of Consolidation, Saharanpur And Others**, reported in **MANU/UP/1825/2003**, this Court held that:

"5. Indisputably, the plots in question were recorded as Gaon Sabha property in the basic year. There are no indicia on the record to vouch for the fact that on the date of vesting of property, petitioners or their predecessors were recorded in the revenue records. As a matter of fact, the petitions are staking their rights to the property on the dint of adverse possession and by reliance on varg 4 entry. In essence, the

main plank of the argument is founded on adverse possession and on varg 4 entry and not that the petitioners or their predecessor had their names in the relevant revenue record on or prior to vesting of the property in the Gaon Sabha under Section 117 of the U.P.Z.A and L.R Act.

6. In the above fact-situation, the questions that boil down for consideration are (1) whether a person in unauthorised possession of Gaon Sabha property could acquire any bhumidhari right on grounds of adverse possession, and (2) whether an order passed by the authorities in a proceeding under Section 122B of the U.P.Z.A and L.R Act which culminated in dropping of proceedings could amount to a declaration of bhumidhari rights?

7. As regards the first question, reference may be made to amendment in Section 210 of the U.P.Z.A and L.R Act made by the U.P Land Laws (Amendment) Act, 1976. The amendment having a bearing on the answer of the first question, may be excerpted below:

"For Section 210 of the Principal Act, the following section shall be substituted and be deemed always to have been substituted, namely:

"210. If a suit for eviction from any land under Section 209 is not instituted by a bhumidhar, sirdar or asami, or a decree for eviction obtained in any such suit is not executed by him, within the period of limitation provided for the institution of such suit or the execution of such decree, as the case may be, the person taking or retaining possession shall:

(i) where the land forms part of the holding of a bhumidhari or sirdari become a sirdar of such land, and the rights, title and interest of an asami. If any, in such land shall be extinguished;

(ii) where the land forms part of the holding of an asami, on behalf of the Gaon Sabha, became an asami thereof holding from year to year."

8. The amendment aforestated leaves no manner of doubt that it has been given retrospective effect the necessary Implication of

*which is that a person having been in unauthorised possession even from the date of enforcement of the U.P.Z.A and L.R Act, i.e, since, 1st July, 1952, would not acquire any bhumidhari right on Gaon Sabha property. The necessary consequence that flows from this amendment in essence is that even if a person had been in actual possession for 12 years or more and even if suit under Section 209 of the U.P.Z.A and L.R Act had not come to be filed, any person in occupation thereof cannot acquire bhumidhari rights on the land belonging to Gaon Sabha. In the perspective of the amendment aforestated made in Section 210 of the U.P.Z.A and L.R Act, the forceful contention pressed on behalf of the petitioners who have not adduced any documentary evidence to bolster up their rights or possession prior to the date of vesting otherwise in accordance with law and have merely relied upon varg 4 entry besides oral evidence in vindication of their bhumidhari rights, will not have any cutting edge and falls to the ground. The view I am taking respecting question No. 1 is fortified by a Division Bench of this Court in *Likhi Ram Moola v. State of U.P.*, 2000 (1) AWC 521 : 2002 (93) RD 126, in which the question raised before the Division Bench resembled the question involved in the instant petition.*

*9. Coming to the second question whether the rights of petitioners could be determined in proceedings emerging from Section 122B of the U.P.Z.A and L.R Act and order passed therein thereby proceedings were ordered to be dropped, it is worth noticing that proceedings stemming from Section 122B of the U.P.Z.A and L.R Act are summary in nature and the question of fact cannot be appraised in these proceedings. The necessary consequence is that any order passed under Section 122B of the U.P.Z.A and L.R Act or Rule 115C and D of the U.P.Z.A and L.R Rules is not capable of conferring any right on a person or a party to whom notices were issued and proceedings were initiated. The view, which I am inclined to take in this case, receives fortification from a decision in *U.P State Sugar Corporation v. Deputy Director of Consolidation*, 2000 (2) AWC 933 (SC) : 2000 (91) RD 165."*

(e) In the case of **Likhi Ram Moola v. State of U.P.**, reported in **2002 (93) RD 126**, this Court held that:

"14. Sri Khan has also submitted that no suit having been filed for ejectment by the gaon sabha under Section 209 of the Act, the petitioners have matured rights under Section 210 of the Act. The period of limitation for filing a suit by the gaon sabha has been amended several times and in such a manner that no one can mature rights over the gaon sabha land by adverse possession. The last amendment which was made by U.P. Land Laws (Amendment) Act, 1976, before expiry of the period then prescribed for filing of the suit, reads as follows :

"For Section 210 of the principal Act, the following section shall be substituted and be deemed always to have been substituted, namely :

"210. If a suit for eviction from any land under Section 209 is not instituted by a bhumidhar, sirdar or asami, or a decree for eviction obtained in any such suit is not executed by him, within the period of limitation provided for the institution of such suit or the execution of such decree, as the case may be, the person taking or retaining possession shall :

(i) where the land forms part of the holding of a bhumidhar or sirdar, become a sirdar of such land, and the rights, title and interest of an asami, if any, in such land shall be extinguished ;

(ii) where the land forms part of the holding of an asami, on behalf of the gaon sabha, become an asami thereof holding from year to year."

15. The result of this amendment was that the effect of non-filing of the suit against the gaon sabha as contemplated in Section 209 (1) (b) of the Act, which was provided in Sub-section (iii) of Section 210, was taken away. It has been held by several decisions of our Court that after the aforesaid amendment, a person in possession for 12 years over the property of a gaon sabha would not acquire sirdari rights. It has been further held that the amendment having been given retrospective effect means that a trespasser even from July, 1952, could not acquire sirdari rights on the land belonging to gaon sabha (See Bhurey v. Board of Revenue, 1984 AWC 561 : 1984 RD 294 and Chatar Singh v. Sahayak Sanchalak, Chakbandi, U.P. Lucknow and Ors., 1979 RD 226). It is, therefore, obvious that the petitioners have not matured any kind of rights over the gaon sabha land. "

(xii) Prayer is to dismiss the writ petition.

8. Considered the submissions advanced by learned counsels for the contesting parties and perused the available records.

9. The order dated 29.05.2018 passed by respondent no.2 and the order passed by respondent no.1 dated 27.09.2021, whereby the respondent no.1 affirmed the order dated 29.05.2018 have been challenged in this petition.

10. Vide order dated 29.05.2018, the application(s), wherein the prayer to recall of order dated 10.08.2017 was sought, were allowed and the order dated 10.08.2017, whereby the application dated 20.04.2016 preferred on 26.05.2016 for recall of final order dated 22.12.1990 passed in the suit, and the order dated 22.12.1990, whereby the suit instituted under Section 229-B of Act of 1950 was decreed, were set aside.

11. Thus, the subject matter of the present petition relates to procedural review. In view of aforesaid, this court is of the view that factual aspects should not be delve with as any observation of this Court on the merits of the case would be prejudicial to the concerned parties before the trial court, where the case is pending, and accordingly, in this view of the matter the impugned orders are being considered by this court.

12. The above indicated orders have been challenged on the following grounds.

“A. Because the impugned orders passed by respondents number 1 and 2 are illegal and perverse as well as against the facts and evidence on record.

B. Because in the recall applications pending before respondent number 2, the subject matter was only for the

recall of order dated August 10, 2017 and not the earlier order dated December 22, 1990. In such circumstances, passing orders and further recalling the previous judgement dated December 22, 1990 was completely illegal, arbitrary as well as malafide because the previous order dated December 22, 1990 was not even the subject matter of recall applications pending before respondent number 2.

C. That when the judgement dated December 22, 1990 was not even the subject matter of the recall application is preferred by respondents 3 and 4; the respondent number 2 had absolutely no jurisdiction to either recall or pass any sort of order with respect to the judgement dated December 22, 1990. Therefore, having passed an order beyond jurisdiction in itself renders the impugned order dated May 29, 2018 void ab initio.

D. Because even the respondents number 3 and 4, who were applicants of the recall application had not prayed for recalling or setting aside of the judgement dated December 22, 1990. In such circumstances also the respondent number 2 had absolutely no authority or jurisdiction to even touch the judgement dated December 22, 1990 in any manner whatsoever.

E. Because the respondent number 1, although passed a detailed judgement dated September 27, 2021; but failed to appreciate the factual and legal matrix and went on to endorse the illegal order passed by respondent number 2.

F. Because in any case, the petitioners cannot be deprived of their legal rights except in due process of law.

G. Because both the impugned orders contained in annexures 1 and 2 are illegal, arbitrary as well as perverse; hence liable to be set aside, in the interests of justice.”

13. From the grounds, quoted above, it is apparent that the petitioners in fact are aggrieved by setting aside the order dated 22.12.1990 passed in the case instituted under section 229-B of the Act of 1950. This part of the order dated 29.05.2018 is nothing but a typographical error else the respondent no.2 would not have fixed the case for disposal of application dated 20.04.2016 filed on 26.05.2016, wherein the prayer sought relates to final order dated 22.12.1990 which was passed in the case instituted under Section 229-B of the Act of 1950.

14. At this stage it would be appropriate to indicate that the petitioners in the present petition have not taken any ground on issue of locus of the respondent no.1 and on the other hand, as per settled principle of law, the respondent no.1, being the villager/member of gram panchayat, has locus to file the application in issue as the subject matter of the case relates to Gaon Sabha land.

15. Now, coming to the impugned orders. In view of the finding recorded in para 13 of this judgment, this court is of the view that the order dated 29.05.2018 be clarified only with regard to order dated 22.12.1990 and the same would suffice and there is no need of quashing the impugned orders.

16. Accordingly, it is clarified that the order dated 22.12.1990 shall not be treated as set aside.

17. In view of the aforesaid, the respondent no.2/Sub-Divisional Officer, Bhati, Distrit- Ambedkar Nagar is directed to decide the application dated 20.04.2016 filed on 26.05.2016 on merits by a reasoned and speaking order, as per law, within a period of three months from the date of production of certified copy of this order.

18. With the aforesaid, this writ petition is **dismissed**. No orders as to costs.

Order Date :- 10.1.2024

Mohit Singh/-

(Saurabh Lavania,J.)

WRIT - C No. - 1597 of 2022