

Neutral Citation No. - 2024:AHC-LKO:48033

A.F.R.

Reserved on 18.03.2024

Delivered on 16.07.2024

Court No. - 13

Case :- WRIT - B No. - 288 of 2024

Petitioner :- Mahesh Chandra Saxena And Others

Respondent :- State Of U.P. Thru. Collector, Kheri And Others

Counsel for Petitioner :- Nagendra Kumar Khare, Mohammad Aslam Khan, Mohan Singh

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Lavania, J.

1. Mohd. Arif Khan, learned Senior Advocate with Advocate(s) Sri Nagendra Kumar Khare, appeared for petitioners. Advocate(s) Sri Hemant Kumar Pandey and Sri Dev Prakash Mishra, appeared for the State.

2. By means of present petition, the petitioners have assailed the order dated 10.04.2023 passed by respondent No. 2-District Magistrate/District Deputy Director of Consolidation, Lakhimpur Kheri in Case No. 2050/2022, Computerized Case No.D202210430002050 (Mahesh Chandra Saxena and Others vs. Prabaghiya Vanadhikari and Others) as also the order dated 16.10.2019 passed by respondent No.3-Consolidation Officer, Antim Abhilekh Second, Lakhimpur Kheri in Case No. 79/68 (Mahesh Chandra Saxena and Others vs. Prabaghiya Vanadhikari and Others).

3. After hearing the learned Senior Advocate for petitioners and learned counsel for the State, the judgment was

reserved on 18.03.2024. On this date, learned counsel for the parties prayed for liberty to submit their written submissions alongwith some relevant documents, for which they were permitted.

4. The written submissions dated 01.04.2024 signed by Mohd. Aslam Khan, Advocate was submitted on behalf of petitioners. Alongwith written submission following have been annexed:-

(i) Copy of judgment passed by the Hon'ble Apex Court in the case of **Smt. Sonawati and Others vs. Sri Ram and Another; 1967 SCC OnLine SC 128**. In this case, based upon the entry of 1356 Fasli (1949 A.D.) rights over the land provided to Pritam Singh were interfered with by this Court and the judgment of this Court was affirmed by the Hon'ble Apex Court. The judgment of affirmation was passed by the Hon'ble Apex Court after observing that name of Pritam Singh was surreptitiously entered in Khasra for 1356 Fasli (1949 A.D.) and after taking note of Section 20(b) of U.P. Zamindari Abolition and Land Reforms Act, 1950 (in short "Act of 1950") and the fact that in the Khasra Barahsala i.e. Consolidated Khasra for 1347-1358 Fasli (1940 to 1951 A.D.) Tota Ram and Lajja Ram are shown as persons cultivating the land and there is no record of name of any sub-tenant on the land.

(ii) Copy of judgment passed by the Hon'ble Apex Court in the case of **Ram Avadh and Others vs. Ram Das and Others (2008) 8 SCC 58**. In this case, the Hon'ble Apex Court, after considering the Section 20 of the Act of 1950 including Explanation III therein as also the entry in the Khatauni for the year 1356 to 1366 Fasli (1949 to 1959 A.D.) interfered in the judgment of the High Court and the revisional Court and affirmed the decision of the Consolidaton Officer and Settlement Officer of Consolidation and provided rights to the appellants therein.

(iii) The copy of the judgment passed by the Hon'ble Apex Court in the case of **Jasraj Inder Singh vs. Hemraj Multanchand. (1977) 2 SCC 155**. This judgment relates to order of remand and according to this, the observations made in the remand order should be complied with by the authority to whom the matter was remanded back.

(iv) Copy of the United Provinces Private Forests Act, 1948 (U.P. Act No. 4 of 1949).

(v) Copy of the judgment passed by this Court in the case of **Mohd. Karrar Ali and 2 others vs. the State of U.P., AIR 1954 All 753**. According to this pronouncement, U.P. Private Forests Act, 1948 has no application to the land other than forests.

(vi) Copy of Para A-124 of U.P. Land Records Manual.

(vii) Copy of Chapter II of Indian Forests Act, 1927 (in short "Act of 1927") which includes Section 20-A as applicable in Uttar Pradesh.

(viii) Copy of the counter affidavit filed by the State in Writ Petition No. 174 (M/S) of 2001 (Mahesh Chandra Saxena & Ors. vs. State of U.P. & Others) annexing therewith the copies of Khatauni of 1356 Fasli (1949 A.D.) and 1359 (1952 A.D.) Fasli. The copy of counter affidavit has been filed to establish that in 1359 Fasli (1952 A.D.) there was no cutting.

(a) It would be apt to indicate that in the Khatauni of 1356 Fasli (1949 A.D.) the area of Gata/Plot No. 21 is mentioned as 431.46 acre and the name of Raja Brijraj Bahadur Singh does not find place, (the basis of claim of predecessor-in-interest of petitioner and the petitioners), and according to the same, entire land was recorded under entry/Ziman-8(iii)(a)(1), *"Imarti Lakdi Ka Jungle"*.

(b) It would be relevant to indicate that from the certified photocopy of the Khatauni of 1359 Fasli (1952 A.D.), (annexed as Annexure No. 4 to the writ petition), it is evident that area of Gata/Plot No. 21 i.e. 431.46 acres mentioned in Khatauni of 1356 Fasli (1949 A.D.) was reduced by making

correction/cutting to 393.91 acres and this correction/cutting was made without any order of the competent Revenue Official and it bears signature of someone, whose designation has not been disclosed. It is also evident from this Khatauni that after reducing the original area i.e. 431.46 acres to 393.91 acres different Gata(s)/Plot(s) were carved out as Gata No(s). 21, 21/2, 21/3, 21/4, 21/5, 21/6 & 21/7. In the Khatauni, the names of Daal Singh S/o Mom Raj Singh, Gopal Singh S/o Sagar, Buddha S/o Kamma, Surta S/o Buddha, Param Singh S/o Mom Raj Singh and Amru S/o Ram Ram, respectively, showing Barley (Jow) crop against Gata No(s). 21/1 to 21/7, respectively, and this was also carried out without any order in this regard.

5. The written submission dated 24.05.2024 by the State, signed by Sri Hemant Kumar Pandey, Sri Dev Prakash Mishra and Sri Yogesh Kumar Awasthi, annexing therewith following documents was submitted. Alongwith this written submissions following have been annexed:-

- (i) Copy of the sale deed(s) of Mahesh Chandra Saxena and Sanjiv Kumar Saxena, Nanhey Lal Sharma, Smt. Vijay Rani Sharma, Nanhey Lal Sharma, Smt. Kamla Saxena, Smt. Vijay Rani Sharma, respectively.
- (ii) Copy of the Khatauni of 1356 Fasli (1949 A.D.) and 1359 Fasli (1952 A.D.).

(iii) Copy of the order dated 18.07.2018 passed by the Consolidation Officer.

(iv) Copy of the report dated 07.06.1999 prepared and submitted by Sri Arun Kumar Mishra, Commissioner, Lucknow Division, Lucknow before the Principal Secretary, Forests Department.

(v) Copy of Form-41 prepared during consolidation proceedings.

(vi) Copy of Form-45 prepared during consolidation proceedings.

(vii) Copy of Khatauni for 1424-29 Fasli (2017-2022 A.D.).

(viii) Copy of the judgment passed by the Hon'ble Apex Court in the case of **T.N. Godavaraman Thirumulpad etc. vs. Union of India and Others; AIR 1997 SC 1228**. In this case, the Hon'ble Apex Court described the word 'Forest'.

(ix) Copy of judgment passed by this Court in **Consolidation No. 1268 of 1979 (State of U.P. Through The Divisional Forest Officer vs. The Deputy Director of Consolidation, U.P. and Others)**. In this case, the Hon'be Apex Court has issued certain guidelines to save the forest and to reduce the de-forestation.

(x) Copy of judgment passed by the Hon'ble Apex Court in the case of **State of U.P. vs. Dy. Director of Consolidation and Others; AIR 1996 SC 2432.**

This case also deals with Forest land and according to this case, no right would be available over the Forest land after notification in terms of Section 4 and 20 of the Indian Forest Act, 1927.

(xi) Copy of Section 20-A of Indian Forest Act, 1927.

(xii) Copy of order dated 03.06.2016 issued by the Chief Conservator of Forest, U.P., Lucknow for making compliance of the directions issued by the Hon'ble Apex Court in the case of **T.N. Godavaraman (Supra).**

(xiii) Copy of judgment passed by the Hon'ble Apex Court in the case of **T.N. Godavaraman Thirumulpad vs. Union of India & Ors.** dated 03.12.2010.

6. The facts indicated in the written submissions dated 01.04.2024 filed by learned counsel for petitioners and the facts indicated in the petition are similar and learned Senior Advocate in his oral submissions placed all the relevant facts and law before this Court in support of his contention. Accordingly, to take note of relevant facts and the submissions advanced by the learned Senior Advocate, the averments made

in the written submissions dated 01.04.2024 are extracted hereinunder:-

"1. The property in dispute, namely, Plot no.21. having an area of 431.61 acres, situate in Mohal Mustahakam, Village, Alenganj, Pargana, Bhud, District, Kheri, before abolition of Zamindari i.e. in khatauni 1356 Fasli was recorded in the Khewat Khatauni of Raja Brijraj Bahadur of Jhandi Estate in Ziman 8 (3) (i) of Non-Z.A. khatauni i.e. "Krishi Yogya Banjar Bhumi and Imarati Lakari Ke Van". The predecessor in interest of the petitioners occupied cultivable portion of plot no.21 in 1358 Fasli and had sown barley crop without the consent of the Zamindar with the result, their names were entered/ recorded in khatauni 1359 Fasli prepared by the Lekhpal in Red Ink in Ziman 5-A as U.P. Land Records Manual was applicable to Non-Z.A. Area of Oudh with a duration of one year.

2. The names of the predecessor in interest of the petitioners were recorded in khatauni 1359 Fasli over plot nos.21/2 to 21/7 (annexure no.4). The said entry continued. The village was brought under consolidation operations, after issue of notification under section 4 of U.P. Consolidation of Holdings Act (hereinafter called) the Act and the names of the predecessor in interest of the petitioners were recorded. Notification under section 52 of the Act was published in 1392 Fasli and the records were remitted to Tehsil Authorities, Tehsil, Gola, District, Kheri. Fresh khatauni was prepared in 1395 Fasli and the names of the predecessor in interest of the petitioners, namely, Dal Singh & others were recorded over new nos. 22Kha to 22Chha.

3. The petitioners purchased the land in dispute, admeasuring 31.35 acres from the recorded tenure holders under registered sale deeds dated 17.3.1997, 28.4.1997, 2.5.1997, 1.7.1997 and 4.7.1997 for valuable sale consideration.

4. In pursuance to the sale deeds, possession was delivered to the petitioners and their names were also mutated in revenue records. Prior to the purchase by the petitioners, they made enquiries and they were informed by the Forest Settlement Officer, Kheri that the plots in dispute were not acquired by the Forest Department for reserve forest. It is submitted that a

*notification under section 4 of Indian Forest Act in respect to an area of 246.67 acres was issued relating to plot no * 0.22 = 21/2 old number and other plots. Thereafter a notification under section 20 of the Act was issued in respect to aforesaid plots on 26.4.1968 (annexure no.8).*

5. As stated above, after purchase of the property in dispute from the recorded bhumidhars, the names of the petitioners were mutated and they are bonafide purchasers for valuable consideration without notice.

6. After a lapse of 45 years, an application was made by the Divisional Forest Officer (opposite party no.4) for deleting the names of the predecessor in interest of the petitioners from the aforesaid plots, stating therein that the property in dispute is reserve forest. Sub Divisional Officer, Gola Gokran Nath, called upon a report from the Tehsildar, Gola, who submitted a report on 16.5.1995 (annexure no.10), stating therein that the recorded tenure holders as per the report of the Lekhpal and Supervisor Kanoongo are in continuous possession and are paying its land revenue. A notification under section 20 of the Act was issued. On a comparison of the settlement map, it is apparent that plot nos.22 and 27 are outside reserve forest, standing on plot nos.21 and 23 and reserve forest situate at a distance of one km away from the plots in dispute. The Sub Divisional Officer, on a consideration of entire facts and the evidence on record, including the report submitted by the Tehsildar, rejected the application made by the Forest Department vide order dated 30.6.1995.

7. After rejection of the application made by the opposite party no.4, no action was taken by the Forest Department, assailing the said order by filing an appeal or revision and the petitioners, as stated above, are in continuous cultivatory possession.

8. It is submitted that as mentioned above, the petitioners being in occupation in 1358 Fasli and were cultivating the land in dispute and being recorded as occupants in 1359 Fasli, by virtue of section 20 (b) of the Act read with Rule 177 - A , they became Sirdar and lateron Bhumidhar by virtue of amendment made under section 131 of U.P.Zamindari Abolition & Land Reforms Act, as has been laid down by this Hon'ble Court as well as Apex Court in the case of Smt. Sonawati, 1968 R.D. pages 151 and 2008 (8) SCC,

page 58, Ram Avadh & others versus Ramdas & others.

9. The petitioners submit that longstanding entries could not be corrected in proceedings under section 33/39 of U.P. Land Revenue Act, as neither the State Government nor the Forest Department had ever assailed the longstanding entries recorded in the name of the predecessor in interest of the petitioners and after purchase. in the name of the petitioners, hence the application for correction of the entries made by the opposite party no.4 was rightly rejected by the Sub Divisional Officer, Gola.

10. The petitioners further submit that no notification, either under section 4, 6 or under section 20 of Indian Forest Act had so far been issued in respect to the plots in dispute. As mentioned above, since the land was lying vacant, the predecessor in interest of the petitioners starting cultivating the land in dispute without the consent of the landlord and being in occupation, their names were recorded by the concerned Lekhpal in Ziman 5-A of U.P. Land Records Manual applicable to Oudh.

11. Again an application was made by the Divisional Forest Officer, South, Kheri for correction of the entries in revenue records in respect to the plots in dispute, on which a report was again called upon from the Tehsildar, Gola Gokran Nath.

12. Sub Divisional Officer, Gola, even without affording any opportunity of hearing to the petitioners, passed an order on 28.10.1999 (annexure no. 13) for deleting the names of the petitioners and recording the land in dispute in the name of Forest Department "Imarati Lakari Ke Jangal, Zere-Intezam, Forest Department."

13. Being aggrieved by the exparte order dated 28.10.1999, the petitioners filed a revision no.54 (L.R.) 1999-2000 before the Board of Revenue, which was allowed vide order dated 11.10.2000 (annexure no.14) and the matter was remanded to the Sub Divisional Officer, Gola to pass fresh orders on merits, after impleading Gaon Sabha as well as after affording opportunity to the petitioners to adduce their evidence, after examining the original records. While remanding the matter, the Board of Revenue had specifically observed in para 4 of the judgment to the effect that the Forest Department could not produce any evidence in support of its claim that the land

belongs to the Forest Department. It was further observed in para 6 of the order that the order dated 28.10.1999 passed by the Sub Divisional Officer is illegal and is liable to be set aside. The revision deserves to be allowed in part. A direction was issued that after registering a case under section 33/39, by arraying Gaon Sabha as a party, the matter may be decided afresh and in case, the entries made in revenue records are found to be forged, proceedings may be initiated against erring officials.

14. The petitioners being aggrieved by the order dated 11.10.2000 (annexure no.14) filed writ petition (M.S.) No.174 of 2001 which was allowed vide judgment dated 12.9.2014. It was observed that the petitioners claimed title under section 20 (b) of U.P.Act No.1 of 1951 as their predecessor in interest were recorded occupant in khatauni 1359 Fasli and in view of the law laid down by the Apex Court, entry in 1359 Fasli must be genuine and made according to the provisions of the Land Records Manual and not a fake entry. The said issue has not been decided by any court or authority. No proceedings for correction of land records were taken under U.P. Consolidation of Holdings Act and prior entries continued. It was further observed that in the absence of any notification under section 117 of U.P. Zamindari Abolition & Land Reforms Act, Gaon Sabha has nothing to do in the matter. The matter was thus remanded to the Deputy Director of Consolidation, Kheri to conduct a proper enquiry, after giving an opportunity of hearing to the parties, if necessary, he may frame an issue and remit the matter to the Consolidation Officer for recording oral and documental evidence of the parties and may pass appropriate orders after receiving evidence and findings of the consolidation officer, after hearing the parties.

15. After remand, the Deputy Director of Consolidation even without complying the terms of the order of remand, as in view of the law laid down by the apex court in the case of Jasraj versus Hemraj, AIR 1977 SC page 1011. remanded the entire matter to the Consolidation Officer, where the statement of Forest Ranger was recorded. He had specifically stated that he does not know the number of the plots mentioned in the notification under section 20 of the Forest Act. He also does not know the number of the plots in

dispute and their corresponding numbers prior to consolidation operations.

16. It would be pertinent to point out here that prior to passing of the order by the Sub Divisional Officer, on the subsequent application made by the Forest Department (opposite party no.4) for correction, an exparte report was submitted behind the back of the petitioners as they were not afforded any opportunity to participate in the said enquiry and this Hon'ble Court, while allowing the writ petition filed by the petitioners, after setting aside the orders passed by the Sub Divisional Officer and the Board of Revenue, remanded the matter to the Deputy Director of Consolidation, Kheri to conduct a proper enquiry, after giving an opportunity of hearing to the parties. No such enquiry, after remand of the matter by this Hon'ble Court, was ever made and the Sub Divisional Officer, resting upon the exparte report of the Commissioner (annexure no.12), he passed an order for deleting the names of the petitioners from the plots in dispute and recording the same in the name of Forest Department, as reserve forest, although this Hon'ble Court has also observed, while allowing the writ petition that Forest Department had failed to substantiate its claim by leading any evidence which is also evident from the notification dated 1.7.1968 issued under section 20 of the Forest Act, mentioning the notification issued on 29.3.1954 under section 4 of the Forest Act, wherein the plots in dispute does not find mention, hence the plots in dispute could not be said/held to be reserve forest, more particularly in view of the State Amendment made under section 4 of the Indian Forest Act published on 1.2.1966.

17. Being aggrieved by the order dated 16.10.2019 (annexure no.2) passed by the Consolidation Officer, to whom, the matter was remanded by the Deputy Director of Consolidation, Kheri to decide the matter on merits, though in pursuance to the order of remand passed by this Hon'ble Court, vide judgment dated 12.9.2014 (annexure no.15), a direction that was issued to the Deputy Director of Consolidation, Kheri to conduct a proper enquiry, after giving opportunity of hearing to the parties, decide the same. Thus the order passed by the Consolidation Officer (annexure no.2) was not only illegal but also against the terms of the order of remand, in view of the law propounded by the Apex Court aforesaid.

18. Being aggrieved, the petitioners filed an appeal before the Settlement Officer of Consolidation, Kheri, who remitted the appeal to the Deputy Director of Consolidation, Kheri, after quoting the observations made by this Hon'ble Court vide judgment dated 12.9.2-14 (annexure no. 19).

19. The petitioners thereupon filed a revision under section 48 (1) of U.P. Consolidation of Holdings Act, before the Deputy Director of Consolidation, Kheri, who also endorsed the order passed by the Consolidation Officer, resting upon exparte report submitted by the Commissioner, which was inadmissible as he had not come in the witness box to prove the said report. Deputy Director of Consolidation, Kheri (opposite party no.2), except quoting the judgments passed by the apex court had not decided the lis as per the observations made by this Hon'ble Court, vide judgment dated 12.9.2014 (annexure no.15). Thus the order passed by the opposite party no.2 was not only illegal but also without jurisdiction as well as against the terms of the order of remand. Now it is well settled proposition of law as has been propounded by the Apex Court that if the matter has been remanded by the higher court to the lower court with certain directions, the lower court is bound by the terms of the order of remand and has to decide the matter accordingly and cannot traverse beyond the specific terms of the order of remand. Thus the order passed by the opposite party no.2 is not only illegal but also without jurisdiction.

20. Main controversy involved, as has been observed by this Hon'ble Court vide 12.4.2014 (annexure no.15), has not yet been decided and the opposite party no.2, though he was required to decide himself, but instead of doing so, he had remitted the matter to the Consolidation Officer, after deciding the matter in accordance with law merely relying upon the exparte report of the Commissioner which was inadmissible. allowed the application made by the Forest Department and the said order has been endorsed by the opposite party no.2.

21. The petitioners submit that there is an enactment known as United Provinces Forest Act, 1948 (U.P.Act No.4 of 1949) (hereinafter called) the Private Forest Act of which section 2 provides that the said Act will not apply to any land which is vested in the Government or to any land in respect of which notifications and orders have been issued under the

Indian Forest Act. Section 3 (15) defines the Private Forest. Section 13 deals with the management of the forests by owners under an approved working plan. Section 25 deals with the extinction of rights other than the landlords' rights. Section 42 deals with the right of rightholders to be exercised in accordance with the rules, while section 46 relates to the release of vested forests. As mentioned above, the plots in dispute had never been acquired for reserve forest, which could not be, in view of the submissions made hereinabove i.e. the State Amendment, made in section 3 of the Indian Forest Act and further after insertion of Chapter 5-A by U.P. Amendment, the claimant has been defined in section 38-A (a) means the claimants, 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 license executed before the commencement of Act no.1, 1956 or owned in accordance with the provisions of any enactment, including the said Act. The petitioners, who have acquired rights by remaining in cultivatory possession in 1359 Fasli, by virtue of section 20 (b) of the Act became Sirdar and after abolition of zamindari and later on after amendment of Act no.131, they became bhumidhar with transferable rights. The State, Forest Department as well as Gaon Sabha had failed to establish the said entry to be forged or fictitious and the sole reliance placed by the Deputy Director of Consolidation as well as Consolidation Officer that there was a cutting/interpolation in the khatauni, the State through its counter affidavit has specifically stated that subsequently an insertion was made below the area of plot no.21 i.e. 393.910 acres as 431.46 acres which is evident from the khatauni filed by the petitioners as annexure no.4 is incorrect as the State of U.P. filed a counter affidavit in writ petition 174 of 2001 (M.S.) filed by the petitioners in which they had annexed the Photostat copy of the certified copy of khatauni obtained on 16.1.1999 as (annexure no.CA-1), there was no such cutting or interpolation. Photostat copy of the said khatauni is annexed herewith. Thus the findings recorded by the opposite parties no.2 and 3, dismissing the revision and allowing the application made by the Forest Department (opposite party no.4) are not only illegal but also against the law.

22. The petitioners submit that the provisions of United Provinces Forest Act, 1948 came up for consideration before this Hon'ble Court in the case of Mohd. Karrar Ali & others versus State of U.P. & others) reported in 1954 Allahabad, page 753, wherein it was propounded that U.P. Private Forest Act has got no application to the land other than forests.

23. The petitioners submit that so far as section 20-A inserted by the State Amendment Act in the Forest Act is concerned, the same has got no application and the land in dispute could not be said/held and deemed to be reserve forest as the land in dispute does not belong to the category mentioned in that section and the findings recorded by the opposite party no.2 that the land in dispute is deemed forest is vitiated in law. The land which is recorded in the revenue records as forest land belonging to the government in respect to that the said provision will apply and not in respect to the land in dispute of which the petitioners became Bhumidhar by operation of law being recorded occupant in khatauni 1350 Fasli in accordance with the provisions of Land Records Manual, para 123 in Red Ink, with the result, they became bhumidhar.

24. In view of the submissions made hereinabove, the writ petition may be allowed. The orders passed by the opposite parties no.2 and 3 be set aside."

7. From the side of State opposing the present petition and supporting the impugned order(s), in nutshell, Sri Pandey, learned counsel for the State submitted as under:-

(i) Intentionally Khatauni of 1356 Fasli (1949 A.D.) of Gata/Plot No. 21 has not been placed on record. In the 1356 Fasli (1949 A.D.), the land in dispute was recorded as "Imarati Lakdi Ka Jungle" (Timber Trees), as indicated in entry (8) (iii)(a)(1) of Para 124-A of U.P. Land Records Manual and in this year the total area was 431.61 acres and in the Khatauni of 1356 Fasli (1949 A.D.) the land in dispute was not recorded in the

name of Raja Brijraj Bahadur Singh. To establish the same, a copy of Khatauni of 1356 Fasli (1949 A.D.) was placed before this Court and the same was made part of record.

(ii) In the 1356 Fasli (1949 A.D.) without any order or recording any reasons, the area of Gata/Plot No. 21 was reduced from 436.46 to 431.61 acres as in the Khatauni of 1346 Fasli (1939 A.D.) the area was 436.46 acres. Subsequently in the 1359 Fasli (1952 A.D.), the area of Gata/Plot No. 21 was again reduced as in the Khatauni of 1359 Fasli (1952 A.D.), 37.55 acres were recorded in the name of predecessor-in-interest of petitioners that too without any order of competent person/authority under Ziman 5-A entry, which finds place in Para A-124 of U.P. Land Records Manual, and the same says that *"Occupiers of lands without title when there is no one already recorded in column 5 of the khasra"*.

(iii) The Ziman 5-A entry favourable to the petitioners was not based upon any order of competent revenue Official and in fact, is not in accordance with the procedure prescribed under the U.P. Land Records Manual including Para(s) 80, 81-A, A-80, A-81, 89-A and 89-B and accordingly this entry of 1359 Fasli (1952 A.D.), favourable to the petitioners, is completely

fictitious, baseless, bogus, surreptitious and forged and can't be relied upon to extend the benefits to the petitioners.

(iv) The specific findings have been made in the impugned order(s) on the entry favourable to the petitioners and accordingly petitioners ought to have placed the relevant material on record to impeach the said findings related to the entries in the revenue record particularly the entries made in the Khatauni of 1359 Fasli (1952 A.D.), in which names of predecessor-in-interest of the petitioners were entered after creating/carving new Gata(s)/Plot(s) No. 21/1 to 21/7 from Gata/Plot No. 21 that too without any order in this regard. However, no such document has been placed on record to impeach the said findings.

(v) The basis of initiation of proceedings against the petitioners was the report dated 07.06.1999 (Annexure No. 12 to the writ petition). According to this report, the entries, as indicated by the petitioners, of 1356 Fasli (1949 A.D.) and 1359 Fasli (1952 A.D.) are forged/bogus entries and to controvert and impeach the same, no document has been placed on record except a questionnaire, annexed as Annexure No. 3 to the petition, which is also a bogus document and is not liable to be relied upon.

(vi) If the facts mentioned in Para 4 of the petition are taken to be true, though not correct, that Gata/Plot No. 21 area 431.61 acres situated in Mohal Mustahkam Village-Allenganj Pargana-Bhud, Tehsil-Gola, District-Lakhimpur-Kheri, before abolition of zamindari i.e. in Khatauni of 1356 Fasli (1949 A.D.) was recorded in the khewat Khatauni of Raja Brijraj Bahadur of Jhandi Estate in Ziman 8(3)(1) of Non-ZA Khatauni, then also the petitioners would not get any right over the said land or part of the said land because the correct entry i.e. 8(iii)(a)(1) and the note appended to the same itself indicate that the same was under the control of Forest Department meaning thereby under the control of State Government and further, for the reason that at the time of submission of report dated 07.06.1999 trees were about 80-100 year old and accordingly, present age of the trees would be about 105-125 year and the trees of Sal (Shakhu) were/are covered under the expression "*Timber Tree*" as indicated in the said entry i.e. 8(iii)(a)(1) readwith note appended to the same.

(vii) The alleged entry of 1356 Fasli (1949 A.D.) in favour of Raja Brijraj Bahadur Singh, as indicated in questionnaire, is forged one and the fact that questionnaire itself is forged/fabricated and bogus document can be deduced from the

fact that in the year 1999 the age of trees was found to be between 80-100 year and accordingly in the 1356 Fasli (1949 A.D.) or 1359 Fasli (1952 A.D.) the age of the trees must be between 40-60 year and to impeach/controvert the same and also the findings related to existence of trees over the land in issue, which in fact was admitted by Mahesh Chandra Saxena and Nanhey Lal Sharma (Petitioner No. 4) during their examination and the same is evident from the impugned order dated 10.04.2023, nothing has been placed on record and accordingly, the entries of the 1356 Fasli (1949 A.D.) and 1359 Fasli(1952 A.D.) including regarding crop of Barley/Jow etc., as pleaded, are bogus and no right could be provided to any person including the petitioners, who have purchased the land from the persons whose names were recorded in the Khatauni of 1359 Fasli (1952 A.D.) without any order in this regard.

(viii) The land indicated in terms of entry 8(iii)(a) (1) in the revenue record is a 'Public Utility Land' and this entry is similar to the entry indicated in Para A-124 applicable in the area over which Act of 1950 applies and after considering the entry i.e. 5(iii)(a)(1) provided under Para A-124, this Court has already settled the issue in various pronouncements according to which, no right

would be available to any person over such type of lands.

(ix) So far as the contention of learned counsel for the petitioners is concerned that the petitioners are saved under Section 20(b) of the Act of 1950. The same has no force as petitioners' case is basically based on entry in the revenue record of the Khatauni of 1359 Fasli (1952 A.D.) and the Section itself indicates 1356 Fasli (1949 A.D.).

(x) The benefit of Section 20(b) of the Act of 1950 would be available if the entry was/is genuine and in this case, the entry of 1359 Fasli (1952 A.D.) itself was/is bogus and fraudulent and as such, no right would be available to the petitioners based upon the sale deed as their basis itself is not a valid document in the eye of law. In this view of the matter, maxim '***Sublato Fundamento Cadit Opus***', which means '*foundation being removed, the structure falls*', would apply in the present case.

(xi) A person, who was not having any title, cannot create a title. In view of the fact that the predecessor-in-interest of petitioners were having no right over the land in dispute in terms of entry 8(iii)(a)(1) in the revenue record as also that without any order, the corrections were made in

the Khatauni of 1359 Fasli (1952 A.D.), no right would flow to the petitioners despite sale deed(s) in their favour. Reference can be made to the maxim '*Nemo dat quod non habet*' which means '*no one can give what they do not have*'.

(xii) In this case, if the orders are interfered with on account of jurisdiction of respondent No.2 and/or on the ground that respondent No.2 has failed to act in terms of order of remand of this Court dated 12.09.2014 or on other procedural irregularities, then in that event, the bogus/forged entries, favourable to the petitioners, would revive in the revenue records, which were not in consonance with the law on issue. Thus, no interference is required in the matter.

(xiii) The entry in the revenue record was undisputedly in the 1356 Fasli (1949 A.D.) and prior to same was 8(iii)(a)(1) i.e. "under the management of Forest Department (including erstwhile forest made over to Forest Department)" and a conjoint reading of the same as also Section 117 of the Act, 1950 and Section 132 of Act of 1950 would indicate that no right can be provided to an occupier of the forest land or land managed by the Forest Department.

(xiv) The rights were provided to the predecessor-in-interest of the petitioners on the basis of entry

in Khatauni of 1359 Fasli (1952 A.D.) ignoring the fact that the original Gata/Plot No.21 indicated in the 1356 Fasli (1949 A.D.) was renumbered as 21/1 to 21/7 without any order of the revenue authority and to dispute or controvert this fact, no order has been placed on record and accordingly, it shall be presumed that the petitioners are admitting the fact that without any order of competent authority, the entries/corrections were made while preparing Khatauni of 1359 Fasli (1952 A.D.).

(xv) In the matter, an inquiry was also carried out by the Commissioner, Lucknow Division, Lucknow and after concluding the inquiry, he submitted his report dated 07.06.1999 to the Principal Secretary, Forest Department. The inquiry report is part of the record as Annexure No.12 to the present petition appended at page No.136 and a perusal of the same indicates that in the 1346 Fasli (1939 A.D.) and 1356 Fasli (1949 A.D.), the land was recorded under Category 8(iii)(a)(1), which in fact was forest land. It also indicates that the new numbers were allotted to original Gata No.21 without any order of the competent authority and this report would override the report of Tehsildar filed in the year 1995, which was basically based on the entries made in 1359 Fasli (1952 A.D.) and the Gata(s)

involved in the notification issued under Sections 4 & 6 of the Act of 1927. The report dated 17.06.1999 also indicates that over the land in issue, there are several trees about 82-100 year old.

(xvi) Before the concerned authority i.e. Consolidation Officer, the statements of the witnesses were recorded and as per the statement(s) of Mahesh Chandra Saxena (Petitioner No.1) and Nanhey Lal Sharma (Petitioner No.4) the adjacent land to the land in issue belongs to the Forest Department and over the land in issue, there are as many as 2752 trees. Thus, the submissions of the learned counsel for the petitioners, based on the averments made in the present petition, that land is vacant land and was/is being used for agricultural purpose is completely fallacious and baseless rather false.

(xvii) Section 20A of the Forest Act, as applicable in Uttar Pradesh, provides deeming clause and according to the same, the land in issue is to be recognized and held as land of Forest Department and not of the petitioners.

(xviii) The land of the Forest Department is the land covered under the expression "*the land used for public purpose*" and accordingly, Section 132 of the Act of 1950 would be attracted and no

right can be provided to any person over the land described under Section 132 of the Act of 1950 nor the claim over the same is legally valid.

8. In addition to above, the written submission dated 24.05.2024 was also filed on behalf of the State, which is extracted hereinunder:-

"1. That the Khatauni of village Alanganj, Pargana Bhud, District Kheri, recorded in Account No. 91 of 1356F, plot no. 21, area 431.46 acre, is recorded as timber trees of forest. Notes of Para 124-A Category 8 defines "timber trees" and says it means a tree the value of which mainly lies in its timber for building purposes and in its fruit or like produce. Examples of timber trees are sakhu, sagaun, hasna, deodar, haldua, country mango (not qalmi), neem, sheesham, jamun, asna, mahua, etc. Such trees as bargad, pakar, peepal, gular etc. are not timber trees." Further it admitted fact that the entire portion of Bhukhand numbers - 21 and 22 is a vast forest of Sal trees (Saakhu Trees) with the age of the trees estimated to be between 80 to 100 years. It is noteworthy that the trees grow naturally every year.

2. That the area of 431.46 acres of Gata No. 21- recorded in the Khata no. 98 of Khatauni 1359F of Village Alianganj Pargana Bhud District- Kheri was illegally reduced to 393.91 acres without any order.

3. That there was consolidation in the above mentioned village (Elanganj), after consolidation as per CH-41, Gata No. 22A area was 158.44 acres of timber forest, 22B area was 2.20 acres of forest, 22C area was 6.60 acres of forest, Gata No. 22D area was 7.15 acres of forest, Gata No. 22E was 8.30 acres of forest, Gata No. 22F was 5.00 acres of forest, Gata No. 22G was recorded as 2.10 acres of forest.

4. That Dr. George Joseph, Principal Secretary, Forest Department, Uttar Pradesh Government, through his letter no. 290/15/Camp/98 dated 30.11.98, requested the District Magistrate Lakhimpur-Kheri, to set up inquiry regarding irregularities committed in revenue records of forest land situated at village Ailanganj Pargana Bhood, Lakhimpur-Kheri. Considering the

seriousness of the matter, the Government, with the approval of the Honorable Chief Minister, decided to get the matter investigated/inquired by Commissioner, Lucknow Division, Lucknow.

5. The Commissioner, Lucknow Division, Lucknow, conducted a site inspection on 04.06.99 in the presence of advocate representative of Shri Mahesh Chandra Saxena and others, village headmen, and former tenure holders/sellers. Following an examination of all village revenue records and land maps, etc., a report on the investigation/inquiry was submitted to the government on 07.06.99. Upon examination, the Commissioner, Lucknow Division, Lucknow, has reached the conclusion that based on the scrutiny of revenue entries, it is evident that prior to the Consolidation, the old plot number 21 (Bhukhand Sankhya-21) had an area of 436.46 acres in the settlement year of 1346 Fasli and it was recorded as Jimman 8(3)(a)(1) of Land Record Manual. It is noteworthy that prior to the abolition of Zamindari, the land under Jimman 8(3)(a)(1) (As per Awadh para 124-A) of Land Records Manual was designated as "forests of timber trees under the management of the forests department (including erstwhile private forests made over to forest department). Notes of Para 124-A Category 8 defines "timber trees" and says it means a tree the value of which mainly lies in its timber for building purposes and in its fruit or like produce. Examples of timber trees are sakhu, sagaun, hasna, deodar, haldua, country mango (not qalmi), neem, sheesham, jamun, asna, mahua, etc. Such trees as bargad, pakar, peepal, gular etc. are not timber trees." Further it admitted fact that the entire portion of Bhukhand numbers - 21 and 22 is a vast forest of Sal trees (Saakhu Trees) with the age of the trees estimated to be between 80 to 100 years. It is noteworthy that the trees grow naturally every year.

6. That the examination of the aforementioned entries makes it clear that prior to the Consolidation, the land was area 436.46 acres of plot number 21 (Bhukhand Sankhya-21) in settlement of 1346 Fasli and with an area of 436.46 acres was also recorded in Khatauni year of 1346 Fasli, under Jimman 8(3)(a)(1) of the settlement year. It is noteworthy that prior to the abolition of Zamindari, the land under Jimman 8(3)(a)(1) (As per Awadh para 124-A) of Land Records Manual was designated as "forests of timber trees

under the management of the forests department (including erstwhile private forests made over to forest department). In the Khatauni of Fasli year of 1354 Fasli, the area of the aforementioned land plot number 21 (Bhukhand Sankhya-21) was recorded area 431.46 acres, Jimman 8(3)(a)(1) (As per Awadh para 124-A) of Land Records Manual was designated as "forests of timber trees under the management of the forests department (including erstwhile private forests made over to forest department) and the same entry was also found and continued in the Khatauni fasli year 1356 Fasli. Notes of Para 124-A Category 8 defines "timber trees" and says it means a tree the value of which mainly lies in its timber for building purposes and in its fruit or like produce. Examples of timber trees are sakhu, sagaun, hasna, deodar, haldua, country mango (not qalmi), neem, sheesham, jamun, asna, mahua, etc. Such trees as bargad, pakar, peepal, gular etc. are not timber trees." Further it admitted fact that the entire portion of Bhukhand numbers - 21 and 22 is a vast forest of Sal trees (Saakhu Trees) with the age of the trees estimated to be between 80 to 100 years. It is noteworthy that the trees grow naturally every year.

7. That Prior to the abolition of Zamindari, a person who had occupied land without any title was entitle to enter his name in Jimman 5Ka. Upon examination of the Khatauni of 1359 Fasli year, it is apparently evident that in Khata Number – 89 lagayat Khata Number – 94, certain entries at the end of Jimman 5, were initially omitted and cutting was made and later included certain entries in another handwriting, and the area of Bhukhand Number- 21 of Khata number 98 under Jimman 8(3)(a)(1) "forests of timber trees" (As per Awadh para 124-A) of Land Records Manual was reduced from 431.46 acres to 393.91 acres. In the Khasra of 1359 Fasli, the Bhukhand Number- 21 was initially recorded as 431.46 acres under Jimman 8(3)(a)(1) ""forests of timber trees under the management of the forests department (including erstwhile private forests made over to forest department)."" (As per Awadh para 124-A), and made a new Plot number- 21/1, and the area was reduced from 431.46 acres to 393.91 acres by cutting down the area. Entries of 21/2 to 21/7, which could have been associated with the aforementioned Bhukhand Number- 21, but it was entered at the end of the Khasra. It is evident that there was no space between Bhukhand Number- 21

and 22, where the entries of 21/2 lagayat 21/7 could have been recorded. In the Khasra of 1359 Fasli, cultivation of "Barley" in the Rabi season is shown in bhukhand numbers - 21/2 to 21/7. However, the total area of barley cultivation in the prepared GOSWARA at the end of the Khasra is 245.72 acres, whereas in all the pages of the Khasra, the total area of barley cultivation in different plots comes 194.75 acres. Clearly, the area recorded in the GOSWARA is higher, which raises doubts about the entries in the Khasra. During the inspection of the land in dispute, it was found that the entire portion of Bhukhand numbers - 21 and 22 is a vast forest of Sal trees (Saakhu Trees) with the age of the trees estimated to be between 80 to 100 years. It is noteworthy that the trees grow naturally every year.

8. That Bhukhand numbers - 22Kha lagayat 22Cha ⌘ has not been marked neither in the Map of consolidation settlement nor in the revenue map of the concerned village. Additionally, there is no separate sub-division of land Bhukhand number - 22 at the site, and there is no possession by the recorded persons over any area Bhukhand numbers - 22Kha lagayat 22Cha. Therefore, the disputed area 31.35 acres remains part of Bhukhand number - 22, and the entire area of Bhukhand number - 22 is/has been under the exclusive possession of the Forest Department. Thus, it is evident that the entries made in name of sellers and their ancestors in the Khasra and Khatauni were wholly illegal and without any basis. Forged or fraudulent, entries do not give any right to anyone. Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title.

9. The Apex Court in case of **Bachan and another Vs. Kankar and others**, AIR 1972 SC 2157 has held that an entry incorrectly introduced by Patwari into the record of rights in favor of a person is fictitious and confers no right on such person. The entries in the Khatauni of 1359 Fasli are completely illegal because the names Jimman 5A could have been entered in the Khatauni of 1359 Fasli, which name would have been mentioned in column 4 of the Khasra. At the end of the Khatauni of 1359 Fasli, entries were added by different handwriting, while omitting and cutting of certain entries in another handwriting, and fraudulently created a new khata 21/2 to 21/7. The

entry of crop cultivation of "Barley" in the Khasra of 1359 Fasli has been total inconsistent with the spot because agriculture activities are not feasible due to the presence of approximately 80 to 100-years old sal trees on these plots. Bhukhand numbers - 21 and 22 is a vast forest of Sal trees (Saakhu Trees).

10. In view of aforesaid, the entries in revenue record of 1356 Fasli and 1359 Fasli, as pleaded, are ***fictitious entries. A fictitious entry is one which is not genuine. It is an unreal entry. A fabricated entry is a fictitious entry, as held by this Hon'ble Court in Ramjeet Upadhyaya and Ors. vs. Dy. Director of Consolidation, Allahabad and Ors. MANU/UP/2846/2011.*** The entries made by the revenue officials in the settlement and revenue records of 1359 Fasli do not have any legal basis based on the principle of distant boundary settlement. In ***Vikram Singh Junior High School v. District Magistrate (F and R) and ors. 2002 (2) AWC 1262 (SC,*** it was held that an entry in the revenue record must have a legal basis.

11. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well-settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on Court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous.

12. In ***A.V. Papayya Sastry v. Government of A.P., (2007) 4 SCC 221,*** the Supreme Court was pleased to held that if any judgement or order is obtained by fraud it cannot be said to be a judgement or order. The relevant portion of the aforesaid judgement is quoted below:

"19. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed;

Fraud avoids all judicial acts, ecclesiastical or temporal.

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22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non-est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.

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38. The matter can be looked at from a different angle as well. Suppose, a case is decided by a competent Court of Law after hearing the parties and an order is passed in favour of the applicant/plaintiff which is upheld by all the Courts including the final Court. Let us also think of a case where this Court does not dismiss Special Leave Petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by the Courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any Court or authority to review, recall or reconsider the, order.

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39. The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non-est and cannot be allowed to stand. This is the fundamental principle of law 'and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as nullity, whether by the Court of first

instance or by the final Court. And it has to be treated as non-est by every Court, superior or inferior."

13. That the Indian Forest Act 1927 is a complete code. The Indian Forest Act 1927 is a special Act and these lands have been notified under section 20 of the Forest Act and are national property. In the case of State of U.P. vs. Dy. Director of Consolidation and Ors. MANU/SC/0612/1996, the Hon'ble Apex Court has held that -

"The crucial question for consideration, however, is whether the Consolidation Authorities have the jurisdiction to go behind the notification under Section 20 of the Act and deal with the land which has been declared and notified as a reserve forest under the Act. It is necessary, therefore, to examine the scheme of Chapter II of the Act. Section 3 provides that the State Government may constitute any forest land or waste land which is the property of the Government or over which the Government has proprietary rights, or to the whole or any part of the forest produce to which the Government is entitled, a reserved forest. Section 4 provides for the issue of a notification declaring the intention of the Government to constitute a reserved forest. Section 5 bars accrual of forest rights in the area covered by the notification under Section 4 after the issue of the notification. Section 6, inter alia, gives power to the Forest Settlement Officer to issue a proclamation fixing a period of not less than three months from the date of such proclamation and requiring every person claiming any right mentioned in Section 4 or Section 5 within such period, either to present to the Forest Settlement Officer a written notice specifying or to appear before him, and state the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof. Section 7 gives power to the Forest Settlement Officer to investigate the objections. Section 8 prescribes that the Forest Settlement Officer shall have the same powers as a civil court has in the trial of a suit. Section 9, inter alia, provides for the extinction of rights where no claim is made under Section 6. Section 11(1) lays down that in the case of a claim to a right in or over any land, other than a right of way or right of pasture, or a right to forest produce or water course, the Forest Settlement Officer shall pass an order

admitting or rejecting the same in whole or in part. In the event of admitting the right of any person to the land, the Forest Settlement Officer, under Section 11(2), can either exclude such land from the limits of the proposed forest or come to an agreement with the owner thereof for the surrender of his rights or proceed to acquire such land in the manner provided by the Land Acquisition Act, 1884. Section 17 provides for appeal from various orders under the Act and Section 18(4) for revision before the State Government. When all the proceedings provided under Section 3 to 19 are over the State Government has to publish a notification under Section 20 specifying definitely the limits of the forest which is to be reserved and declaring the same to be reserved from the date fixed by the notification.

It is thus obvious that the Forest Settlement Officer has the power of a civil court and his order is subject to appeal and finally revision before the State Government. The Act is a complete code in itself and contains elaborate procedure for declaring and notifying a reserve forest. Once a notification under Section 20 of the Act declaring a land as reserve forest is published, then all the rights in the said land claimed by any person come to an end and are no longer available. The notification is binding on the Consolidation Authorities in the same way as a decree of the civil court. The respondents could very well file objections and claims including objection regarding the nature of the land before the Forest Settlement Officer. They did not file any objection or claim before the authorities in the proceedings under the Act. After the notification under Section 20 of the Act, the respondents could not have raised any objections qua the said notification before the Consolidation Authorities. The Consolidation Authorities were bound by the notification which had achieved finality.”

14. In a similar matter the Division of this Hon'ble Court in the case of State of U.P. vs. Kamal Jeet Singh decided on 04.08.2017 MANU/UP/2821/2017, in which the Hon'ble Court has allowed the claim of State of Uttar Pradesh held the following-

“From the above discussions, it is clear that the law laid down by Hon'ble the Apex Court in the case of State of U.P. v. Deputy Director of Consolidation and others, 1996 All LJ 1393, is fully applicable in the case and the revenue authorities or the authorities

other than the authorities mentioned in the Forest Act cannot adjudicate the claim over the land included in the notification under Section 4 or 20 of the Forest Act.

On the basis of above legal propositions, we conclude the present petition as follows:

"I. From the date of notification under Section 4 of the U.P. Zamindari Abolition Act all the estate situated in U.P. vested in the State and stand transferred and vested in the State free from all encumbrances.

II. The land in question was previously in 1356F or before that was recorded as junglat/ghas/waste land.

III. Under the provisions of Section 3 of the Forest Act, the State may constitute any forest land or waste land which is the property of the Government or over which the Government has proprietary right and declare it as reserved forest. The land in question was recorded as junglat being under the proprietary right of the State and State has every authority to declare the land as forest land.

IV. After notification of Section 4 of the Forest Act no right shall be acquired in or over the land comprised in such notification except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government. It is not a case where grant was made by the Government.

V. No right shall be alienated by a grant, sale or otherwise without the sanction of the State Government. Jagat Ram had no authority to transfer the land. Thus, the respondents have no better title than Jagat Ram.

VI. As reported by the revenue authorities the land was recorded as bushes or woody vegetation and it is included in forest in light of Section 38(a) & (b) of U.P. Act No. XXIII of 1965.

VII. After the issuance of notification under Section 4 of the Forest Act late Jagat Ram through whom respondents claim their right on the basis of a transfer deed, had filed an objection under Section 6 of the Forest Act and it was decided in the year 1958 and the land was declared as forest land. Thus the dispute reached to its finality, as indicated above, and except revision before the State no authority has jurisdiction

to determine the rights as contained in Section 27-A of the Forest Act.

VIII. By way of measurement and by way of notification the petitioners have proved that the land in, question is included in the notification under Section 4 of the Forest Act."

46. Before parting with the order, we direct the Chief Secretary of U.P. to constitute a Committee consisting Principal Conservator of Forest with Commissioner/District Magistrate/Divisional Forest Officer/Sub Divisional Magistrate or any other Officer as may be deemed fit, having jurisdiction over local area and to examine and verify the records relating to land vested in the State Government/declared as forest reserved or forest land and to ensure that the land actually vested in the State Government vide notification/order or by operation of any Law is entered in the relevant records and name of the State Government is corrected and incorporated. Copy of the same be kept with the Principal Conservator of Forest and concerned revenue records. The Registry is directed to send a copy of this order to the Chief Secretary, Government of U.P. within fifteen days. On the basis of submissions made above, the writ petition deserves to be allowed and the order dated 3.3.1978 passed by opposite party No. 3 and judgment and order dated 15.7.1978 passed by opposite party No. 2 deserve to be quashed. Accordingly, the writ petition is allowed and both the orders mentioned above are hereby quashed. No order as to costs."

*15. This Hon'ble Court in the case of **State of U.P. and Ors. vs. Chunnu and Ors. (22.01.2022 - ALLHC) : MANU/UP/0737/2022** while considering the Hon'ble Supreme Court ' judgment in **AIR 2021 SC 4739** (**Prabhagiya Van Adhikari Awadh Van Prabhag v. Arun Kumar Bhardwaj (Dead) Thr. LRs. and others**) has also allowed the claim of State Government.*

*16. In the case of **CONSOLIDATION No. - 1268 of 1979 State Of Uttar Pradesh Through The Divisional Forest Officer v. The Deputy Director Of Consolidation, U.P. And Others**, the Hon'ble Has held that Declaration under Section 20 of the Forest Act cannot be questioned either by the Civil Court or by the Revenue Court or by consolidation Court. In spite of that D.D.C. held that land in dispute was wrongly declared as reserved forest⁷⁷⁸ through notification*

under Section 20 of the Act. D.D.C. clearly exceeded the jurisdiction. The declaration of reserved forest under Section 20 of the Act is binding upon the Consolidation Court like Civil Court decree. In this regard reference may be made to AIR 1996 S.C. 2432 State of U.P. V/S D.D.C.

17. This Hon'ble Court in case of Sharad Kumar Dwivedi vs. State of U.P. and Ors. MANU/UP/3141/2022 considered the provisions of Para A-124 (5) (iii) Culturable Waste-

(a) Forests of timber trees-

(1) under the management of Forests Department (including erstwhile private forests made over to Forests Department)

(2) vested in the Gram Sabha.

(b) Forests of other trees, shrubs, bushes etc.

(1) (1) under the management of Forests Department (including erstwhile private forests made over to Forests Department)

(2) vested in the Gram Sabha." that is almost same as given under Jimman 8(3)(a)(1) (As per Awadh para 124-A) of Land Records Manual was designated as "forests of timber trees under the management of the forests department (including erstwhile private forests made over to forest department). While examining the relevant laws including the earlier authority of this Hon'ble Court in Gyanendra Singh Vs. Additional Commissioner, Agra Division, Agra, MANU/UP/1697/2003 : 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.

Radhey Shyam and Ors. vs. State of U.P. and Ors.

18. In the case of Gyanendra Singh Vs. Additional Commissioner, Agra Division, Agra,

MANU/UP/1697/2003: 2003 (95) RD 286. The Hon'ble Court held that the entry of the aforesaid plot clearly indicates that the said plots are a kind of forest recorded as Dhaka Forest. The use and utility of forest cannot be denied. Existence of forest are beneficial for human life and environment. There cannot be any denial that forest land is a land of public utility. Section 132 of U.P. Zamindari Abolition and Land Reforms Act mentions about the land in which bhumidhari rights shall not accrue. Section 132 of U.P. Zamindari Abolition and Land Reforms Act is extracted below :

132. Land in which (bhumidhari) rights shall not accrue.-Notwithstanding anything contained in Section 131, but without prejudice to the provisions of Section 19, (bhumidhari) rights shall not accrue in :

(a) pasture lands or lands covered by water and used for the purposes of growing singhara or other produce or land in the bed of a river and used for casual or occasional cultivation ;

(b) such tracts of shifting or unstable cultivation as the State Government may specify by notification in the Gazette ; and

(c) lands declared by the State Government by notification in the Official Gazette, to be intended or set apart for taungya plantation or grove lands of a (Gaon Sabha) or a local authority or land acquired or held for a public purpose and in particular and without prejudice to the generality of this clause :

(i) land set apart for military encamping grounds ;

(ii) lands included within railway or canal boundaries ;

(iii) lands situate within the limits of any cantonment ;

(iv) lands included in sullage farms or trenching grounds belonging as such to a local authority ;

(v) lands acquired by a town improvement trust in accordance with a scheme sanctioned under Section 42 of U.P. Town Improvement Act, 1919 (U.P. Act VII of 1919), or by a municipality for purpose mentioned in Clause (a) or Clause (c) of Section 8 of the U.P. Municipalities Act, 1916 (U.P. Act VII of 1916) ; and

(vi) lands set apart for public purposes under the U.P. Consolidation of Holdings Act, 1953 (U.P. Act No. 5 of 1954).

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 and Anr. v. Jagjit Singh and another**, MANU/SC/0136/1995 : (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 again and 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”

19. The Division Bench's Judgment of this Hon'ble Court in **Radhey Shyam and Ors. vs. State of U.P. and Ors., 2017(8)ADJ372**, while considering the provision of section 20-A of the forest Act, allowed the claim of similar nature in the favour of State Government. Section 20-A provides **"20 A. Certain forest land or waste land when deemed to be reserved forest--(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, including the Merged States (Laws) Act, 1949 or the U.P. Merged States (Application of Laws) Act, 1950, or any order issued thereunder, any forest land or waste land in a merged State which immediately before the date of merger (hereinafter in this section referred to as the said date)-**

(a) was deemed to be reserved forest under any enactment in force in that State, or

(b) was recognized or declared by the Ruler of such State as a reserved forest under any law (including any enactment, rule, regulation, order, notification, custom or usage having the force of law) for the time being in force, or

(c) was dealt with a reserved forest in any administrative report or in accordance with any working plan or register maintained and acted upon under the authority of the Ruler.

Shall be deemed to be and since the said date to have continued to be a reserved forest subject to the same rights or concession, if any, in favour of any person as were in force immediately before the said date.

Explanation I.--A certificate of the State Government or of any officer authorized in his behalf to the effect that a report, working plan or register was maintained and acted upon under the authority of the Ruler shall be conclusive evidence of the fact that it was so maintained and acted upon.

Explanation II---Any question as to the existence or extent of any right or concession referred to in this subsection shall be determined by the State Government, whose decision, given after such enquiry, if any, as it thinks fit, shall be final.

Explanation III.--"Working plan' includes any, plan scheme, project, map, drawings and lay-outs prepared for the purpose of carrying out the operations in course of the working and management of forests.

(2) No right shall be deemed to have been acquired on or after the said date in or over any land mentioned in sub-section (1) except by succession or under a grant or contract in writing made or entered into by or on behalf of the State Government or some person in whom such right was vested immediately before the said date and no fresh clearings since made for cultivation or for any other purpose (except clearings made in accordance with any concessions granted by the Ruler and in force immediately before the said date or in accordance with the rules made by the State Government in this behalf since the said date) shall be recognized as or deemed to be lawful,

anything contained in this Act or any other law for the time being in force notwithstanding.

(3) The State Government may within five years from the commencement of the Indian Forest (Uttar Pradesh Amendment) Act, 1965, revise any arrangement of the nature specified in Section 22, and pass any incidental or consequent, order, including any direction to the effect that any of the proceedings specified in the foregoing provisions of this Chapter be taken.

(4) In relation to any land mentioned in sub-section (1), the references in Sections 24 and 26-

(a) to Section 23 shall be construed as references to sub-section (2); and

(b) to rights admitted, recorded or continued under Section 14 or Section 15 shall be construed as references to rights of pasture or to forest produce admitted, recorded or continued in or under the corresponding enactment, law or document referred to in sub-section (1).

(5) Without prejudice to any action that may be or may have been taken for ejectment, vacation of encroachment or recovery of damages in respect of any unauthorized occupation of or trespass over any land mentioned in sub-section (1), or for seizure, confiscation, disposal or release (on payment of value or otherwise) of any forest produce in respect of which any forest offence has been committed in relation to such land or of any tools, boats, carts, or cattle used in committing such offence, nothing in this section shall be deemed to authorize the conviction of any person for any act done before the commencement of the Indian Forest (Uttar Pradesh Amendment) Act, 1965, which was not an offence before such commencement."

20. The Hon'ble Court in the aforesaid case while considering section 20-A of the Forests Act allowed the claim of State Government in the similar nature as in present petition and directed in the operative portion as under-

"Before parting with the order, we are of the view to direct the Chief Secretary of U.P. to constitute a Committee consisting Principle Conservator of forest with Commissioner/District Magistrate/Divisional Forest Officer/Sub Divisional Magistrate or any other Officer

as may be deemed fit, having jurisdiction over local area and to examine and verifying the records relating to land vested in the State Government/declared as forest reserved or forest land and to ensure that the land actually vested in the State Government vide notification/order or by operation of any Law be entered in the relevant records and name of the State Government accordingly be corrected and incorporated. Copy of the same be kept with the Principle Conservator of Forest and concerned revenue records. With above observations, we are of the view that both the writ petitions lacks merit and deserve to be dismissed.

Accordingly, both the petitions are dismissed. There shall be no order as to costs.”

21. That in this case in his evidence before the Subordinate Court, DW-2 Om Prakash Forest Inspector of the Forest Department (Divisional Forest Officer) has clearly explained the situation in his affidavit that the entire portion of Bhukhand numbers - 21 and 22 is a vast forest of Sal trees (Saakhu Trees) with the age of the trees estimated to be between 80 to 100 years. It is noteworthy that Sal trees grow on their own and the entire area is under the exclusive control of the forest department. This Hon'ble Court in the case of Gyanendra Singh vs. Additional Commissioner, Agra Division, Agra, 2003 (95) RD 286 has held that these are a forest and public utility land and the same cannot be transferred by way of lease, sale etc. and no bhumdhari rights shall accrue in respect of the said land. These lands are saved under Section 132 (c) as held for public purpose of the U.P.ZA. & L.R. Act, 1950 and the said judgment has been further followed by this Court in its judgment dated 05.07.2022 in Public Interest Litigation No. 7472 of 2021 and in the case of Sharad Kumar Dwivedi vs. State of U.P. through Principal Secretary, Lucknow and others. Thus, it is a reserved forest as per the provisions of section 20-A of the Indian Forest Act and same is covered under section 132 (c) as held for public purpose of the U.P.ZA. & L.R. Act, 1950 of the Zamindari Abolition & Land Reforms Act, 1950.

22. Since, in the Khatauni of 1356 Fasli, Gata Number 21 measuring area 431.46 Acres of Khata No. 91 of village Ailanganj Pargana Bhud District- Kheri, is recorded as a timber forest. Hence, in terms of Section 20A of the Indian Forest Act, the entire area of Gata

Number 21 measuring area 431.46 Acres of Khata No. 91 of village Ailanganj Pargana Bhud District- Kheri, is a reserved forest land. More so, before the Subordinate Court, Mahesh Chandra Saxena himself has admitted in cross-examination that the land in dispute is recorded as a forest in the revenue record of 1356 Fasli.

23. The legislature has inserted the aforementioned provisions with a laudable object. Forest is a national wealth which is required to be preserved. The State is the owner of the forests and forest-produce. Depletion of forests would lead to ecological imbalance. It is now well-settled that the State is enjoined with a duty to preserve the forests so as to maintain ecological balance and, thus, with a view to achieve the said object forests must be given due protection, keeping the principles contained in Article 48-A and 51-A(g) of the Constitution of India in mind.

24. The Apex Court in Hinch Lal Tiwari vs. Kamala Devi and Ors. reported in MANU/SC/0410/2001 : (2001) 6 SCC 496 and Jagpal Singh and others vs. State of Punjab and others reported in MANU/SC/0078/2011 : (2011) 11 SCC 396 that the material resources of the Community like forests, tanks, ponds, hillock, mountain etc; being nature's bounty need to be protected for a proper and healthy environment as they maintain delicate ecological balance and enable people to enjoy a quality life which is essence of the guaranteed right under Article 21 of the Constitution. The Government including Revenue Authorities have been mandated to take appropriate steps under the relevant statutory provisions to prevent damage, misappropriation of the such Public-Utility land under Section 132 of the Act and, therefore, no bhumidhari right can be given on the forest land. This is a national property for well-being of entire living creatures. In the above facts and circumstances, the Writ Petition is liable to be dismissed with exemplary costs."

9. Having considered the aforesaid as also the pleadings and documents on record, this Court finds it appropriate to first consider the issue related to category/entry under which the entire land in issue i.e. Gata/Plot No. 21 was recorded in the Khatauni of 1356 Fasli (1949 A.D.) and the relevant para in

this regard is Para-4 of the writ petition, which on reproduction reads as under:-

*“4. That the disputed property was entered in the ownership of Raja Brijraj Bahadur of Jhandi as proprietor/khewatdar/Zamindar of Mohal Mustahkam village Alenganj Pargana Bhud District Kheri, before abolition of Zamindari in Uttar Pradesh. Before 1356 F Gata no.21 area 431.61 acr. was entered as owner with possession in the khewat khatauni of Raja Brijraj Bahadur of Jhandi in Ziman 8(3)1 of Non-ZA khatauni. The photocopy of the questionnaire from record room is being annexed herewith **Annexure No.3** to this writ petition.”*

10. On being asked regarding the entry indicated in Para 4 of writ petition, quoted above, learned Senior Advocate, appearing for petitioners had stated that typographical error regarding the entry, inadvertently, could not be corrected while filing the present petition and this entry should be read as Ziman 8(iii)(a)(1).

11. Before proceeding further on the facts of the case, this Court finds it appropriate to indicate relevant part of para(s) of U.P. Land Records Manual i.e. Para 124 (Applicable for Arrangements of holdings in Agra) and Para 124-A (Applicable for Arrangement of buildings in Avadh) and Para A-124 (Applicable to the areas over which Act of 1950 applies).

"124. Arrangements of holdings in Agra.-In Agra the arrangements of land within each patti or khewat-khata in the khatauni will be as follows:

PART-I-A

xxxxxxxxxxx

(14) Culturable land-

(i) new fallow:

(ii) old fallow;

*(iii) culturable waste-**(a) forest of timber trees-**(1) under the management of the Forest Department (including erstwhile private forests made over to Forest Department).**(2) Zamindari forests and those held by corporate bodies or local authorities.**(b) forests other trees, shrubs, bushes, etc.-**(1) under the management of the Forest Department including erst- while private forests-made over the Forest Department.**(2) Zamindari forests and those held by corporate bodies or local authorities.**c) permanent pastures and other grazing lands;**d) thatching grass and bamboo bushes;**(e) other culturable waste.*

Note.(1) For purposes of classification under sub-class (iii), "timber tree" means tree the value of which mainly lies in its timber for building purposes and not in its fruit or like produce. Examples of timber trees are sakhu, sagaun, hasna, Deodar, halna, country mango (not qalmi), mahua, neem, etc., such trees as bargad, pakar, peepal, gular, etc., are not timber trees

*(2) Sub-class (b) will consist of forests of babul, dhak, sihor, bankarunda etc.**(3) Sub-class (c) will include grazing lands within forest areas also.**(4) For sub-class (d) the examples of thatching grasses are bed, narkul, pat-war, kans, baid, etc.**(5) Groves other than those held by grove-holders-**(a) qalmi;**(b) others.*

124-A. Arrangement of buildings in Avadh.-In Avadh the arrangement of land within each patti or khewat-khata in the khatauni will be as follows:

PART-I-A

XXXXXXXXXX

(8) Culturable wastes land-

(i) new fallow;

(ii) old fallow;

(iii) culturable waste land-

(a) forests of timber trees-

(1) under the management of the Forest Department (including erstwhile private forests made over to Forest Department).

(2) Zamindari forests and those held by corporate bodies or local authorities;

(b) forests of other trees, shrubs, bushes, etc.

(1) under the management of the Forest Department (including erstwhile private forest made over to Forest Department).

(2) Zamindari forest and those held by corporate bodies or local authorities.

(c) permanent pastures and other grazing lands;

(d) thatching grass and bamboo bushes;

(e) other culturable waste.

Notes. (1) For purposes of classification under sub-class (iii), "timber tree" means a tree, the value of which mainly lies in its timber for building purposes and not in its fruit or like produce. Example of timber trees are sakhu, sagaun, hasna, haldua, deodar, country mango (not qalmi), mahua, neem, etc. Such trees as bargad, pakar, peepal, gular, etc, are not timber trees.

(2) Sub-class (b) (2) will consist of forests of babul, dhak, sihor, bankarunda, etc.

(3) Sub-class (c) will include grazing land within forests areas also.

(4) For sub-class (d) the examples of thatching grasses are bed, narkul, patwar, kans, baib, etc.

(5) Groves other than those held by grove-holders-

(a) qalmi;

(b) others.

A-124. Arrangement of holdings.-The arrangement of land within each village in the khatauni shall be as follows:

PART-I

XXXXXXXXXXXXXX

(5) Culturable land-

(i) new fallow;

(ii) old fallow;

(iii) culturable waste-

(a) Forests of timber trees-

(1) under the management of the Forests Department (including erstwhile private forests made over to Forests Department).

(2) vested in the [Gram Sabha].

(b) Forests of other trees, shrubs, bushes, etc.

(1) under the management of Forest Department (including erstwhile private forest made over to Forests Department).

(2) vested in the [Gram Sabha].

(c) permanent pasture and other grazing lands;

(d) thatching grass and bamboo bushes;

(e) other culturable waste.

Note. (1) For purposes of classification under sub-class (iii) above "timber trees" means tree the value of which mainly lies in its timber for building purposes and not in its fruit or like produce. Examples of timber trees are sakhu, sagaun, hasna, deodar, haldua, country mango (not qalmi), neem, sheesham, jamun, asna, mahua, tun mulberry kadam bamboo, imili, chir, cypress, babool, aonla, bel, kaitha, dhak, kikar arma, seedling mango and kanji (pongamiagalbra), etc. Such trees as bargad, pakar, peepal, gular etc. are not timber trees.

(2) Sub-class (b) (2) will consists of babool, dhak, sirhor, bankraunda, etc.

(3) *Sub-class (c) will include grazing lands within forests areas also.*

(4) *For sub-class (d) the examples of thatching grasses are bed, narkul, patwar, kuns, baib, etc."*

12. The entry (14)(iii)(a)(1) in Para 124 and entry 8(iii)(a)(1) in Para 124-A and entry 5(iii)(a)(1) in Para A-124 indicates that the land with any of these entries would be the land under management of the Forest Department.

13. Further, according to the 'Note' appended to the provision(s), referred hereinabove, Sal (Sakhu) trees, which were/are situated and were about 80-100 year old at the time of submission of report dated 07.06.1999 by the Commissioner, Lucknow Division, Lucknow and at present the same would be about 105-125 year old, would be covered under expression "*Timber Tree*".

14. In view of aforesaid, the entire Gata/Plot No. 21 area 431.61 acres in 1356 Fasli (1949 A.D.) was under the management/control of Forest Department, even if it is presumed that in 1356 Fasli (1949 A.D.) the land was recorded in the name of Raja Brijraj Bahadur Singh.

15. Now, the question is as to whether any right would be available to any person over the land of aforesaid nature or over the land with aforesaid category/entry i.e. 8(iii)(a)(1) in Para 124 or 5(iii)(a)(1) in Para A-124. This question has no more *res-integra*.

16. In the case of ***Gyanendra Singh and Another vs. Additional Commissioner, Agra Division, Agra and Others; 2003 (95) RD 286***, while dealing with the matter related to Section

198(4) of the Act of 1950 this Court dismissed the petition after taking note of entry in the revenue record i.e. "Jungle Dhak" and Section 132 of the Act of 1950 and also the submissions of learned counsel for the petitioners that opportunity was not provided. As per this judgment, the land recorded as "Jungle Dhak" would be covered under Section 132 and accordingly no right would be available to any person over such type of lands.

"5. Both the courts below have recorded finding that all the three plots were recorded as "Jangal Dhaka". The word "Jangal Dhaka" means Dhaka Forest, Dhaka is a kind of small tree having large leaves. The entry of the aforesaid plot clearly indicates that the said plots are a kind of forest recorded as Dhaka Forest. The use and utility of forest cannot be denied. Existence of forest are beneficial for human life and environment. There cannot be any denial that forest land is a land of public utility. Section 132 of U.P. Zamindari Abolition and Land Reforms Act mentions about the land in which bhumidhari rights shall not accrue. Section 132 of U.P. Zamindari Abolition and Land Reforms Act is extracted below:-

"132. Land in which (bhumidhari) rights shall not accrue.—Notwithstanding anything contained in Section 131, but without prejudice to the provisions of Section 19, (bhumidhari) rights shall not accrue in:

(a) pasture lands or lands covered by water and used for the purposes of growing singhara or other produce or land in the bed of a river and used for casual or occasional cultivation;

(b) such tracts of shifting or unstable cultivation as the State Government may specify by notification in the Gazette; and

(c) lands declared by the State Government by notification in the official Gazette, to be intended or set apart for taungya plantation or grove lands of a (Gaon Sabha) or a local authority or land acquired or held for a public purpose and in particular and without prejudice to the generality of this clause:-

(i) land set apart for military encamping grounds;

- (ii) lands included within railway or canal boundaries;*
- (iii) lands situate within the limits of any cantonment;*
- (iv) lands included in sullage farms or trenching grounds belonging as such to a local authority;*
- (v) lands acquired by a town improvement trust in accordance with a scheme sanctioned under Section 42 of U.P. Town Improvement Act, 1919 (U.P. Act VII of 1919), or by a municipality for purpose mentioned in clause (a) or clause (c) of Section 8 of the U.P. Municipalities Act, 1916 (U.P. Act VII of 1916); and*
- (vi) lands set apart for public purposes under the U.P. Consolidation of Holdings Act, 1953 (U.P. Act No. V of 1954).”*

6. *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 again and 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.....”

7. Thus the submission of counsel for the petitioners that other persons have been granted leases of plots recorded as “Jangal Dhaka” is not relevant nor can validate the lease of petitioners. No error has been

committed by the respondents in cancelling the lease of the petitioners.

8. The next submission of the petitioners is to the effect that Additional Collector is not Collector within the meaning of U.P. Zamindari Abolition and Land Reforms Act and has no jurisdiction to cancel the lease. Assuming without admitting that power to cancel the lease only vests with Collector, this Court will not exercise its jurisdiction under Article 226 of the Constitution to interfere with an order of Additional Collector, the effect of which is to restore the illegal lease granted to the petitioners. This Court while exercising jurisdiction under Article 226 of the Constitution will not exercise its jurisdiction in a manner the effect of which is to restore illegal order.

9. The Apex Court in Gadde Venkateswara Rao v. Government of Andhra Pradesh, AIR 1966 SC 828, has observed that while exercising jurisdiction under Article 226, High Court will not exercise its jurisdiction, the effect of which is to restore an illegal order. The relevant paragraph of the aforesaid judgment is extracted below:

“(17) The result of the discussion may be stated thus. The Primary Health Centre was not permanently located at Dharmajigudem. The representatives of the said village did not comply with the necessary conditions for such location. The Panchayat Samithi finally cancelled its earlier resolutions which they were entitled to do and passed a resolution for locating the Primary Health Centre permanently at Lingapalem. Both the orders of the Government, namely the order dated March 7, 1962, and that dated April 18, 1963, were not legally passed; the former, because it was made without giving notice to the Panchayat Samithi, and the latter, because the Government had no power under Section 72 of the Act to review an order made under Section 62 of the Act and also because it did not give notice to the representatives of Dharmajigudem village. In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government dated April 18, 1963? If the High Court had quashed the said order, it would have restored an illegal order, it would have given the health centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our

view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case.”

10. Both the submissions of counsel for the petitioners being without any substance, the orders impugned in the writ petition need to interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.”

17. This Court in the case of ***Sharad Kumar Dwivedi vs. State of U.P. & Ors.*** **2022 SCC OnLine All 466**; took note of relevant provisions including Para A-124 of U.P. Land Records Manual, Section 117 and 132 of the Act of 1950 and Section 101 of U.P. Revenue Code, 2006 (in short "Code of 2006") and also relevant pronouncements/reports on the issue including the judgment passed in the case of **Gyanendra Singh (supra)** and thereafter held that the land recorded as "Jungle Dhak" is a public utility land. The relevant part of the judgment reads as under:-

"Relevant Provisions:—

35. *Para A-124 of the U.P. Land Records Manual provides the classes of the tenure or categories of land, which reads as under:—*

“A-124. Arrangement of holdings : - The arrangement of land within each village in the khatauni shall be as follows:—

Part I=

(1)

(1-A)

(1-B)

(2)

(3)

(4)

(5) Culturable Land—

(i)

(ii)

(iii) *Culturable Waste—*

(a) *Forests of timber trees—*

(1) *under the management of Forests Department (including erstwhile private forests made over to Forests Department)*

(2) *vested in the Gram Sabha.*

(b) *Forests of other trees, shrubs, bushes etc.*

(1) (1) *under the management of Forests Department (including erstwhile private forests made over to Forests Department)*

(2) *vested in the Gram Sabha.”*

36. *Section 117 of the U.P.Z.A. & L.R. Act, 1950 is in respect of the vesting of certain lands etc. in Gram Sabhas and other local authorities. Section 117(6) of the U.P.Z.A. & L.R. Act, 1950 reads as under:—*

“117. Vesting of certain lands, etc. in Gaon Sabhas and other Local Authorities.

(1) ...

(2) ...

(6) *The State Government may at any time, [by general or special order to be published in the manner prescribed], amend or cancel any [declaration, notification or order] made in respect of any of the things aforesaid, whether generally or in the case of any Gaon Sabha or other local authority and resume such thing and whenever the State Government so resumes any such things, the Gaon Sabha or other local authority, as the case may be, shall be entitled to receive and be paid compensation on account only of the development, if any, effected by it in or over that things:*

Provided that the State Government may after such resumption make a fresh declaration under sub-section (1) or sub-section (2) vesting the thing resumed in the same or any other local authority (including a Gaon Sabha), and the provisions of sub-sections (3), (4) and

(5), as the case may be, shall *mutatis mutandis*, apply to such declaration.”

37. Section 132 of U.P.Z.A. & L.R. Act, 1950 provides the category of lands in which *bhumidhari* rights shall not accrue. Relevant provisions of Section 132 of the U.P.Z.A. & L.R. Act, 1950 read as under:—

“132. Land in which [*bhumidhari*] rights shall not accrue.- Notwithstanding anything contained in Section 131, but without prejudice to the provisions of Section 19, [*bhumidhari*] rights shall not accrue in—

(a) pasture lands or lands covered by water and used for the purpose of growing *singhara* or other produce or land in the bed of a river and used for casual or occasional cultivation;

.....

(c) lands declared by the State Government by notification in the Official Gazette, to be intended or set apart for *taungya* plantation or grove lands of a [*Gaon Sabha*] or a Local Authority or land acquired or held for a public purpose and in particular and without prejudice to the generality of this clause-

.....

(vi) lands set apart for public purposes under the U.P. Consolidation of Holdings Act, 1953 (U.P. Act V of 1954).]”

38. Section 101 of the U.P. Revenue Code, 2006 permits the exchange of land by a *Bhumidhar* with prior permission in writing of the Sub-Divisional Officer. However, it further provides that the Sub-Divisional Officer shall refuse permission for exchange *inter alia* in respect of the land in which *bhumidhari* rights do not accrue. Section 101 of the U.P. Revenue Code, 2006 reads as under:—

“101 Exchange.- (1) Notwithstanding anything in section 77 of this Code, any *bhumidhar* may with prior permission in writing of the Sub-Divisional Officer exchange his land with the land- (a) held by another *bhumidhar*; or (b) entrusted or deemed to be entrusted to any Gram Panchayat or a local authority under section 59. (2) The Sub-Divisional Officer shall refuse permission under sub-section (1) in the following cases, namely- (a) if the exchange is not necessary for the consolidation of holdings or securing

convenience in cultivation; or (b) if the difference between the valuation, determined in the manner prescribed, of the lands given and received in exchange exceeds ten per cent of the lower valuation; or (c) if the difference between the areas of the land given and received in exchange exceeds twenty-five per cent of the lesser area; or (d) in the case of land referred to in clause (b) of sub-section (1), if it is reserved for planned use, or is land in which bhumidhari rights do not accrue; or (e) if the land is not located in same or adjacent village of the same tahsil : Provided that the State Government may permit the exchange with land mentioned in clause (d) aforesaid, on the conditions and in the manner, prescribed. (3) Nothing in this section shall be deemed to empower any person to exchange his undivided interest in any holding, except where such exchange is in between two or more co-sharers. (4) Nothing in the Registration Act, 1908 (Act No. 16 of 1908), shall apply to an exchange in accordance with this section.”

Analysis:

39. *It is a trite law that if a writ petition filed by a person raises question of public importance involving exercise of power by men in authority, then it is the duty of the Court to enquire into the matter. The legal fraud played by the public authority for benefit of the private persons at the expense of public at large cannot be condoned. In the present case, even if it is believed that the petitioner has some personal grudge or score to settle with opposite party no. 5 and his sons, the cause espoused by him in this writ petition is of greater public importance and, therefore, this Court in its order dated 18.3.2021 observed that looking at the facts of the case, this Court may treat this writ petition as Public Interest Litigation suo motu.*

40. *Supreme Court in the case of Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh, (2011) 5 SCC 29 in paragraph 80 held as under:—*

“80. The challenge to the locus standi of the appellant merits rejection because it has not been disputed that the appellant is a public spirited organization and has challenged other similar allotment made in favour of Punjabi Samaj, Bhopal, That apart, as held in Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi, (1987) 1 SCC 227 even if a person files a writ petition for vindication of his private interest but

raises question of public importance involving exercise of power by men in authority then it is the duty of the Court to enquire into the matter.”

41. *The State or its instrumentalities cannot give largesse to any person according to the sweet will and whims of the authorities of the State. Every action/decision of the State and its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy. Paragraph 65 of the said judgment reads as Under:—*

“65. What needs to be emphasized is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefitted by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favoritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.”

42. *This Court in Gyanendra Singh v. 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 judgment 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 again and 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.....”

44. Thus, I do not find any substance in the submission of Sri. Mohd. Arif Khan, learned Senior Advocate that the land in question, which was recorded as “Jangal Dhak” is not a public utility land and, therefore, there was no bar under Section 132 of the U.P.Z.A. & L.R. Act, 1950.”

18. In Writ - C No.1001953 of 2006 (**Ramesh vs. Additional Commissioner, Lucknow And 2 Ors.**), this Court held that the land recorded as "Jungle Dhak" would be covered under Section 132 of the Act of 1950 and according to this

judgment, the land recorded as "Timber Trees" as also "Jungle Dhak" would be a public utility land and no right would be available to any person over such type of lands.

19. Undisputedly, the land earlier was recorded under category/entry 8(iii)(a)(1) of Para 124 of U.P. Land Records Manual and subsequently after enforcement of the Act of 1950, the entire land was recorded under categories/entries indicated in Para A-124 of U.P. Land Records Manual. It is for the reason that in 1359 Fasli (1952 A.D.), some portion of Gata/Plot No. 21 was recorded as '*Imarti Lakdi Ka Jungle*', under category/entry 5(iii)(a)(1) and out of total area i.e. 431.46 acres of this land 35 acres were recorded under category/entry 5-A, which means "*Occupiers of lands without title when there is no one already recorded in column 5 of the khasra*" and earlier to the same i.e. in 1346 Fasli (1939 A.D.) and 1356 Fasli (1949 A.D.), the land was recorded under category 8(iii)(a)(1), which means "the land managed by Forest Department".

20. It would not be out of place to indicate here that in terms of Section 20-A inserted in Indian Forest Act, 1927, vide U.P. Act 23 of 1965, no right would be available to any person over any "Forest Land or Waste Land". Section 20-A is extracted hereinunder:-

"20-A. Certain forest land or waste land when deemed to be reserved forest.—(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, including the Merged States (Laws) Act, 1949 or the U.P. Merged States (Application of Laws) Act, 1950, or any order issued thereunder, any forest-land or waste-land in a merged State which

immediately before the date of merger (hereinafter in this section referred to as the said date),-

(a) was deemed to be a reserved forest under any enactment in force in that State, or

(b) was recognized or declared by the Ruler of such State as reserved forest under any law (including any enactment, rule, regulation, order, notification, custom or usage having the force of law) for the time being in force, or

(c) was dealt with as a reserved forest in any administrative report or in accordance with any working plan or register maintained and acted upon under the authority of the Ruler.

shall be deemed to be and since the said date to have continued to be a reserved forest subject to the same rights or concession, if any, in favour of any person as were in force immediately before the said date.

Explanation I- A certificate of the State Government or of any officer authorized in his behalf to the effect that a report, working plan or register was maintained and acted upon under the authority of the Ruler shall be conclusive evidence of the fact that it was so maintained and acted upon.

Explanation II- Any question as to the existence or extent of any right or concession referred to in this sub-section shall be determined by the State Government, whose decision, given after such enquiry, if any as it thinks fit shall be final.

Explanation III- 'Working plan' includes any plan, scheme, project, map, drawings and lay-outs prepared, for the purpose of carrying out the operations in the course of the working and management of forests.

(2) No right shall be deemed to have been acquired on or after the said date in or over any land mentioned in sub-section(I) except by succession or under a grant or contract in writing made or entered into by or on behalf of the State Government or some person in whom such rights was vested immediately before the said date and no fresh clearings since made for cultivation or for any other purpose (except clearings made in accordance with any concessions granted by the Ruler and in force immediately before the said date or in accordance with the rules made by

the State Government in this behalf since the said date) shall be recognized as or deemed to be lawful, anything contained in this Act or any other law for the time being in force notwithstanding.

(3) The State Government may within five years from the commencement of the Indian Forest (Uttar Pradesh Amendment) Act, 1965, revise any arrangement of the nature specified in section 22, and pass any incidental or consequential, order, including any direction to the effect that any of the proceedings specified in the foregoing provisions of this Chapter be taken.

(4) In relation to any land mentioned in sub-section (1), the references in sections 24 and 26-

(a) to section 23 shall be construed as references to sub-section (2) ; and

(b) to rights admitted, recorded or continued under section 14 or section 15 shall be construed as references to rights of pasture or to forest produce admitted, recorded or continued in or under the corresponding enactment, law or documents referred to in sub-section (1).

(5) Without prejudice to any action that may be or may have been taken for ejectment, vacation of encroachment or recovery of damages in respect of any unauthorised occupation of or trespass over any land mentioned in sub-section (1), or for seizure, confiscation, disposal or release (on payment of value or otherwise) of any forest produce in respect of which any forest offence has been committed in relation to such land or of any tools, boats, carts, or cattle used in committing such offence, nothing in this section shall be deemed to authorize the conviction of any person for any act done before the commencement of the Indian Forest (Uttar Pradesh Amendment) Act, 1965, which was not an offence before such commencement."

21. Regarding expression(s) 'Forest' and 'Forest Land', the Hon'ble Apex Court in the case of T.N. Godavaram Thirumulpad etc. vs. Union of India and Others; (1997) 2 SCC 267, held as under:-

"4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. 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 2(i) 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. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in Ambica Quarry Works v. State of Gujarat [(1987) 1 SCC 213] , Rural Litigation and Entitlement Kendra v. State of U.P. [1989 Supp (1) SCC 504] and recently in the order dated 29-11-1996 (Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority [WP (C) No 749 of 1995 decided on 29-11-1996]). The earlier decision of this Court in State of Bihar v. Banshi Ram Modi [(1985) 3 SCC 643] has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay."

22. Upon conjoint reading of above indicated entries and note appended to the same as also the observation made in the judgment(s), referred above and the spirit of Section 20-A of the Act of 1927, this Court is of the view that no right would be available to any person over the 'land' if the same is recorded in terms of category/entry 14(iii)(a)(1) in Para 124 or 8(iii)(a)(1) in Para 124-A or 5(iii)(a)(1) in Para A-124 of U.P. Land Records Manual.

23. Now, the issue before this Court is as to whether any right would be available to the petitioner(s) based upon Section 20(b) of the Act of 1950 and the revenue entries indicated in (i) Khatauni of 1356 Fasli (1949 A.D.); (ii) indicated in questionnaire (annexed as Annexure No. 3 to the petition) and (iii) Khatauni of 1359 Fasli (1952 A.D.).

24. The aforesaid is in view of the claim of the petitioners, which can be deduced from the following facts:-

25. As per petitioners, in 1356 Fasli (1949 A.D.), the land in issue i.e. Gata/Plot No. 21 area 431.61 acres was recorded in the name of Raja Brijraj Bahadur Singh under Category 8(3)1. Para 4 of Writ Petition, at the cost of repetition, is extracted hereinunder:-

"4. That the disputed property was entered in the ownership of Raja Brijraj Bahadur of Jhandi as proprietor /khewatdar/Zamindar of Mohal Mustahkam village Alenganj Pargana Bhud District Kheri, before abolition of Zamindari in Uttar Pradesh. Before 1356 F Gata no. 21 area 431.61 acr. was entered as owner with possession in the khewat khatauni of Raja Brijraj Bahadur of Jhandi in Ziman 8(3)1 of Non-ZA khatauni. The photocopy of the questionnaire from record room

is being annexed herewith Annexure No. 3 to this writ petition."

26. As per petitioners, in 1359 Fasli (1952 A.D.) on account of possession of over 31.35 acres of Gata/Plot No. 21 the names of predecessor-in-interest of petitioners were recorded and Gata/Plot No. 21 was re-numbered/sub-divided as Gata/ Plot No. 21, 21/2 to 21/7 and accordingly Gata/Plot No. 21 area 393.91 acres recorded under Category/Entry 8(iii)(a)(1) in Para 124-A, which is similar to category/entry 5(iii)(a)(1) in Para A-124 of U.P. Land Records Manual, and 31.35 acres of Gata/Plot No. 21 was recorded under Category 5-A in Para 124-A of U.P. Land Records Manual, which means "*Occupiers of lands without title when there is no one already recorded in column 5 of the khasra*".

27. Relevant details of entries (as appears from Annexure No. 4 to the petition), which is the copy of Khatauni of 1359 Fasli (1952 A.D.), wherein names of predecessors-in-interest of the petitioners were mentioned, are indicated as under:-

"नकल 'उद्धरण'- खतौनी-सन् फसली 1359 "महाल-मुस्तहकम"										
ग्राम-एलनगंज परगना-भूड जिला-खीरी।										
1	2	3	4	5	6	7	8	9	10	11
जिमन-(5)अ काबिजान आराज़ी बिला हकीयत जव खसरा के खाना 5 में किसी का इन्द्राज न हो।										
89 डाल सिंह पुत्र मोमराज सिंह सा सांटाग कॉप	1 एक साल	21/2	7.85	ई: जंगल से						
90 गोपाल सिंह पुत्र सागर	1	21/3	8.60	ई: जंगल से						

सा० टाँडा कांप	सा०			
91 बुद्ध पुत्र कम्मा सा० टाँडा काप	1 एक साल	21/4	2.50	ई: जंगल से
92 सुरता पुत्र बुद्ध सा० टाँडा काप	1 एक साल	21/5	6-0	ई: जंगल से
93 परम सिंह पुत्र मोम- राज सिंह	1 एक साल	21/6	10-0	इमारती जंगल से
94 अमरू पुत्र राम राम सा०टाडा काप	1 एक साल"	21/7	2-60	ई: जंगल से

28. In order to decide the issue aforesaid, the relevant part of the Khatauni of 1359 Fasli (1952 A.D.) i.e. where the division of Gata/Plot No.21 has been indicated, is also extracted hereinunder:-



29. From the persons recorded in Khatauni of 1359 Fasli (1952 A.D.) the petitioners purchased the land in issue, which in 1356 Fasli (1949 A.D.) was part of Gata/Plot No. 21 area 431.61 acre under Category 8(iii)(a)(1) of U.P. Land Record Manual, according to which, the land was under the control of Forest Department. Details of acquiring the right in the land in issue, as appears from Annexure No. 17 of this Writ Petition, are as under:-

"धारा 24— यह कि निम्न क्रम के अनुसार आपत्तिकर्तागण निम्न भूमि के *Bonafide Purchaser for Valuable Consideration without Notice* निम्न भूमि के संकमणीय भूमिधर हैं, और, आपत्तिकर्तागण के नाम इस भूमि पर दर्ज होने योग्य हैं।

नाम विक्रेता	पुरानी गाटा सं०	नयी गाटा सं०	रकबा	क्रेतागण	अन्य विवरण
श्रीमती कबूतरी देवी पत्नी हरी सिंह	21/2	22ख	2.20 एकड़	महेश चन्द्र सक्सेना पुत्र श्री लाल बहादुर सक्सेना	दिनांक 17.03. 1997 को भूमि मय भूमि पर खड़े पेड़ों के रजिस्टर्ड बैनामा द्वारा क्रय की
झाऊ सिंह पुत्र डाल सिंह, लाखन सिंह, अर्जुन सिंह, बलवन्त सिंह पुत्रगण नन्हू सिंह, विजय पाल पुत्र मान सिंह, ईश्वर चन्द्र व भारत सिंह पुत्रगण राम रतन, मुरली पुत्र तोताराम, मलखान सिंह, शंकर सिंह, ब्रम्हा सिंह, राम औतार, लछिमन, गंगाध र, महादेव पुत्रगण दयाल सिंह, व चन्द्रिका पुत्र हेतराम	21/3	22ग	6.60 एकड़	महेश चन्द्र सक्सेना पुत्र श्री लाल बहादुर सक्सेना	दिनांक 09.06. 1997 को भूमि मय भूमि पर खड़े पेड़ों के रजिस्टर्ड बैनामा द्वारा क्रय की
पुत्तू सिंह पुत्र गोपाली	21/4	22 घ	7.20 एकड़ का 1/2 भाग	विजयरानी शर्मा पुत्री श्री होरी लाल शर्मा	दिनांक 28.04. 1997 को भूमि मय भूमि पर खड़े पेड़ों के रजिस्टर्ड बैनामा द्वारा क्रय की

भीकम पुत्र गोपाली	21/4	22 घ	7.20 एकड़ का 1/2 भाग	संजीव कुमार सक्सेना, व अनूप कुमार सक्सेना	दिनांक 28.04. 1997 को भूमि मय भूमि पर खड़े पेड़ों के रजिस्टर्ड बैनामा द्वारा क्रय की
बलवन्त सिंह पुत्र परम सिंह	21/5	22ड	8.30 एकड़ का 1/2 भाग	कमला सक्सेना पुत्री श्री मोहन लाल सक्सेना	दिनांक 04.07. 1997 को भूमि मय भूमि पर खड़े पेड़ों के रजिस्टर्ड बैनामा द्वारा क्रय की
बलवन्त सिंह पुत्र परम सिंह	21/5	22ड	8.30 एकड़ का 1/2 भाग	विजयरानी शर्मा पुत्री श्री होरी लाल शर्मा	दिनांक 04.07. 1997 को भूमि मय भूमि पर खड़े पेड़ों के रजिस्टर्ड बैनामा द्वारा क्रय की
कोमल व साहू पुत्रगण सुरेश, मुकेश पुत्र रघु ज्वर	21/6	22च	5 एकड़	नन्हे लाल शर्मा पुत्र श्री भूपराम शर्मा	दिनांक 28.04.1997 को भूमि मय भूमि पर खड़े पेड़ों के रजिस्टर्ड बैनामा द्वारा क्रय की
कलावती बेवा बुद्धा	21/7	22छ	2.10 एकड़	नन्हे लाल शर्मा पुत्र श्री भूपराम शर्मा	दिनांक 28.04. 1997 को भूमि मय भूमि पर खड़े पेड़ों के रजिस्टर्ड बैनामा द्वारा क्रय की

30. The entries in revenue records favourable to the petitioners were undisputed till Forest Department raised its claim over the land in issue.

31. The Forest Department for the first time disputed this entry in the year 1995. On an objection being raised regarding the entries, the S.D.M, Gola Gokaran Nath, District-Kheri sought report from the revenue Official/Tehsildar and in response, the report dated 16.05.1995 was submitted. This report says that present Gata No.22 (earlier Gata/Plot Nos.21/2 to 21/7) is not reserved forest. The report is annexed as

Annexure No.10 to the present petition and being relevant, the same is reproduced hereinunder:-

“उपरोक्त स्थिति का मैंने भली भाँति निरीक्षण किया है। उपरोक्त वर्णित सम्बन्धित खातेदारों की उपरोक्त भूमि पर शाल आदि प्रजातियों के वृक्ष खड़े हैं जिन पर भी उनका ही स्वामित्व है। क्योंकि चकबन्दी के पूर्व के नम्बरों में भी जंगल दर्ज है और वर्तमान में भी जंगल दर्ज है।

इस प्रकार एक लम्बे अर्से से यथार्थ में उपरोक्त खातेदार अपनी उपरोक्त भूमि तथा उस पर खड़ी सम्पत्ति के काबिज व पैतृक स्वामी हैं। वे पट्टेदार नहीं अपितु श्रेणी 1 क संक्रमणीय भूमिधर के काश्तकार हैं।

प्रभागीय वनाधिकारी के पत्रांक 5210 दिनांक 29.5.95 द्वारा राजि अधिकारी भीरा का कथन उपलब्ध वन व वन राजस्व अभिलेखानुसार निराधार सिद्ध हुआ है वर्तमान का 22 नं० विज्ञापित वन क्षेत्र में आरक्षित नहीं है।

अतः आज के दिनांक 21.2.95 के आदेशानुपालन में उपरोक्त भूस्वामित्वों को उक्त भूमि पर तथा उस पर खड़ी वृक्ष सम्पदा पर सीमांकन कार्यवाही इजरा अनुरूप दि० 31.3.95 को पुनः सत्यापित कब्जा सुनिश्चित कर दिया गया है। आवश्यक कार्यवाही हेतु पत्रावली सेवा में प्रेषित।”

32. It reflects from the above quoted report that the same was prepared after taking note of the notifications dated 29.03.1954 and 26.04.1968 issued under Section 4 and 20 of the Act of 1927, respectively, which are also part of the record as Annexure No.8.

33. From a bare perusal of the report, quoted above and the notifications referred above, it is apparent that old Gata/Plot Nos.21/1 to 21/7 were not acquired for reserve forest under the Act of 1927. However, the admitted fact in the 1356 Fasli (1949 A.D.) and prior to that the total area i.e. 431.61 acre of Gata/Plot No.21 was recorded under Category/Entry 8(iii)(a)(1) and out of this, only over 31.35 acres, the petitioners are claiming their rights and rest of the land i.e. 393.91 acres belongs to the Forest Department undisputedly.

34. The S.D.M, District-Kheri, thereafter, by order dated 30.06.1995 rejected the claim of the Forest Department. The basis of rejection, as appears from the order of the S.D.M., Gola Gokaran Nath, District-Kheri, is the report of the Tehsildar dated 16.05.1995.

35. After the order dated 30.06.1995, the Forest Department again raised its claim over the land in issue and the claim of the Forest Department was allowed vide order dated 28.10.1999 passed by S.D.M, Gola, Gokaran Nath in Case No.118/Allenganj-Forest Department-Forged entry 99, dated 28.10.1999. The operative portion of order dated 28.10.1999 is extracted hereinbelow:-

"अतः आदेश दिया जाता है कि खतौनी 1400-1405 फ० के खाता सं० 1, 7, 34, 57, 60 एवं 129 स्थित ग्राम ऐलनगंज परगना भ० से अंकित सभी मूल खातेदारों एवम् बनामादारों के नाम निरस्त करे भूमि नं० 22 ख से 22 छ की "इमारती लकड़ी के जंगजेर इंतजाम वन विभाग" के रूप में राजकीय भूलेखों में अंकित किया जाये। नायब तहसीलदार के वाद सं० 684, 686, 685-682, 755, 690 व 609 में पारित आदेश व नामान्तर वाद निरस्त किये जाते हैं। यदि 1406 फसली की खतौनी नई बनाई गयी हो तो यह आदेश भूमि नं० 22 ख से 22 छ पर प्रभावी होगा। आदेश का अंकन राजस्व अभिलेखों में किया जावे।"

36. Being aggrieved by the order dated 28.10.1999, the petitioners approached the revisional authority by means of the Revision No.53 (LR) 1999-2000 (Mahesh Chandra Saxena vs. State of U.P./Forest Department) and this Revision was allowed vide order dated 11.10.2000. The operative portion of the order dated 11.10.2000 reads as under:-

"६- उपर्युक्त विवेचना के आधार पर मैं इस निष्कर्ष पर पहुँचा हूँ कि उप जिलाधिकारी का आदेश दिनांक २८-१०-१९ विधिसम्मत नहीं है, जिसे निरस्त किया जाता है तथा निगरानी आंशिक रूप से स्वीकार करते हुए मामला विचारण न्यायालय को इस अभ्युक्ति के साथ प्रतिप्रेषित किया जाता है कि वह भू-राजस्व अधिनियम की धारा

३३/३९ के अन्तर्गत मुकदमा दर्ज करके संबंधित गाँव सभा को पक्ष बनाकर मामले का निस्तारण गुण-दोष के आधार पर इस आदेश की प्राप्ति के तीन माह के भीतर करें तथा यह भी आदेशित किया जाता है कि वह संबंधित मूल अभिलेख के जाँचोपरान्त उसकी फोटो-स्टेट कापी सत्यापित करके अपनी कस्टडी में रख लें तथा वह व्यक्तिगत रूप से यह भी देखेंगे कि गाँव सभा का पक्ष सही ढंग से प्रस्तुत हो। यदि अभिलेखों में फर्जी (forged) प्रविष्टि पाई जाती है तो संबंधित अधिकारी/कर्मचारी के विरुद्ध कार्यवाही की जाये तथा कृत कार्यवाही से परिषद् को भी सूचित किया जाये।”

37. The operative portion of the order dated 11.10.2000, quoted above, indicates that the revisional authority interfered in the order dated 28.10.1999 passed by S.D.M. Gola Gokaran, whereby the claim of the Forest Department was allowed, and remanded the matter back for deciding afresh on merits after impleading Gaon Sabha as a party to the proceedings.

38. Thereafter, the petitioners challenged both the order(s) dated 28.10.1999 and 11.10.2000 by means of the Misc. Single No.-174 of 2001 (Mahesh Chandra Saxena And Others vs. State of U.P. and Others). The petition referred by the petitioners was finally allowed vide order dated 12.09.2014. The relevant portion of the judgment of this Court dated 12.09.2014 reads as under:-

"3. Divisional Forest Officer (respondent-4) moved an application for deleting the names of the petitioners from the aforesaid khatas. It has been stated in the application that the land in dispute was Forest land and covered with dense forest of old 'sal' trees. The names of the petitioners/ their transferors were recorded by making forgery in the revenue records, over it. On this application, a report has been called for from Tahsildar, who submitted his report and Up-Ziladhikari, by the order dated 28.10.1999 deleted the names of the petitioners from the land in dispute holding that it were Forest land and the names of the transferors of the petitioners were recorded by making forgery in the revenue records. The petitioners filed a revision (registered as Revision No. 53 (LR) of 1999-2000) from the aforesaid order. The revision was

heard by Board of Revenue U.P., who by order dated 11.10.2000 held that the petitioners failed to prove satisfactorily that after date of vesting how their transferors were recorded over the land in dispute. Gaon Sabha was not impleaded as party although after date of vesting, property appeared to have been vested in it and why it had failed to protect the public property. Up-Ziladhikari passed the order in violation of principles of natural justice. On these findings, the order of Up-Ziladhikari, dated 28.10.1999 was set aside and the matter was remanded to Up-Ziladhikari for fresh decision on merit after impleading gaon sabha and giving the parties an opportunity to adduce their evidence and examining original record. Hence this writ petition has been filed.

4. A complaint was also made to State Government, in this respect. On which Principal Secretary, Forest Department, Govt. of U.P., by order dated 29.04.1999 called for a report from Commissioner, Lucknow. In pursuance of the order dated 29.04.1999, the Commissioner heard the matter and also made spot inspection and after examining the evidence of the parties as well as original revenue records prior to the consolidation operation, submitted his report dated 07.06.1999. The Commissioner, in his report found that in settlement khatauni of 1346 F, plot 21 (area 436.41 acre) (a part of which is now disputed land) was recorded in khata 66 in ziman 8 (3) as "Krishi Yogy Banjar Bhumi and Imarti Lakari Ke Van" in gair ehatimali mohal and quality of soil was mentioned as 'janganl'. In 1354 F an area of 831.46 acre of plot 21 was recorded in khata 170 as mustahkam in ziman 8 (3) as "Krishi Yogy Banjar Bhumi and Imarti Lakari Ka Janganl". Same entry was repeated in 1356 F khatauni in khata 211. For the first time, in 1359 F, plot 21 was sub-divided and (i) plot 21/1 (area 393.91 acre) was recorded in khata 98 in ziman 8 (3) (1) as "Imarti Lakari Ke Janganl", (ii) plot 21/2 (area 7.85 acre) was recorded in khata 89 in ziman 5-A as "Occupiers of land without title when there is no one already recorded in column 5 of khasra" in the name of Dal Singh, with period of cultivation of one year. (iii) plot 21/3 (area 8.60 acre) was recorded in khata 90 in ziman 5-A in the name of Gopal Singh, with period of cultivation of one year. (iv) plot 21/4 (area 2.50 acre) was recorded in khata 91 in ziman 5-A in the name of Buddhu, with period of cultivation of one year. (v) plot 21/5 (area 8.60 acre) was recorded in khata 92 in

ziman 5-A in the name of Surta, with period of cultivation of one year. (vi) plot 21/6 (area 10.00 acre) was recorded in khata 93 in ziman 5-A in the name of Gopal Singh, with period of cultivation of one year. (vii) plot 21/7 (area 2.60 acre) was recorded in khata 94 in ziman 5-A in the name of Amru, with period of cultivation of one year. In khasra 1359 F area of plot 21/1 was recorded as 393.91 acre cutting 431.46 acre and its deducted area were recorded in plots 21/2 to 21/7 as mentioned in the khatauni, in the names of different persons and cultivation of barely was shown but in the remark column entry of "Imarti Lakari Ke Jangal" has been mentioned. The Commissioner further found that this entry was made in different hand writing than the hand writing of then patwari, who had prepared regular khasra. In goswara total area of barely crop was shown as 245.72 acre in plot 21. The names of the persons recorded over plots 21/2 to 21/7 were recorded as sirdar in 1360 F. Same entry continued in 1370 F-1372 F khatauni and maintained during consolidation. After consolidation new plot number 22-ka to 22-chha was recorded of old plots 21/1 to 21/7. The petitioners purchased the aforesaid land in 1997 and on the basis of sale deed their names were mutated.

5. The counsel for the petitioners submitted that the predecessors of the petitioners were in cultivatory possession over the land in dispute since 1358 F and their names were recorded in settlement khatauni 1359 F. They acquired sirdari right under Section 20 (b) read with Rule 177-A of U.P. Act No. 1 of 1951 and the Rules framed in it, being recorded occupants in 1359 F. The village has undergone in to consolidation operation. Entry in their favour was maintained during consolidation. The predecessors acquired bhumidhari right under Section 131 as amended by U.P. Act No. 1 of 1977. The petitioners are bonafide transferees. Their names were also mutated in the proceedings under Section 34 of U.P. Land Revenue Act, 1901. Claim of the respondents, if any, is barred under Section 49 of U.P. Consolidation of Holdings Act, 1953. In any case, long standing entry coming since 1359 F and maintained during consolidation cannot be deleted by an administrative order that too without providing any opportunity of hearing, as held by Board of Revenue U.P. in Hira Lal Vs. Aharwa, 1966 RD 10, Bahadur Vs. State of U.P., 1980 RD 1 (FB) and this Court in Maha Lakshmi Land and Finance Company (P) Ltd.

Versus Board of Revenue U.P., 1997 (15) LCD 273. He submitted that in the absence of any notification under Section 20 of Indian Forest Act, the land cannot be treated as Forest land and Forest Department of State of U.P. has nothing to do with the land in dispute. He submitted that in the absence of any notification under Section 117 of U.P. Act No. 1 of 1951, Gaon Sabha has nothing to do in the matter, as held by Supreme Court in U.P. State Sugar Corporation Ltd. Vs. Dy. Director of Consolidation, AIR 2000 SC 878. Gaon Sabha did not raise any objection against the petitioners, either before consolidation or during consolidation. Right of Gaon Sabha, if any, is barred under Section 11-A and 49 of U.P. Consolidation of Holdings Act, 1953, as held by Division Bench of this Court in Gaon Sabha Kudra Vs. Noor Mohd. Khan, 1975 RD 61 (DB). Board of Revenue has illegally directed for impleading Gaon Sabha and deciding the dispute afresh, which is merely harassment of the petitioners for nothing. Impugned orders are illegal, without jurisdiction and liable to be set aside.

6. I have considered the arguments of the counsel for the parties and examined the record. A perusal of the report of the Commissioner shows that in settlement khatauni of 1346 F, plot 21 (area 436.41 acre) was recorded in khata 66 in ziman 8 (3) as "Krishi Yogy Banjar Bhumi and Imarti Lakari Ke Van" in gair ehatimali mohal and quality of soil was mentioned as 'janganl'. In 1354 F an area of 831.46 acre of plot 21 was recorded in khata 170 as mustahkam in ziman 8 (3) as "Krishi Yogy Banjar Bhumi and Imarti Lakari Ka Janganl". Same entry was repeated in 1356 F khatauni in khata 211. For the first time, in 1359 F, plot 21 was sub-divided and (i) plot 21/1 (area 393.91 acre) was recorded in khata 98 in ziman 8 (3) (1) as "Imarti Lakari Ke Janganl", (ii) plot 21/2 (area 7.85 acre) was recorded in khata 89 in ziman 5-A as "Occupiers of land without title when there is no one already recorded in column 5 of khasra" in the name of Dal Singh, with period of cultivation of one year. (iii) plot 21/3 (area 8.60 acre) was recorded in khata 90 in ziman 5-A in the name of Gopal Singh, with period of cultivation of one year. (iv) plot 21/4 (area 2.50 acre) was recorded in khata 91 in ziman 5-A in the name of Buddhu, with period of cultivation of one year. (v) plot 21/5 (area 8.60 acre) was recorded in khata 92 in ziman 5-A in the name of Surta, with period of cultivation of one year. (vi) plot 21/6 (area 10.00 acre)

was recorded in khata 93 in ziman 5-A in the name of Gopal Singh, with period of cultivation of one year. (vii) plot 21/7 (area 2.60 acre) was recorded in khata 94 in ziman 5-A in the name of Amru, with period of cultivation of one year. In khasra 1359 F, area of plot 21/1 was recorded as 393.91 acre cutting 431.46 acre and its deducted area were recorded in plots 21/2 to 21/7 as mentioned in the khatauni, in the names of different persons. Although cultivation of barely was shown but in the remark column entry of "Imarti Lakari Ke Jangal" has been mentioned. The Commissioner found that this entry was made in different hand writing than the hand writing of then patwari, who had prepared regular khasra. In goswara total area of barely crop was shown as 245.72 acre in plot 21, which does not tally with the entry of khatauni.

7. According to Forest Department of State of U.P., the entire area of old plot 21 is still dense forest of 'sal' timber trees. Agricultural activities are not going on in any part of it. According to the petitioners, land recorded in their names are agricultural land. Entry in ziman 5-A, in Awadh is for "occupiers of land without title, where there is no one already recorded in column 5 of the khasra. Entry in ziman 8 (a), in Awadh is for "Forest of timber trees". Even in khatauni 1359 F, in remark column, entry of "Imarti Lakari Ke Jangal" has been mentioned. If there had been dense forest then, there could have been no agricultural activities. The petitioners claim title under Section 20(b) of U.P. Act No. 1 of 1951, as their predecessors were "recorded occupants" in 1359 F khatauni. A special Bench consisting of five Hon'ble Judges of this Court in *Basdeo vs. Board of Revenue, U.P. 1974 R.D. 188 (SB)* and Supreme Court in *Ram Harakh vs. Hamid Ahmad Khan (1998) 7 SCC 488* held that in order to get right under Section 20(b) of U.P. Act No. 1 of 1951, entry in 1359F must be genuine and made according to the provisions of Land Record Manual and not a fake entry. Till today, this issue has not been decided by any court/authority after hearing the parties. In case, this entry was not genuine, the property in dispute was vested in State of U.P. under U.P. Act No. 1 of 1951 and only on the basis of subsequent possession, no right can be derived on it.

8. Admittedly no proceeding for correction of land record was taken under U.P. Consolidation of Holdings Act, 1953 and only the prior entries were maintained.

The counsel for the petitioners submitted that after consolidation, their right cannot be challenged in view of Section 49 of the Act, which is quoted below:-

"49. Bar to civil jurisdiction.--Notwithstanding anything contained in any other law for the time being in force, the declaration and adjudication of rights of tenure holders in respect of land lying in an area, for which a notification has been issued under sub-section (2) of Section 4 or adjudication of any other rights arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under this Act, shall be done in accordance with the provisions of this Act and no Civil or Revenue Court shall entertain any suit or proceeding with respect to rights in such land or with respect to any other matters for which a proceeding could or ought to have been taken under this Act."

9. Supreme Court in Dina Nath v. State of U.P., (2010) 15 SCC 218, while upholding the direction of this Court for holding inquiry in respect of the entries made during consolidation over government land held that the Court cannot be a silent spectator and is bound to perform its constitutional duty for ensuring that the public property is not frittered by unscrupulous elements in the power corridors and acts of grabbing public land are properly inquired into and appropriate remedial action taken.

10. In order to avoid bar of Section 49, it is appropriate that District Deputy Director of Consolidation may conduct an inquiry and examine the correctness of the records including prepared during consolidation in exercise of his jurisdiction under Section 48 of U.P. Consolidation of Holdings Act, 1953.

11. In the absence of any notification under Section 117 of U.P. Act No. 1 of 1951, Gaon Sabha has nothing to do in the matter, as held by Supreme Court in U.P. State Sugar Corporation Ltd. Vs. Dy. Director of Consolidation, AIR 2000 SC 878. However, under Section 6 (a) of U.P. Act No. 1 of 1951, forest was vested in State of U.P. and respondent-3 is a department of State of U.P. assigned with the responsibility of maintaining forest as such Forest Department of State of U.P. and State of U.P. are necessary parties and required to be heard along with the petitioners by District Deputy Director of Consolidation. Since, the village has undergone into

consolidation operation as entry made by consolidation authorities cannot be corrected exercising powers under U.P. Land Revenue Act, 1901.

12. In view of the aforesaid discussion, the writ petition is allowed. The orders of Up-Ziladhikari, dated 28.10.1999 and Board of Revenue, U.P. dated 11.10.2000 are set aside. The matter is remanded to District Deputy Director of Consolidation Kheri to conduct a proper inquiry after giving opportunity of hearing to the parties, if necessary he may frame issue and remit the matter to Consolidation Officer for recording oral and documentary evidence of the parties and pass appropriate order. After receiving evidence and findings of Consolidation Officer he shall decide the matter after hearing the parties. Since the matter is lingering for a long time and issue of public property is allegedly involved, he shall decide the matter expeditiously.”

39. A perusal of the above quoted portion of the judgment of this Court dated 12.09.2014 indicates that this Court did not accept the claim of petitioners based upon Section 20(b) of the Act of 1950 and remanded the matter before the respondent No.2-District Magistrate/District Deputy Director of Consolidation, Lakhimpur Kheri, with direction to conduct a proper inquiry after giving opportunity of hearing to the parties, if necessary, he may frame issue and remit the matter back to respondent No.3-Consolidation Officer, for recording oral and documentary evidence of the parties and pass appropriate orders and thereafter decide the matter after hearing the parties.

40. After the order dated 12.09.2014, respondent No.2-District Magistrate/District Deputy Director of Consolidation, Lakhimpur-Kheri, proceeded in the matter, as appears from Annexure no.17 of the petition, which is a copy of the

objection filed by the petitioners which was entertained by respondent No.2 on 10.12.2014.

41. Thereafter, respondent No.2 vide order dated 09.09.2015 sent the matter to the respondent No.3- Consolidation Officer, Antim Abhilekh Second, Lakhimpur-Kheri.

42. Before the respondent No.3 the evidence was adduced by the parties, which is evident from the impugned order(s), Para 33 and Annexure No.18 of the Writ Petition. Annexure No. 18 is the copy of affidavit of evidence of the witnesses of the Forest Department, namely Satya Prakash, Van Daroga, who was duly cross examined.

43. It is to be noted that the petitioners have not placed before this Court the evidence adduced from the side of petitioners, though under law, the petitioners are under obligation to place each and every material on record before this Court.

44. Based upon the evidence adduced by the parties respondent No.3 passed the order dated 16.10.2019, impugned herein, whereby a direction was issued to expunge names of the petitioners from the revenue records.

45. The order dated 16.10.2019 was challenged by the petitioners by means of an Appeal No.583/2019541043000575 (Mahesh Chandra & Others vs. Prabhagiya Vanadhikari & Others), which was disposed of on 19.07.2022. Thereafter, the petitioners approached this Court by means of Writ - B No.570 of 2022 (Mahesh Chandra Saxena and 5 others vs. Distt. Dy.

Director of Consolidation/Collector, Lakhimpur Kheri And 5 Ors.), challenging the order(s) dated 09.09.2015 and 16.10.2019 passed by respondent No.2 and respondent No.3, respectively, as also consequential order dated 26.08.2021 passed by the respondent No.3-Consolidation Officer, Antim Abhilekh Second, Lakhimpur Kheri.

46. This Court, after considering the entire facts of the case, dismissed the petition vide final order dated 26.09.2022. The relevant part of order of this Court dated 26.09.2022 reads as under:-

“In the light of the aforesaid directions the District Deputy Director of Consolidation passed the order dated 9.9.2015 which is annexed as Annexure-1 and thereafter the matter was considered by the Consolidation Officer by a detailed order dated 16.10.2019 which came to be assailed in appeal which was allowed on 26.8.2021. It is also to be noticed that the order dated 9.9.2015 whereby the District Deputy Director of Consolidation remanded the matter to the Consolidation Officer was never challenged by the petitioners at that point of time. Moreover, the petitioners participated in the proceedings and never raised any objections regarding jurisdiction. It is also to be noticed that being aggrieved against the order dated 16.10.2019 the petitioners preferred an appeal which came to be allowed and it is only thereafter when the Consolidation Officer by means of his report dated 7.9.2022 by which the entire matter has now again been remitted to the District Deputy Director of Consolidation and now the petitioners have approached this court assailing the entire orders and the exercise which has taken place. The court further finds that the matter is open to be considered before the District Deputy Director of Consolidation, Lakhimpur Kheri, where the date is fixed for 7.10.2022. Till date the petitioners have not raised any objection before any of the Consolidation Authority except by filing the instant writ petition. Once the initial remand order dated 9.9.2015 was not challenged and after having participated in the

proceedings and at this later stage the petitioners have preferred this writ petition in the aforesaid background, this court is not inclined to entertain this petition, especially when the entire matter is open to be considered by the District Deputy Director of Consolidation, Lakhimpur Kheri, where the matter is listed on 7.10.2022.

It shall be open for the petitioner to raise all his grievances and objections before the said court and in case such objections are raised, needless to say that the authority shall consider and decide the same in accordance with law, however, this court does not deem appropriate to interfere at this stage. Accordingly the petition is dismissed.”

47. After the aforesaid order of Writ Court dated 26.09.2022, respondent No.2 passed the impugned order dated 10.04.2023, after providing proper opportunity of hearing to the parties to the proceedings. The relevant portion of the impugned order dated 10.04.2023 reads as under:-

“अधीनस्थ न्यायालय के समक्ष वन विभाग (प्रभागीय वनाधिकारी) के साक्षी डी०डब्ल्यू०-2 ओम प्रकाश वन दरोगा ने अपने साक्ष्य हेतु शपथ पत्र की धारा 12 में स्थिति को स्पष्ट इस प्रकार स्पष्ट किया है कि भूखण्ड सं०-21 व 22 का पूरा भाग साखू (साल) का एक विशाल जंगल है जिस पर स्थित पेड़ों की उम्र अनुमानतः 80 से 100 वर्ष है। उल्लेखनीय है कि साल के वृक्ष स्वयं उगते हैं और सम्पूर्ण क्षेत्रफल पर वन विभाग का कब्जा है। चूंकि ग्राम ऐलनगंज परगना भूड जिला-खीरी की खतौनी 1356 फसली के खाता सं०-91 में दर्ज गाटा सं०-21 रकबा 431.46 एकड़ इमारती लकड़ी के जंगल के रूप में दर्ज है इस कारण भी भारतीय वन अधिनियम की धारा 20 क (ए) के अन्तर्गत गाटा सं०-21 का सम्पूर्ण रकबा 431.46 एकड़ आरक्षित वन भूमि है। अधीनस्थ न्यायालय के समक्ष महेश चन्द्र सक्सेना ने हुई जिरह के पृष्ठ सं०-1 की नीचे से तीसरी व दूसरी लाइन में स्वयं स्वीकार किया है कि 1356 फ० खतौनी में 21 नम्बर पर जंगल दर्ज है और उन्होंने जिरह के पृष्ठ सं०-2 की नीचे से पाचवी व चौथी, तीसरी लाइन में स्वयं स्वीकार किया है कि हमारी विवादित भूमि के चारों तरफ वन विभाग के निजी पेड़ व भूमि है हमारी विवादित भूमि पर 2752 पेड़ खड़े हैं। अधीनस्थ न्यायालय के समक्ष महेश चन्द्र सक्सेना ने हुई जिरह के पृष्ठ सं०-1 की अन्तिम लाइन व पृष्ठ सं०-2 की पहली लाइन में स्वीकार करते हुये कहा है कि यहां पर मैं ये भी बता दूँ कि 21 नम्बर बड़ा है जिसका रकबा 431.46 एकड़ जंगल दर्ज है। महेश चन्द्र सक्सेना ने हुई जिरह के पृष्ठ सं०-3 की अन्तिम लाइन में स्वयं कहा है कि "ये कहना गलत है कि वन विभाग की भूमि नहीं है। उपरोक्त महेश चन्द्र सक्सेना द्वारा प्रस्तुत साक्ष्य से स्वतः स्पष्ट है कि विवादित भूमि आरक्षित वन भूमि (जंगल भूमि) है। अधीनस्थ न्यायालय के

समक्ष नन्हें लाल शर्मा ने अपने बयान की तीसरी, चौथी व पांचवी लाइन में कहा है कि "मेरा विवादित गाटा सं०-22 ख से 22 छ तक है 22 ख के उत्तर में ग्राम समाज है उसकी गाटा संख्या मुझे नहीं मालूम है, 22 ख के पूरब में ग्राम समाज है गाटा संख्या नहीं पता है, 22 ख पर पेड़ लगे हैं।" बयान के ऊपर से 19 वीं लाइन में भी कहा है कि विवादित भूमि पर भी पेड़ लगे हुये हैं।" बयान की ऊपर 21, 22, 23, 24 वीं लाइन में कहा है कि "विवादित भूमि पर साल व कूकट के पेड़ लगे हैं। विवादित भूमि के चारों तरफ ग्राम समाज की जमीन पर पेड़ लगे हैं।" उक्त बयानों से पूर्णतयः स्पष्ट है कि विवादित भूमि व उसके चारों ओर की भूमि जंगल के स्वरूप में है। खेती नहीं होती है। इसलिये 1356 फ० के खाता सं०-91 के गाटा सं०-21 रकबा 431.36 व 1359 फ० के खाता सं०-98 का गाटा 21 रकबा 431.46 एकड़ इमारती लकड़ी के जंगल के रूप में ठीक ही दर्ज है। इस प्रकार विवादित भूमि जंगल की भूमि है। जिस पर वन संरक्षण अधिनियम 1980 के प्राविधानों के अन्तर्गत गैर वानिकी कार्य वर्जित हैं। शेष आपत्तिकर्तागण विजयरानी शर्मा, अनूप कुमार व संजीव कुमार, कमला सक्सेना ने अपना कोई बयान दर्ज नहीं कराया है और कोई भी साक्ष्य प्रस्तुत नहीं किया है और अधीनस्थ न्यायालय के समक्ष कभी भी उपस्थित नहीं हुए हैं। अधीनस्थ न्यायालय के समक्ष वन विभाग के साक्षी सत्यप्रकाश वन दरोगा एवं ओम कुमार सिंह वन दरोगा ने विवादित भूमि को अपने-अपने साक्ष्य में पूर्णतयः जंगल साबित किया है। 1359 फ० ग्राम ऐलनगंज परगना भूड जिला खीरी की प्रमाणित प्रतिलिपि अधीनस्थ न्यायालय के समक्ष प्रस्तुत थी, तब भी अपीलकर्तागण के निवेदन पर अधीनस्थ न्यायालय ग्राम ऐलनगंज परगना भूड जिला-खीरी की 1359 फसली की खतौनी को अभिलेखागार माल से तलब कर अवलोकन किया और आर्डर शीट दिनांकित 18.07.2018 पर अपने मत में माना कि 1359 फसली के खाता सं०-98 में दर्ज गाटा सं०-21 के रकबा 431.46 एकड़ पर कटिंग हुई है इसलिये आपत्तिकर्तागण का कोई स्वत्व उत्पन्न नहीं होता है। धारा 20 भारतीय वन अधिनियम के प्राविधान के अन्तर्गत इस आराजी से सम्बन्धित सभी हकूक समाप्त हो जाते हैं। माननीय उच्चतम न्यायालय ने रिट पिटीशन सं०-202/1995 टी०एन० गोडावर्मन थिरुमलकपाद बनाम यूनियन आफ इण्डिया व अन्य में दिनांक 03.12.2010 को निर्णय व आदेश पारित करते हुये कहा है कि *Land over 2 hectares in area with the minimum density of 50 trees per hectare would be considered as "Forest."*

माननीय उच्च न्यायालय इलाहाबाद लखनऊ पीठ लखनऊ के समक्ष प्रस्तुत रिट याचिका सं०-5690/2000 दयाशंकर आदि बनाम उत्तर-प्रदेश राज्य में माननीय उच्च न्यायालय ने निम्न आदेश पारित करते हुये दिनांक 21.11.2000 को रिट याचिका निरस्त कर दी।

Article 48 of the Constitution of India mandates the State to make an endeavour to protect and improve the environment and safeguard the forest and wild life of the country. The writ petition is devoid of merit. It is accordingly dismissed.

भारतीय वन अधिनियम 1927 पूर्ण संहिता है। भारतीय वन अधिनियम 1927 विशेष अधिनियम है, जिसमें आरक्षित वन भूमि घोषित करने का प्राविधान वर्णित है। वन संरक्षण अधिनियम 1980 के प्राविधानों के अनुसार आरक्षित वन भूमि पर गैर वानिकी कार्य वर्जित है एवं दण्डनीय अपराध है। AIR 1997 Supreme Court 1228 रिट याचिका सं०-202/95 टी०एन० गोडावर्मन थिरुमलकपाद बनाम यूनियन आफ इण्डिया में माननीय उच्चतम न्यायालय द्वारा पारित आदेश दिनांक 12.12.1996 द्वारा भी वन संरक्षण अधिनियम 1980 का कड़ाई से पालन करने के निर्देश दिये हैं। इसी क्रम में रिट याचिका (सी) संख्या-202/1995 टी०एन० गोडावर्मन थिरुमलकपाद व अन्य में योजित अन्य आई०ए० के साथ आई०ए० संख्या-2469/2009 में माननीय उच्चतम न्यायालय ने दिनांक 05.10.2015 को सुनवाई के उपरान्त आदेश पारित कर इसे माननीय राष्ट्रीय हरित अधिकरण प्रधान बेंच, नई-दिल्ली को अन्तरित कर दिया था जिसमें मा० राष्ट्रीय हरित अधिकरण ने दिनांक 04.05.2016 को निर्णय आदेश देते हुए कहा कि "वन एवं वन सम्पदा की सुरक्षा एवं संरक्षकता सुनिश्चित किये जाने हेतु एवं धारा 4 में विज्ञापित अथवा अन्य वन भूमि के गैर वानिकी उपयोग पर विभिन्न प्रशासनिक अथवा न्यायिक स्तरों द्वारा जारी आदेशों का प्रभाव निरस्त करने के सम्बन्ध में तथा उल्लंघन करने के लिए जिम्मेदार अधिकारियों के विरुद्ध कार्यवाही किये जाने का पारित किया है।

ए०आई०आर० 1996 सुप्रीम कोर्ट 2432 *The State of U.P. Vs. Dy. Director of Consolidation & others* में माननीय उच्चतम न्यायालय ने पैरा-9 व 10 में विधि व्यवस्था दी है कि-*The crucial question for consideration, however, is whether the Consolidation Authorities have the jurisdiction to go behind the notification under Section 20 of the Act and deal with the land which has been declared and notified as a reserve forest under the Act. It is necessary, therefore, to examine the scheme of Chapter II of the Act. Section 3 provides that the State Government may constitute any forest land or waste land which is the property of the Government or over which the Government has proprietary rights, or to the whole or any part of the forest produce to which the Government is entitled, a reserved forest. Section 4 provides for the issue of a notification declaring the intention of the Government to constitute a reserved forest. Section 5 bars accrual of forest rights in the are covered by the notification under section 4 after the issue of the notification. Section 6, inter alia, gives power to the Forest Settlement Officer to issue a proclamation fixing a period of not less than three months from the date of such proclamation and requiring every person claiming any right mentioned in Section 4 or Section 5 within such period, either to present to the Forest Settlement Officer a written notice specifying or to appear before him, and state*

the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof. Section 7 gives power to the Forest Settlement Officer to investigate the objections. Section 8 prescribes that the Forest Settlement Officer shall have the same powers as a Civil Court has in the trial of a suit. Section, inter alia, provides for the extinction of rights where no claim is made under Section 6. Section 11(1) lays down that in the case of a claim to a right in or over any land, other than a right of way or right of pasture, or a right to forest produce or water course, the Forest Settlement Officer shall pass an order admitting or rejecting the same in whole or in part. In the event of admitting the right of any person to the land, the Forest Settlement Officer, under Section 11(2), can either exclude such land from the limits of the proposed forest or come to an agreement with the owner thereof for the surrender of his rights or proceed to acquire such land in the manner provided by the Land Acquisition Act, 1884. Section 17 provides for appeal from various orders under the Act and Section 18(4) for revision before the State Government. When all the proceedings provided under Section 3 to 19 are over the State Government has to publish a notification under Section 20 specifying definitely the limits of the Forest which is to be reserved and declaring the same to be reserved from the date fixed by the notification.

It is thus obvious that the forest settlement officer has the powers of a civil court and his order is subject to appeal and finally revision before the state government. The act is a complete code in itself and contains elaborate procedure for declaring and notifying a reserve forest. Once a notification under section 20 of the act declaring a land as reserve forest is published, then all the rights in the said land claimed by any person come to an end and are no longer available. The notification is binding on the Consolidation Authorities in the same way as a decree of the civil court. The respondents could very well file objections and claims including objection regarding the nature of the land before the Forest Officer. They did not file any objection or claim before the authorities in the proceedings under the Act. After the notification under Section 20 of the Act, the respondents could not have raised any objections qua the said notification before the Consolidation Authorities. The Consolidation

Authorities were bound by the notification which has achieved finality."

Consolidation No-1268/1979 State of Uttar Pradesh Through the Divisional Forest Officer Vs. The Deputy Director of Consolidation U.P. and Others में माननीय उच्च न्यायालय इलाहाबाद में अपने निर्णय दिनांक 19.08.2013 में कहा है कि If contesting respondents were aggrieved by preliminary notification under Section 4 of Forest Act they should have availed the remedies provided under the Act (Sections 6, 9, 17, 11 and 16). However, after final notification under Section 20 the Chapter is closed.

इसी प्रकार माननीय उच्चतम न्यायालय ने एस०एल०पी० सिविल संख्या-9837-9838/ईश्वर चन्द्र गुप्ता बनाम स्टेट आफ यू०पी० व अन्य को खारिज करते हुये अवैध कब्जेदारों को चार सप्ताह में वन भूमि खाली करने के आदेश पारित किये। उपरोक्त के अतिरिक्त सिविल अपील संख्या-744-759/1977 स्टेट आफ यू०पी० बनाम उप संचालक चकबन्दी में माननीय उच्चतम न्यायालय द्वारा पारित निर्णय दिनांक 8-7-1996 (RD 1996 Page No.-448, oa AIR 1996 SC 2432) में निम्नांकित व्यवस्था निर्धारित की गई है-

It is thus obvious that the Forest Settlement Officer has the powers of a civil court and his order is subject to appeal and finally revision before the State Government. The Act is a complete code in itself and contains elaborate procedure for declaring and notifying a reserve forest. Once a notification under Section 20 of the Act declaring a land as reserve forest is published, then all the rights in the said land claimed by any person come to an end and are no longer available. The notification is binding on the Consolidation Authorities in the same way as a decree of the civil court. The respondents could very well file objections and claims including objection regarding the nature of the land before the Forest Officer. They did not file any objection or claim before the authorities in the proceedings under the Act. After the notification under Section 20 of the Act, the respondents could not have raised any objections qua the said notification before the Consolidation Authorities. The Consolidation Authorities were bound by the notification which has achieved finality."

उक्त वर्णित भूमि राष्ट्रीय सम्पत्ति है व माननीय उच्चतम न्यायालय के निर्णय व आदेश के क्रम में भारतीय वन अधिनियम की धारा 20 का गजट नोटिफिकेशन सिविल डिफ्री के समान है एवं धारा-132(ग) उ०प्र० जमींदारी विनाश एवं भूमि व्यवस्था अधिनियम 1950 के अन्तर्गत सार्वजनिक हित की भूमि है, जिस पर आपत्तिकर्तागण का

कोई स्वत्व उत्पन्न नहीं होता है। यही प्राविधान उत्तर- प्रदेश राजस्व संहिता की धारा 77 में वर्णित है।

उभय पक्षों की सुनवाई के उपरान्त पत्रावली का अवलोकन किया। पत्रावली पर उपलब्ध नकल खतौनी 1359 फसली के अवलोकन से स्पष्ट है कि गाटा सं० 21 का रकबा 431.46 एकड़ रहा, इस पर कटिंग करके इसका रकबा 393.91 एकड़ अंकित कर दिया गया। चूंकि गाटा सं०- 21 व 22 के बीच में स्थान उपलब्ध नहीं था इसलिये कूटरचना करके गाटा सं० 21/2 लगायत 21/7 तक की प्रविष्टियां अन्त में अंकित कर दी गयीं। पत्रावली पर उपलब्ध नकल खतौनी 1356 फसली के अवलोकन से स्पष्ट है कि गाटा सं०-21 का रकबा 431.46 एकड़ रहा, जो इमारती लकड़ी जंगल के नाम ज़िम्न 8 के रूप में दर्ज है। पत्रावली पर उपलब्ध आयुक्त लखनऊ मण्डल लखनऊ की विस्तृत जांच आख्या के अवलोकन से यह तथ्य स्पष्ट है कि 1359 फसली ग्राम ऐलनगंज परगना भूड जिला खीरी की खतौनी में साजिश करके कूट रचना कर गाटा सं०- 21 का रकबा 431.46 एकड़ को काटकर 393.91 एकड़ कर दिया गया। गाटा सं०- 21 व 22 के बीच स्थान न होने के कारण खतौनी के अन्त में दूसरी हस्तलिपि से गाटा सं० 21/2 लगायत 21/7 तक की प्रविष्टियां साजिश करके दर्ज कर दी गयीं और आख्या से यह भी स्पष्ट है कि गाटा सं०-21 और 22 के भू-भाग में साखू का विशाल जंगल है जिस पर स्थित पेड़ों की उम्र अनुमानतः 80 से 100 वर्ष है जिस पर वन विभाग का कब्जा है। जांच आख्या में खातेदारों की प्रविष्टियों को स्पष्ट रूप से साजिशी, संदिग्ध एवं कूटरचित कहा गया है। ग्राम ऐलनगंज परगना भूड जिला-खीरी की खतौनी 1356 फसली खाता सं०-91 में दर्ज गाटा संख्या -21 रकबा 431.46 एकड़, 1359 फसली खाता सं० -98 में दर्ज गाटा संख्या - 21 रकबा 431.46 एकड़ इमारती लकड़ी के जंगल के रूप में दर्ज है जो भारतीय वन अधिनियम की धारा 20 ए के प्राविधान के अनुसार आरक्षित वन है एवं ए०आई०आर० 1997 सुप्रीम कोर्ट 1248 टी०एन०गोडावर्मन थिरुमलकपाद बनाम यूनियन आफ इण्डिया में माननीय उच्चतम न्यायालय द्वारा पारित आदेश दिनांक 12.12.1996 द्वारा वन संरक्षण अधिनियम 1980 का कड़ाई से पालन करने के निर्देश दिये हैं एवं साथ ही साथ फारेस्ट शब्द को परिभाषित करते हुये पैरा- 4 में कहा है कि *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 2(i) 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 or classification thereof.*

इस प्रकार माननीय उच्चतम न्यायालय द्वारा वन की दी गयी परिभाषा के अनुसार भी वन भूमि है। जहां तक महेश चन्द्र सक्सेना आदि के द्वारा प्रस्तुत साक्ष्य एवं विधि व्यवस्था का प्रश्न है, तो वह सारे साक्ष्य 1359 फसली खतौनी में कूटरचना कर उसके क्रम में तैयार हुये हैं जिसका साक्षिक महत्व शून्य है। कूटरचित इन्द्राज के खातेदारों से

महेश चन्द्र सक्सेना आदि द्वारा बयनामा कराया गया है, यहां पर यह भी उल्लेखनीय है कि क्रेता को वही अधिकार प्राप्त होता है, जो क्रय की हुई भूमि के विक्रेता के पास होता है। यहां पर महेश चन्द्र सक्सेना आदि के पक्ष में जो बयनामों खातेदारों द्वारा निष्पादित किये गये हैं, वह खातेदार विक्रेता अपना स्वत्व कूटरचना फर्जी तरीके से प्राप्त किये हैं ऐसी स्थिति में फर्जी व कूटरचित इन्द्राज व उसके क्रम में हुये बयनामों के आधार पर किसी भी प्रकार का अनुतोष नहीं दिया जा सकता है। विवादित भूमि वर्तमान समय में जंगल के रूप में है जिस पर साखू आदि के वर्षों पुराने पेड़ खड़े हैं। ऐसी स्थिति में अधीनस्थ न्यायालय चकबन्दी अधिकारी द्वितीय, लखीमपुर-खीरी द्वारा विवादित भूमि पर अंकित खातेदारों का नाम निरस्त कर आरक्षित वन के खाते में दर्ज करने का आदेश उचित एवं न्याय संगत है।

अतः उपरोक्त विवेचना के आधार पर चकबन्दी अधिकारी, अन्तिम अभिलेख द्वितीय, लखीमपुर-खीरी के निर्णय व आदेश दिनांकित 16.10.2019 की पुष्टि की जाती है। पत्रावली बाद आवश्यक कार्यवाही अभिलेखागार में संचित की जाये।"

48. On the question aforesaid, indicated in Para 23 hereinbefore, the judgments referred by the learned counsel for the petitioners have already been indicated in the earlier paragraphs of this judgment and some other cases which are also relevant are required to be indicated at this stage.

49. The Hon'ble Apex Court in the case of **Bachan and Ors. vs. Kankar and Ors. (1972) 2 SCC 555**; observed as under:-

"15. This Court in Sonawati v. Sri Ram [AIR 1968 SC 466(1968) 1 SCR 617 :] said that Section 20 of the U.P. Zamindari Abolition and Land Reforms Act, 1951 conferred certain rights upon persons whose names were recorded in the revenue records in respect of agricultural land. In Sonawati case this Court found that there was strong evidence which was relied on by the Revenue Court that the name of Pritam Singh predecessor-in-interest of the appellants was surreptitiously entered in the Khasra. The first appellate court there did not at all consider that evidence. The surreptitious entry in Sonawati case was held by this Court to disentitle the appellants to any adhivasi right under Section 20 of the U.P. Zamindari Abolition and Land Reforms Act.

16. This Court recently in Ram Das v. Deputy Director of Consolidation, Ballia, [(1971) 1 SCC 460 : AIR 1971 SC 673] dealt with the contention of the appellants on

the one hand who were recorded as Sir Khudkasht-holders of the plots in dispute and the contention of the respondents on the other who were entered as sub-tenants in respect of those plots in the year 1356 Fasli. Suits were filed between the parties. A compromise was entered into the suits. It was admitted by the respondents that the appellants were Bhoomidars and that the respondents had no interest. The further admission in the compromise was that the entry in the revenue records in favour of the respondents was fictitious. The respondents subsequently applied for setting aside the compromise decrees on the ground that they had been obtained fraudulently. During the pendency of the suits consolidation proceedings under the U.P. Consolidation of Holdings Act, 1953 commenced. The Consolidation Authorities held that the suits were not maintainable because on the date on which the suits were filed the respondents had become sirdars. The appellants filed a writ petition under Article 226 challenging the order of the Consolidation Authorities. The High Court held in that case relying on the earlier decisions of that Court that even if the entry was fictitious the respondents who were recorded as occupants would, under Section 20(b) of the U.P. Zamindari Abolition and Land Reforms Act, 1951 become adhivasi of the disputed land. This Court relying on the earlier decision in Sonawati case held that there was evidence to show that the entry was fictitious and the person whose name was entered on the record on the material date could not claim the right of an adhivasi.

17. *The rulings of this Court establish that the decision of the learned Single Judge as well as that of the Division Bench of the Allahabad High Court is erroneous. Section 20 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 speaks of a person recorded as occupant to become adhivasi of the land and will be entitled to take or retain possession as mentioned in the section. One of the principal matters mentioned in the section is that the Khasra or Khatauni of 1356 Fasli is to be prepared under Sections 28 and 33 of the U.P. Land Revenue Act, 1901. The U.P. Land Records Manual in Chapter A-V in para A-55 to A-67 lays down the manner in which the Khasra or the field book showing possession is to be prepared by the Patwari in the areas to which Zamindari Abolition and Land Reforms Act, 1950 applies. There are detailed instructions about the*

manner in which the enquiry should be carried out about actual possession and change in possession and corrections in the map and field book, the form in which the khasra is to be prepared. The form of khasra is given in para A-80. The form shows that the Lekhpal has to prepare a consolidated list of entries after partial or proper investigation. Again, para A-70 to A-73 to the U.P. Zamindari Abolition and Land Reforms Act show how entries have to be made in khataunis every year showing the nature of tenure of each holder. The khatauni is meant to be a record of tenure-holders. The manner of changes to be made there is laid down in para A-82 to A-83. Entries are to be checked. Extract has to be sent to the Chairman, Land Management Committee as contemplated in paragraph A-82 (iii). In this context Section 20(b)(i) of the U.P. Zamindari Abolition and Land Reforms Act which speaks of the record “as occupant” in the khasra or khatauni of 1355 Fasli refers to the khasra or khatauni being prepared in accordance with the provisions of the Land Revenue Act, 1961. Khasra is the field book provided for by Section 28 of the Land Revenue Act. Khatauni is an annual register prepared under Section 32 of the Land Revenue Act 1951. It has to be emphasised that the entry under Section 20 (b)(i) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 in order to enable a person to obtain adhivasi rights must be an entry under the provisions of law.

18. This Court has held that entries which are not genuine cannot confirm adhivasi rights. The High Court wrongly held that though the entry was incorrect it could not be said to be fictitious. It is too obvious to be stressed 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.

19. The learned Single Judge of the Allahabad High Court held that the Deputy Director of Consolidation did not have the jurisdiction while dismissing the revision application in the consolidation proceedings to hold that the entry was fictitious. The Deputy Director of Consolidation pointed out that the entry was held to be fictitious by a civil court also. The Settlement Officer was the final Court of fact. The order of the Settlement Officer found that the entries relied on by

the respondents were mala fide, contrary to rules and false. The view of the learned Single Judge confirmed by the Division Bench is antithetic to the basic principles that fraudulent or mala fide actions have no legal sanction.

***20.** The High Court erred in quashing the order of the Deputy Director of Consolidation and the order of the Settlement Officer. The High Court overlooked the evidence. The High Court relied on surreptitious entry as lawful entry. A fabricated entry is obviously a fictitious entry. In the present case, the entry was introduced by the Patwari by devious methods. Such entry is mendacious.*"

50. In the case of **Mohd. Ramzan Khan vs. D.D.C., Allahabad and Others; 2009 SCC OnLine All 1111**, this Court observed as under:-

"Entry of occupant in 1356 Fasli confers a right upon that person under Section 20(b) of the Act. Original petitioner and respondent No. 35 were not recorded in 1356 Fasli. Even in respect of that provision, the Supreme Court has held that an entry in 1356 Fasli may confer right upon the recorded person even if the entry is wrong, however if the entry is fraudulent or made without any basis it will not confer any right vide Wali Mohd. v. Ram Surat, [AIR 1989 SC 2296](#) and "Chandrika Prasad v. Pullo" [AIR 2000 SC 1785](#). Paras No. 4 & 5 of the earlier authority, which were quoted in Para-21 of the later authority also, are quoted below:

"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 Cl. (i) of sub-sec. (b) of S. 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 Ss. 28 and 33 respectively of the U.P. Land Revenue Act, 1901. An analysis of the said section shows that under sub-sec. (b) of S. 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 *Bechan v. Kankar*, (1973) 1 SCR 727 : (AIR 1972 SC 2157). 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 S. 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 S. 20(b) of the said Act. This decision is clarified by a subsequent judgment of this Court in *Vishwa Vijai Bharti v. Fakhrul Hasan*, (1976) Suppl SCR 519 : (AIR 1976 SC 1485) where it has been held as follows (at p. 1488 of AIR):

“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."

Accordingly, I do not find least error in the impugned orders. Original petitioner and respondent No. 35 could not justify the entries of their names in the revenue records of 1358 & 1359 Fasli."

51. In the case of **Gujj Lal and Ors. vs. Dy. Director of Consolidation, Firozabad and Ors.**, 2015 SCC OnLine All 8063, this Court in relation to the entry in the revenue record observed as under:-

"8. I have considered the arguments of the Counsel for the parties and examined the record. Section 57 of U.??? Land Revenue Act, 1901, attaches presumption of correctness of settlement year khatauni. Khatauni of 1356-F and 1359-F are settlement year khatauni. The respondent filed khatauni 1348-F and 1349-F and proved that joint family property has been partitioned between Vovid and descendants of Shyama, who were brothers by decree of Sub-Divisional Officer dated 6.12.1941, passed in partition Suit No. 42/5, which was incorporated in khata 47 of 1348-F. According to partition decree, 2.73 acre land came in share of Indrapal, 2.73 acre land came in share of Ninnu, Sarnam and Mihilal jointly and 5.45 acre land came in share of Vovid. It has also been noted in khatauni 1348-F that Charani and Shripat being daughter's sons of Vovid were his heirs. According to the partition decree, khatauni 1349-F was prepared, in which, the names of Charani and Shripat sons of Rate were recorded in khata 21, consisting eight plots of an area of 5.45, which had come in the share of Vovid in partition suit. Same plots with same area were recorded in khata 11 of 1356-F khatauni, in which along with Charani and Shripat, names of Ninnu, Sarnam and Mihilal sons of Summer were also recorded and this entry continued later on. Thus the respondent has proved that land which was came in exclusive share of Vovid was inherited by him but names of Ninnu, Sarnam and Mihilal were wrongly recorded over it along with their names in 1356-F

khatauni without any basis. Thus presumption of correctness stood rebutted from the evidence of the respondent. Now burden of proof shifted upon the petitioners to prove that their names were correctly recorded.

9. The petitioners took plea that Charani and Shripat were unable to pay rent of the land in dispute to zamindars as such they co-opted Ninnu, Sarnam and Mihilal as co-sharers of $\frac{1}{2}$ share in the land in dispute with the consent of zamindar. Section 33 of U.P. Tenancy Act, 1939, which was applicable at the relevant time provides as follows—

Section 33. Interest of other tenants.—(1) The interest of a tenant holding on special terms in Oudh, of an ex-proprietary tenant, of an occupancy tenant, of a hereditary tenant, and of a non-occupancy tenant is heritable, but is not transferable otherwise than in accordance with the provisions of this Act.

(2) Notwithstanding in forgoing provisions of this section shall render illegal—

(a) a sub-lease of a holding as hereinafter provided.

(b) a sale of the interest of a tenant under the provisions of section 251.

(c) a release or transfer of an interest in favour of a co-tenants:

Provided that no person shall be deemed to be a co-tenant notwithstanding that he may have shared in the cultivation of the holding, unless he was a co-tenant from the commencement of the tenancy, or has become such by succession or has been specifically recognized as such in writing by the land holder.

10. Thus under law, a written consent of zamindar was necessary for co-option. No such written consent of zamindar was produced by the petitioners. Theory of the petitioners that they had been through out paying rent of their half shares has also not been proved by them as the petitioners have filed 4 rent receipts, out of which one of the year 1358-F, one of the year 1359-F and two were of the year 1397-F. Apart from it, there are noting in *khatauni* 1356-F and 1359-F that original *khataunis* were in torn condition, which itself create a doubt regarding its correctness. Thus the findings that the petitioners could not prove that they were co-opted as co-tenant or paying rents of half share or were in possession of the land in dispute, do

not suffer from any illegality. An illegal and unauthorized entry in khatauni cannot become a legal entry only on the ground that it has been perpetuated for a long time due to negligence of revenue authority or right owner as such on its basis no right can accrue to any one.

11. Supreme Court in Vishwa Vijay Bharati v. Fakhrul Hassan, [1976 RD 237 (SC).] held that 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. This judgment has been followed in Wali Mohhd. v. Ram Surat, [1989 RD 403 (SC).] Again in Vikram Singh Junior High School v. District Magistrate (Fin. & Rev.), [2002 (93) RD 278 (SC).] it has been held that the entry in the revenue record must have a legal basis. Further there was no adjudication of dispute as regards continuance of the wrong entry. The appellant could not have claimed any title over the land in dispute merely on the basis of wrong entry which continued in its favour through negligence or failure of the Revenue Officer or the Consolidation Officer to correct the record, in pursuance of the order of the Board of Revenue which had attained finality. In the consolidation proceedings, the Collector is also the District Deputy Director of Consolidation under the U.P. Consolidation of Holdings Act and is authorized to correct any wrong entry continued in the consolidation record in that capacity in the exercise of power under section 48. of the U.P. Con-solidation of Holdings Act.

12. A Special Bench of 5 Hon'ble, Judges in Basdeo v. Board of Revenue, U.P., [1974 RD 188 (DB).] and Supreme Court in Bechan v. Kankar, [1972 RD 219 (SC).] and Ram Harakh v. Hamid Ahmad Khan, [(1998) 7 SCC 484.] held that in order to get right under section 20 of U.P. Act No. 1 of 1951 on basis of entry of "recorded occupant" in 1356-F and 1359 F, entry must have been made according to the provisions of Land Records Manual and genuine. In

the present case, it has been found that the entry of the names of the petitioners was not a genuine entry as such under law no right accrued to them on the basis of unauthorized entry.

13. There is difference between “fraud” and “fabricated entry”. Supreme Court in Reliance Salt Ltd. v. Cosmos Enterprises, [2007 (66) ALR 653 (SC) : 2007 (50) AIC 82.] held that “Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract

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- “(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.”

14. Supreme Court in Bachan v. Kankar, [1972 RD 219 (SC).] held that fabricated entry is 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.

15. Thus case law relied upon by the petitioners, on the proposition of “fraud” has no application in this case. Only this much was required to be examined that entry in favour of the petitioners was genuine or fabricated and unauthorized. It has been found that entry of the names of the petitioners in khata in dispute was unauthorized. There is no illegality in the order of Deputy Director of Consolidation. In view of aforesaid discussions, the writ petition has merit and is dismissed.

16. Petition Dismissed. "

52. On the question/issue, indicated in Para 23 of this judgment, this Court considered the (i) facts of the case, (ii) documents on record particularly questionnaire (Annexure No.3) and Khatauni of 1359 Fasli (1952 A.D.) (Annexure No.4), relied upon by the petitioners, and also Khatauni of 1356 Fasli (1949 A.D.), indicated in Para 28 of this judgment and which is also part of written submission dated 01.04.2024 filed by the petitioners, (iii) provisions indicated above and (iv) pronouncements on the issue of extending the benefit of Section 20(b) of the Act of 1950 including the judgments passed in the case of **Smt. Sonawati (Supra)** and **Ram Avadh (Supra)**, relied upon by learned counsel for the petitioners.

53. Upon due consideration, this Court is of the view that the petitioners are not entitled to benefit of Section 20(b) of the Act of 1950. It is for the following facts and reasons:-

(a) Entries indicated in the documents (Questionnaire and Khatauni of 1359 Fasli), relied upon by the petitioners, are not genuine. The same, to the view of this Court, are bogus, forged, fictitious and fabricated and have been made surreptitiously. It is in view of the following reasons:-

(i) In the 1356 Fasli (1949 A.D.), the land in dispute was recorded as "*Imarati Lakdi Ka Jungle*" (Timber Trees), as indicated in entry (8) (iii)(a)(1) in Para 124-A of U.P. Land Records Manual and in this year the total area was 431.61 acres and in the Khatauni of 1356 Fasli (1949 A.D.) the land in dispute was not recorded in the name of Raja Brijraj Bahadur

Singh, (the basis of claim of predecessor-in-interest of petitioner and the petitioners).

(ii) From the certified photocopy of the Khatauni of 1359 Fasli (1952 A.D.), (annexed as Annexure No. 4 to the writ petition), it is evident that area of Gata/Plot No. 21 i.e. 431.46 acres mentioned in Khatauni of 1356 Fasli (1949 A.D.) was reduced by making correction/cutting to 393.91 acres and this correction/cutting was made without any order of the competent Revenue Official and it bears signature of someone, whose designation has not been disclosed.

(iii) After reducing the original area i.e. 431.46 acres to 393.91 acres different Gata(s)/Plot(s) were carved out as Gata No(s). 21, 21/2, 21/3, 21/4, 21/5, 21/6 & 21/7 in the names of Daal Singh S/o Mom Raj Singh, Gopal Singh S/o Sagar, Buddha S/o Kamma, Surta S/o Buddha, Param Singh S/o Mom Raj Singh and Amru S/o Ram Ram, (the basis of claim of predecessor-in-interest of petitioner and the petitioners), respectively, showing Barley (Jow) crop against Gata No(s). 21/1 to 21/7, respectively, under Ziman 5-A entry, which finds place in Para A-124 of U.P. Land Records Manual, and the same says that *"Occupiers of lands without title when there is no one already recorded in column 5 of the khasra"* and this was also carried out without any order in this regard.

(iv) Entry i.e. 8(iii)(a)(1) in Para 124-A of U.P. Land Records Manual and the note appended to the same itself indicate that the same was under the control of Forest

Department meaning thereby under the control of State Government.

(v) The alleged entry of 1356 Fasli (1949 A.D.) in favour of Raja Brijraj Bahadur Singh, as indicated in questionnaire, is forged one and the fact that questionnaire itself is forged/fabricated and bogus document is evident from the fact that in the year 1999 the age of trees was found to be between 80-100 year and accordingly in the 1356 Fasli (1949 A.D.) or 1359 Fasli (1952 A.D.) the age of the trees must be between 40-60 year and to impeach/controvert the same and also the findings related to existence of trees over the land in issue, which in fact was admitted by Mahesh Chandra Saxena and Nanhey Lal Sharma (Petitioner No. 4) during their examination and the same is evident from the impugned order dated 10.04.2023, nothing has been placed on record.

(vi) The benefit of Section 20(b) of the Act of 1950 would be available if the entry was/is genuine and in this case, the entry of 1359 Fasli (1952 A.D.) itself was/is bogus and fraudulent and as such, no right would be available to the petitioners based upon the sale deed as their basis itself is not a valid document in the eye of law. Reference in this regard can be made to the maxim(s) '*Sublato Fundamento Cadit Opus*', which means '*foundation being removed, the structure falls*', '*Nemo dat quod non habet*' which means '*no one can give what they do not have*'.

54. For the reasons aforesaid, this Court is not inclined to interfere in the impugned order(s) 10.04.2023 and 16.10.2019

passed by respondent No.2-District Magistrate/District Deputy Director of Consolidation, Lakhimpur Kheri and respondent No.3-Consolidation Officer, Antim Abhilekh Second, Lakhimpur Kheri, respectively, on the grounds pressed by the learned counsel for the petitioners including the ground that respondent No.2 has failed to act in terms of order of remand of this Court dated 12.09.2014 as if the order(s) are interfered on this ground, then in that event the bogus/forged entries favourable to the petitioners would revive in the revenue records.

55. Having observed above, this Court finds no force in the present petition. It is accordingly ***dismissed***. Costs made easy.

56. The Court records the valuable assistance given by Ms. Urmish Shankar, Research Associate, attached with me in drafting this judgment and finding out case laws applicable in the present case.

Order Date :- 16.07.2024

Arun/Vinay/-