

Court No. - 7

Case :- WRIT - C No. - 2686 of 2024

Petitioner :- Ram Tirath

Respondent :- State Of U.P. Thru. Prin. Secy. Revenue Deptt., Lucknow
And Others

Counsel for Petitioner :- Rakshit Raj Singh

Counsel for Respondent :- C.S.C.,Mohan Singh

Hon'ble Saurabh Lavania,J.

1. Heard Sri Rakshit Raj Singh, learned counsel for the petitioner, Sri Ajay Kumar Singh Tomar, learned Additional Chief Standing Counsel appearing for the State-respondent Nos. 1 to 3 and Sri Mohan Singh, learned counsel appearing for the respondent No. 4/Gram Sabha concerned.

2. Under challenge is the order dated 15.07.2023 passed by the respondent no.3-/Tehsildar (Nyayik), Mandal- Ayodhya, District- Barabanki, Tehsil- Nawabganj, in the proceedings carried out against the petitioner under Section 67 of the U.P. Revenue Code, 2006 (in short "Code of 2006") registered as Case No. 9045/2016, Computerized Case No. T20160412019045 (Gaon Sabha vs. Ram Tirath).

3. The petitioner has also challenged the order dated 05.02.2024 passed by the respondent no.2-Collector, Ayodhya Mandal, District-Barabanki, in the Appeal No. 3037/2023, Computerized Case No. D202304120003037 (Ram Tirath vs. Gaon Sabha and others) filed under Section 67(5) of the Code of 2006.

4. By the order dated 15.07.2023, the respondent no.3 directed the revenue official concerned to evict the petitioner from Gata No.458/.02960 Hect. (recorded as 'Banjar').

5. Brief facts, which appears from the material available on record and are relevant for the purposes of disposal of the present petition, are as under:-

(i) That the petitioner namely Ram Tirath claims that he belongs to Scheduled Caste community and is an agricultural labour.

(ii) As per Khatauni of fasli year 1424-1429, the petitioner and his wife are Bhumidhar with transferable rights of Gata no.464/0.055 Hect. and Gata no. 551/0.279 Hect. of Khata no.234.

(iii) On being found in possession of a part land situated in Village-Pyarepur Saraiya, Pargan-Pratapganj, Tehsil-Nawabganj, District-Barabanki bearing Gata no.458 measuring 0.2960 Hect. recorded as Grade-5 'Banjar' land in the revenue records, the Lekhpal of the vicinity submitted a report dated 03.07.2016 and based upon the same, the respondent no.3 initiated the proceedings under Section 67 of Code of 2006.

(iv) In the proceedings aforesaid registered as Case No. 9045 of 2016, the petitioner took the defence based upon Section 122-B(4-F) of U.P. Zamindari Abolition and Land Reforms Act, 1950 (in short "the Act of 1950").

(v) The case set up by the petitioner on the basis of Section 122-B(4-F) of the Act of 1950 in the proceedings under Section 67 of Code of 2006 was rejected by the respondent no.3 vide impugned order dated 15.07.2023, the relevant portion of which is extracted hereinunder:-

"मेरे द्वारा पत्रावली पर उपलब्ध साक्ष्यों एवं विद्वान अधिवक्ता के तर्कों को सुना गया एवं अभिलेखीय परीक्षण किया गया जिसमें पाया गया कि प्रश्नगत वाद क्षेत्रीय लेखपाल द्वारा भूमि स्थित ग्राम प्यारेपुर सरैया परगना प्रतापगंज जिला बाराबंकी की गाटा संख्या 458/0.296 हे० जो कि राजस्व अभिलेखों में श्रेणी 5 बजरं खाते की भूमि है, पर अवैध अध्यासन करने के फलस्वरूप उ०प्र०राजस्व संहिता 2006 की धारा 67 के तहत रिपोर्ट विपक्षी रामतीरथ के विरुद्ध प्रस्तुत की गयी। क्षेत्रीय लेखपाल की रिपोर्ट के जवाब में विपक्षी द्वारा मुख्य रूप से इस बात पर बल दिया गया कि विपक्षी अनुजाति जाति का सदस्य है एवं उक्त भूमि उ०प्र०भू० अधिनियम की धारा 132 व राजस्व संहिता की धारा 77 से अच्छादित नहीं है। प्रश्नगत भूमि पर उसका कब्जा लगभग कई वर्षों से चला आ रहा है इसलिए जमींदारी विनाश अधिनियम की धारा- 122 ख(4-च) के अन्तर्गत पात्रता की श्रेणी में है। इस बिन्दु के सम्बन्ध में पत्रावली पर उपलब्ध साक्ष्यों एवं क्षेत्रीय लेखपाल के बयान एवं नामिका

अधिवक्ता द्वारा प्रस्तुत तर्कों के आधार पर न्यायालय इस निष्कर्ष पर पहुंचता है कि प्रश्नगत वाद की कार्यवाही उ०प्र०रा० संहिता 2006 की धारा 67 के अन्तर्गत प्रचलित है। इस कारण विपक्षी द्वारा प्रस्तुत प्रार्थना पत्र प्रश्नगत वाद की कार्यवाही से आच्छादित न होने के कारण प्रार्थना पत्र पोषणनीय न होने के कारण निरस्त होने योग्य है। फिर भी प्राकृतिक न्याय के दृष्टिगत यदि न्यायालय प्रार्थना पत्र विचार करता भी है तो उ०प्र०ज०वि० अधिनियम 1950 की धारा 122 ख(4-च) अथवा राजस्व संहिता 2006 की धारा 67-क के व्यवस्था के तहत राजस्व प्राधिकारी व ग्राम सभा के लिए यह बिन्दु आवश्यक है कि अवैध अधिवासी प्रश्नगत भूमि पर निवासित एवं वास्तव में गरीब व्यक्ति होना चाहिए इसके सम्बन्ध में पत्रावली में संलग्न खतौनी की फसली वर्ष 1424-1429 की खाता संख्या 234 की गाटा संख्या 464/0.055 हे० व गाटा संख्या 551/0.279 हे० से स्पष्ट है कि अतिक्रमणकर्ता स्वयं व उसकी पत्नी संक्रमणीय भूमिधर के रूप में दर्ज अभिलेख है यह विधि मानवीय दृष्टि के तहत केवल असहाय एवं मजबूर निराश्रित व्यक्तियों के उत्थान के नियति से प्रालब्ध किया गया है यदि न्यायालय ऐसे परिस्थितियों में भी लाभ प्रदान करता है तो वह समाज के लिए आदतन सरकारी भूमियों पर अतिक्रमण करने के लिए प्रेरित करने का स्रोत होगा। जहां तक प्रश्नगत वाद में विपक्षी का सरकारी भूमि पर कब्जा होने का प्रश्न है तो विपक्षी द्वारा स्वयं अन्तर्गत धारा 122 ख (4-च) के तहत प्रस्तुत प्रार्थना पत्र प्रस्तुत करके यह स्वीकार कर लिया गया कि ग्राम समाज की भूमि है पर उसका कब्जा व दखल है। इस प्रकार उपरोक्त बिन्दुओं के आलोक में विपक्षी रामतीरथ पुत्र रामनाथ द्वारा ग्राम समाज की भूमि पर अवैध कब्जा करने के फलस्वरूप क्षेत्रीय लेखपाल द्वारा प्रस्तुत रिपोर्ट दिनांक 03.07.2016 की पुष्टि करते हुए विपक्षी के विरुद्ध प्रश्नगत से बेदखली एवं क्षतिपूर्ति का आदेश पारित किया जाना न्यायोचित प्रतीत होता है।

आदेश

अतः ग्राम प्यारेपुर सरैया परगना प्रतापगंज तहसील नवाबगंज जिला बाराबंकी की गाटा संख्या 458/0.296 हे० राजस्व अभिलेखों में श्रेणी 5-3-ड (बंजर) से विपक्षी रामतीरथ पुत्र रामनाथ को बेदखल किया जाता है तथा अनाधिकार अतिक्रमण के लिए विपक्षी रामतीरथ पुत्र रामनाथ निवासी:- ग्राम प्यारेपुर सरैया परगना प्रतापगंज तहसील नवाबगंज जिला बाराबंकी पर 7, 10, 400-00 (सात लाख दस हजार चार सौ रुपये मात्र) क्षतिपूर्ति आरोपित किया जाता है। आदेश की प्रति लेखपाल को निःशुल्क उपलब्ध करायी जाये। लेखपाल को निर्देशित किया जाता है कि प्रतिवादी को वादीय भूमि से

बेदखल करते हुए 15 दिन के अन्दर आर०सी० प्रपत्र 67क व 67ख न्यायालय में प्रस्तुत करें। आर०सी० प्रपत्र 67 क व 67ख प्राप्त होने पर आर०सी० प्रपत्र 67ग जारी हो। वसूली व बेदखली के उपरान्त पत्रावली दाखिल दफ्तर हो।"

(vi) The appellate authority i.e respondent no.2 vide impugned order dated 05.02.2024 passed in Appeal No. 3037 of 2023 filed by the petitioner challenging the order dated 15.07.2023 dismissed the appeal and affirmed the order dated 15.07.2023 passed by respondent no.3. The relevant portion of the order dated 05.02.2024 reads as under:-

"मैंने उभय पक्ष द्वारा प्रस्तुत तर्कों सहित अपील पत्रावली एवं अवर न्यायालय की पत्रावली एवं प्रस्तरवार आख्या का सम्यक अवलोकन एवं परिशीलन किया। अवर न्यायालय की पत्रावली पर उपलब्ध लेखपाल प्रसूचना दिनांक 03.07.2016 के अवलोकन से पाया जाता है कि ग्राम प्यारेपुर सरैया परगना प्रतापगंज तहसील नवाबगंज की गाटा संख्या 458/0.296 हे० जो ग्राम सभा श्रेणी-5 बंजर खाते की भूमि है जिसपर लगभग 10 वर्षों से अपीलार्थी / विपक्षी द्वारा अवैध रूप से खेती की जा रही है, जिसके सर्किल रेट के अनुसार गाँव सभा सम्पत्ति को रू०- 14, 20, 800-00 की क्षति पहुंची। लेखपाल प्रसूचना से सहमत होकर तहसीलदार नवाबगंज द्वारा वाद पंजीकृत कर नोटिस निर्गत की गयी। अपीलार्थी/ विपक्षी की ओर से अवर न्यायालय के समक्ष आपति प्रस्तुत की गयी। अपीलार्थी/ विपक्षी द्वारा अवर न्यायालय के समक्ष नोटिस के विरुद्ध आपति में मुख्य रूप से यह कथन किया गया कि काफी मेहनत करके लगभग 20 वर्ष से उक्त भूमि पर कृषि कार्य करता चला आ रहा है। आपत्तिकर्ता अनुसूचित जाति पासी का सदस्य है और प्रश्नगत नोटिस में इंगित गाटा संख्या 458 का असंक्रमणीय भूमिधर अन्तर्गत धारा 122 ख(4 च) जमींदारी विनाश अधिनियम के अन्तर्गत हो चुका है। जमींदारी विनाश अधिनियम की धारा 122 ख(4 च) का प्रतिस्थापन दिनांक 16.07.1975 से प्रभावी करते हुये गाँव सभा की 117 जमींदारी विनाश अधिनियम के अन्तर्गत आने वाली भूमियों के बाबत प्रख्यापित किया गया है कि 30 जून 1975 के पूर्व अगर जमींदारी विनाश अधिनियम की धारा 177 के अन्तर्गत आने वाली किसी भूमि पर कोई अनुसूचित जाति/ अनुसूचित जनजाति का कोई व्यक्ति काबिज अर्थात् अध्यासित है तो उस भूमि का असंक्रमणीय भूमिधर मान लिया जायेगा, उसे गाँव सभा या कलेक्टर बेदखल नहीं कर सकेगा। कालान्तर में जमींदारी विनाश अधिनियम की धारा 122 ख(4 च) में संशोधन करते हुये

उत्तर प्रदेश अधिनियम संख्या 31 वर्ष 2007 द्वारा यह प्रतिस्थापित किया गया कि संगत तिथि 01.05.2002 को बढ़ाकर 13.05.2007 कर दिया गया है। इस प्रकार अनुसूचित जाति एवं अनुसूचित जनजाति के व्यक्ति जो 13 मई 2007 के पूर्व काबिज है उन्हें अब बेदखल नहीं किया जायेगा। अवर न्यायालय द्वारा अपने पारित आदेश दिनांक 15.07.2023 में पत्रावली पर उपलब्ध साक्ष्यों एवं विद्वान अधिवक्ता के तर्कों को सुनने के उपरान्त अभिलेखीय परीक्षणोंपरान्त पाया गया कि विपक्षी द्वारा गाटा संख्या 458/0.296 हे० जो राजस्व अभिलेखों में बंजर खाते की भूमि है, जिसपर विपक्षी द्वारा अवैध अध्यासन किया गया, जिसके सम्बन्ध में क्षेत्रीय लेखपाल द्वारा रिपोर्ट प्रस्तुत की गयी। अवर न्यायालय द्वारा विपक्षी की आपत्ति में किये गये कथनों के क्रम में यह भी विवेचना की गयी कि उ०प्र० ज०वि० अधिनियम 1950 की धारा 122 ख(4 च) अथवा राजस्व संहिता 2006 की धारा 67-क की व्यवस्था के तहत राजस्व प्राधिकारी द्वारा ग्राम सभा के लिये यह बिन्दु आवश्यक है कि अवैध अधिवासी प्रश्रुत भूमि पर निवासित एवं वास्तव में गरीब व्यक्ति होना चाहिये। इस सम्बन्ध में पत्रावली पर उपलब्ध अभिलेखीय साक्ष्य के रूप में उद्धरण खतौनी फसली वर्ष 1424-1429 की खाता 234 की गाटा संख्या 464/0.55 हे० व गाटा संख्या 551/0.297 हे० अतिक्रमणी (अपीलार्थी) स्वयं व उसकी पत्नी संक्रमणीय भूमिधर के रूप में दर्ज अभिलेख है। इस प्रकार स्पष्ट है कि अवर न्यायालय द्वारा उभय पक्षों को सुनने एवं अभिलेखीय साक्ष्यों के आधार पर विधि सम्मत रूप से आदेश दिनांक 15.07.2023 पारित किया गया है, जिसमें किसी प्रकार के हस्तक्षेप की आवश्यकता नहीं है। अतएवं अपीलार्थी द्वारा प्रस्तुत अपील बलहीन एवं निराधार तथ्यों पर आधारित होने के कारण निरस्त किये जाने योग्य है।

अतएवं उपरोक्त की गयी विवेचना के आलोक में अवर न्यायालय द्वारा पारित आदेश दिनांक 15.07.2023 में किसी प्रकार के हस्तक्षेप की आवश्यकता न पाये जाने के कारण अपीलार्थी राम तीरथ पुत्र राम नाथ निवासी ग्राम प्यारेपुर सरैया परगना प्रतापगंज तहसील नवाबगंज जिला बाराबंकी की अपील दिनांकित 05.08.2023 निरस्त की जाती है। आदेश की प्रमाणित प्रति के साथ अवर न्यायालय की पत्रावली इस निर्देश के साथ प्रेषित कि वह अपने पारित आदेश दिनांक 15.07.2023 का विधि अनुसार क्रियान्वन सुनिश्चित करायें। बाद आवश्यक कार्यवाही अपील पत्रावली संचित राजस्व अभिलेखागार की जाय।"

6. Impeaching the impugned orders dated 05.02.2024 and 15.07.2023, it is stated that in rejecting the plea based upon Section 122-B(4-F) of the Act of 1950 taken by the petitioner, the respondent nos.2 and 3 erred in law and facts both and as such interference and protection of this Court is required.

7. Per contra, learned State counsel stated that the impugned orders are not liable to be interfered by the Court being reasoned and speaking orders as also that under Section 67A of the Code, 2006, the 'house sites' can be settled/protected and the petitioner is in possession of land recorded as 'Banjar' and he and his wife are recorded tenure holder of Gata no.464/0.055 Hect. and Gata no.551/0.297 Hect.

8. Considered the aforesaid and perused the record.

9. Issue before the Court is as to whether the plea of the petitioner, based upon Section 122-B(4-F) of the Act of 1950, has rightly been considered by respondent nos.2 and 3.

10. In order to decide the aforesaid, this Court finds it appropriate to take note of some authorities wherein Section 122-B(4-F) of the Act of 1950 has been considered and interpreted.

11. Relevant paras of the judgment passed in the case of **Satya Veer and another vs State of U.P. and others; 2015 SCC Online All 7504** read as under:-

"12. To examine this question, it would be apt to go through the relevant provisions under the Act:—

Section 122-B reads as under:—

"122-B. Powers of the Land Management Committee and the Collector.—

(1) Where any property vested under the provisions of this Act in a Gaon Sabha or a local authority is damaged or misappropriated or where any Gaon Sabha or local authority is entitled to take or retain possession of any land under the provisions of this Act and such land is occupied otherwise than in accordance with the provisions of this Act, the Land Management Committee or Local Authority, as the case may be, shall inform the Assistant Collector concerned in the manner prescribed.

(2) Where from the information received under sub-section (1) or otherwise, the Assistant Collector is satisfied that any property referred to in sub-

section (1) has been damaged or misappropriated or any person is in occupation of any land, referred to in that sub-section, in contravention of the provisions of this Act, he shall issue notice to the person concerned to show cause why compensation for damage, misappropriation or wrongful occupation as mentioned in such notice be not recovered from him or, as the case may be, why he should not be evicted from such land.

(3) If the person to whom a notice has been issued under subsection (2) fails to show cause within the time specified in the notice or within such extended time not exceeding three months from the date of service of such notice on such person, as the Assistant Collector may allow in this behalf, or if the cause shown is found to be insufficient, the Assistant Collector may direct that such person may be evicted from the land and may for that purpose, use, or cause to be used such force as may be necessary and may direct that the amount of compensation for damage, misappropriation or wrongful occupation be recovered from such person as arrears of land revenue.

(4) If the Assistant Collector is of opinion that the person showing cause is not guilty of causing the damage or misappropriation or wrongful occupation referred to in the notice under sub-section (2) he shall discharge the notice.

(4-A) Any person aggrieved by the order of the Assistant Collector under sub-section (3) or sub-section (4) may, within thirty days from the date of such order prefer, a revision before the Collector on the grounds mentioned in clauses (a) to (e) of section 333.

(4-B) The procedure to be followed in any action taken under this section shall be such as may be prescribed.

(4-C) Notwithstanding anything contained in section 333 or section 333-A, but subject to the provisions of this section—

(i) every order of the Assistant Collector under this section shall, subject to the provisions of subsections (4-A) and (4-D), be final.

(ii) every order of the Collector under this section shall, subject to the provisions of sub-section (4-D), be final.

(4-D) Any person aggrieved by the order of the Assistant Collector or Collector in respect of any property under this section may file a suit in a Court of competent jurisdiction to establish the right claimed by him in such property.

(4-E) No such suit as is referred to in sub-section (4-D) shall lie against an order of the Assistant Collector if a revision is preferred to the Collector under sub-section (4-A).

Explanation.—For the purposes of this section, the expression 'Collector' means the officer appointed as Collector under the provisions of the U.P. Land Revenue Act, 1901 and includes an Additional Collector].

Section 122-B(4-F)- Notwithstanding anything in the foregoing subsection, where any agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe is in occupation of any land vested in a Gaon Sabha under section 117 (not being land mentioned in section 132) having occupied it

from before [May 13, 2007] and the land so occupied together with land, if any, held by him from before the said date as bhumidhar, sirdar or asami, does not exceed 1.26 hectares (3.125 acres), then no action under this section shall be taken by the Land Management Committee or the Collector against such labourer and it shall be deemed that he has been admitted as bhumidhar with non-transferable rights of that land under section 195 and it shall not be necessary for him to institute a suit for declaration of his rights as bhumidhar with nontransferable rights in that land.

Explanation.—The expression 'agricultural labourer' shall have the meaning assigned to it in section 198."

13. Section 123 further reads as under:—

"Section 123. Certain house sites to be settled with existing owner thereof.—

(1) Without prejudice to the provisions of section 9, where any person referred to in sub-section (3) of section 122-C has built a house on any land referred to in sub-section (2) of that section, not being land reserved for any public purpose and such house exists on the (30th day of June, 1985) the site of such house shall be held by the owner of the house on terms and conditions as may be prescribed.

(2) Where any person referred to in sub-section (3) of section 122-C has built a house on any land held by a tenure-holder (not being a Government lessee) and such house exists on the (30th day of June, 1985) the site of such house shall, notwithstanding anything contained in this Act, be deemed to be settled with the owner of such house by the tenure holder on such terms and conditions as may be prescribed.

Explanation.—For the purposes of sub-section (2), a house existing on the (30th day of June, 1985) on any land held by a tenure-holder shall, unless the contrary is proved, be presumed to have been built by the occupant thereof and where the occupants are members of one family by the head of that family.)"

14. These are the two provisions which provides for settlement of land in favour of the scheduled castes or scheduled tribes agricultural labourers who have built their house or have occupied the land prior to the cut-off date i.e. 1.5.2002 (in the instant case).

15. Only rider is that the land in question should not be a land reserved for public purpose or the land mentioned in section 132 of the Act. In so far as according benefit of section 122-B (4-F) is concerned, the petitioners who allege their possession have to fulfil certain conditions.

16. Section 122-B under the scheme of the Act provides for a complete mechanism to save Gaon/Sabha land from encroachment and unauthorised possession.

17. Sub-section (1) provides that information has to be sent by the Land Management Committee to Gaon Sabha or local authority in case of any encroachment over the land of Gaon Sabha or the local authority and the Assistant Collector concerned shall proceed in the manner prescribed therein.

18. Sub-sections (2), (3) and (4) provide for the manner in which a report of encroachment is to be dealt with by the Assistant Collector.

19. Sub-section (4-A) further provides that if any person is aggrieved by the order of Assistant Collector under subsection (3) or sub-section (4) of section 122-B, he may prefer revision before the Collector.

20. Sub-section (4-C) further provides that the order of Assistant Collector or the Collector as the case may be, is final.

21. Sub-section (4-D) further provides that any person, aggrieved by the orders of the Assistant Collector or Collector, may file a suit before the competent Court to establish his rights.

22. These provisions imposed a responsibility upon the Land Management Committee to keep a vigil on the encroachment or unauthorised occupation of the Gaon-Sabha land. In case of any such situation, immediate action is to be taken by making a report to the Assistant Collector concerned who shall issue a notice and take appropriate action and shall pass necessary orders accordingly.

23. However, sub-section (4-F) of section 122-B of the Act carves out an exception which permits the occupation over the Gaon-Sabha land by a certain class of persons namely Scheduled Castes/Scheduled Tribes who is an agricultural landless labourer and has been in possession over the said land before 1st May, 2002. Sub section (4-F) which was substituted by U.P. Act No. 24 of 1986 is an enabling provision to protect the agricultural labourers belonging to Scheduled Castes and Scheduled Tribes from being evicted from the Gaon-Sabha land if he/she fulfils the conditions enumerated therein.

24. Section 195 confers power upon the Land Management Committee to admit any persons as "Bhumidhar with non-transferable rights" to any land which does not fall in any of the clauses mentioned in section 132 with the previous approval of the Assistant Collector incharge of the Sub-Divisions with respect to the lands as follows:—

"(a) the land is vacant land,

(b) the land is vested in the (Gaon Sabha) under section 117, or

(c) the land has come into the possession of [Land Management Committee] under section 194 or under any other provisions of this Act."

25. Section 197 of the Act, however, gives power to the Land Management Committee to admit any person as 'Aasami' to any land falling in any of the clauses mentioned in section 132. Thus, under the Scheme of "U.P. Zamindari, Abolition & Land Reforms Act" but for the aforesaid provisions of sub-section (4-F), the rights of any person as Bhumidhar with transferable or non-transferable rights, as the case may, unless his name is duly recorded in the revenue records has not been recognised except where such person seeks declaration by filing a suit under section 229-B of the Act. It is only by virtue of subsection (4-F) of section 122-B that the agricultural labourer who fulfils the conditions given therein is not required to seek a

declaration by filing a suit and can be admitted as "Bhumidhar with non-transferable rights" under section 195.

26. Thus, from a reading of the provisions of section 122-B in its entirety, it is clear that sub-section (4-F) is not a provision for seeking declaration of the rights of a person who is in occupation of the Gaon-Sabha land for declaring him as "Bhumidhar with nontransferable rights". In fact, it is a right to defend, if such a person is to be evicted or dispossessed from the land of Gaon-Sabha in an appropriate provision under the Act. Thus, the occupant as described in sub-section (4-F), who is sought to be evicted from the Gaon-Sabha land, would have a right to plead and establish that since his possession has continued since before the cut-off date, rights had precipitated in his favour and he is a Bhumidhar of the land with non-transferable rights, if such plea is raised the same would be considered by the authority concerned before evicting that person.

27. The right of defence given under the said provision to an Agricultural labourer belonging to Scheduled Caste/Scheduled Tribe cannot be taken as a right of seeking declaration under the aforesaid provisions. Meaning thereby, section 122-B (4-F) cannot be taken recourse for recording entry in the 'Khatauni'."

12. Relevant para of the judgment passed in Special Appeal no.479 of 2015 (**Sushila and another vs State of U.P. and others**) reads as under:-

"Sub-section (4F) of Section 122B has been construed and interpreted in a judgment of the Hon'ble Supreme Court in Manorey alias Manohar vs. Board of Revenue (U.P.) and Ors.3. The Supreme Court held that sub-section (4F) carves out an exception from the provisions of sub-sections (1), (2) & (3) under which a procedure for eviction of unauthorized occupants of land vested in the Gram Sabha is provided. The exception which is carved out by sub-section (4F) is in favour of agricultural labourers belonging to Scheduled Castes and Schedule Tribes having land below the stipulated ceiling of 3.125 acres. Where the conditions of sub-section (4F) are fulfilled, the legislature has provided that no action to evict such person shall be taken and he shall be deemed to have been admitted as Bhumidhar with non transferable rights over the land.

The Supreme Court has held thus:

"8. First, the endeavour should be to analyze and identify the nature of the right or protection conferred by sub-section (4F) of Section 122-B. Sub-sections (1) to (3) and the ancillary provisions upto sub-section (4E) deal inter alia, with the procedure for eviction of unauthorized occupants of land vested in Gaon Sabha. Sub-section (4F) carves out an exception in favour of an agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe having land below the ceiling of 3.125 acres. Irrespective of the circumstances in which such eligible person occupied the land vested in Gaon Sabha (other than the land mentioned in Section 132), no action to evict him shall be taken and moreover, he shall be deemed to have been admitted as a Bhumidhar with non transferable rights over the land, provided he satisfies the conditions specified in the sub-section. According to

the findings of the Sub-Divisional Officer as well as the appellate authority, the appellant does satisfy the conditions. If so, two legal consequences follow. Such occupant of the land shall not be evicted by taking recourse to sub-section (1) to (3) of Section 122B. It means that the occupant of the land who satisfies the conditions under sub-section (4F) is entitled to safeguard his possession as against the Gaon Sabha. The second and more important right which sub-section (4F) confers on him is that he is endowed with the rights of a Bhumidhar with no-transferable rights. The deeming provision has been specifically enacted as a measure of agrarian reform, with a thrust on socio-economic justice. The statutorily conferred right of Bhumidhar with non-transferable rights finds its echo in clause (b) of Section 131. Any person who acquires the rights of Bhumidhar under or in accordance with the provisions of the Act, is recognized under Section 131 as falling within the class of Bhumidhar. The right acquired or accrued under sub-section (4F) is one such right that falls within the purview of Section 131(b)."

The Supreme Court also held that sub-section (4F) is not merely a shield to protect the possession of a person who fulfills the conditions in sub-section (4F) but it also confers a positive right of being recognized as Bhumidhar on the occupant satisfying the conditions and criteria laid down in the sub-section.

The Supreme Court has held thus:

"Thus, sub-section (4F) of Section 122-B not merely provides a shield to protect the possession as opined by the High Court, but it also confers a positive right of Bhumidhar on the occupant of the land satisfying the criteria laid down in that sub-Section. ...When once the deeming provision unequivocally provides for the admission of the person satisfying the requisite criteria laid down in the provision as Bhumidhar with non-transferable rights under Section 195, full effect must be given to it. Section 195 lays down that the Land Management Committee, with the previous approval of the Assistant Collector in-charge of the Sub Division, shall have the right to admit any person as Bhumidhar with non-transferable rights to any vacant land (other than the land falling under Section 132) vested in the Gaon Sabha. Section 198 prescribes "the order of preference in admitting persons to land under Sections 195 and 197". The last part of sub-section (4F) of Section 122-B confers by a statutory fiction the status of Bhumidhar with non-transferable rights on the eligible occupant of the land as if he has been admitted as such under Section 195. In substance and in effect, the deeming provision declares that the statutorily recognized Bhumidhar should be as good as a person admitted to Bhumidhari rights under Section 195 read with other provisions. In a way, sub-section (4F) supplements Section 195 by specifically granting the same benefit to a person coming within the protective umbrella of that sub-section. The need to approach the Gaon Sabha under Section 195 read with Section 198 is obviated by the deeming provision contained in sub-section (4F). We find no warrant to constrict the scope of deeming provision."

13. Relevant para of the judgment passed in Writ-C no.129 of 2013 (**Brahmanand and others vs State of U.P. and others**) reads as under:-

"9. From the bare reading of the aforesaid provisions it is quite explicit that the intendment of the legislature in incorporating said provision was to automatically conferred the rights in respect of the category of lessees who had the possession as on 30th June, 1985 and, therefore, if the tenure holder was living on said date, he would have automatically become entitled to the said benefit. Merely because necessary application has come to be made at a later point of time and tenure holder died leaving behind heirs, the said claim cannot be denied on the ground that on the date application had been moved the original tenure holder had died and that land later on came within territorial of the municipality or Nagar Nigam. The provision clearly indicates that one who was in possession of the land on the relevant date, the land stood settled with the said person conferring upon him with the status of bhumidhar with non-transferable and mere application would have only resulted in necessary correction in the revenue records. So, even if the application is subsequently moved, it cannot be said that the rights would accrue only on the date of the application and in case if the tenure holder died subsequently his heirs shall be denied benefits. The right to the tenure holder accrued in the year 1985 itself as per the provision and subsequent death of the tenure holder would automatically result in the succession of his heirs and right would automatically get transferred to the successors and it cannot be said that the bhumidhari rights even in the category of non transferable rights are not subject to succession and, therefore, in my considered opinion the Sub-Divisional Magistrate manifestly erred in rejecting the application on the ground that the heirs would not have been permitted to step into the shoes to claim rights under the relevant provision of law.

10. Besides above, once the Additional Commissioner had remitted the matter with clear obsrvation in the order of remand that the claim would not be denied on the ground that subsequently the land had got notified under the Nagar Nigam under the U.P. Nagar Nigam Adhiniyam Act, 1959, it was not open for the Sub-Divisional Magistrate to sit in appeal over the order of the Additional Commssioner and thus, the Court is of definite opinion that the authority has clearly exceeded its jurisdiction and authoritiy in making such observation and, therefore, the order passed by the Sub-Divisional Magistrate on that count also cannot be sustained.

11. So far the findings recorded by the Additional Commissioner in the subsequent revision is concerned, as I have already held hereinabove that rights would not get changed merely because the land has subsequently been notified as within the territorial limits of Nagar Nigam Meerut, if the tenure holder was in possession on the cut of date i.e. 30th June, 1985. In my above observation and the view taken by me, I am supported by the judgment of the Apex Court in the case of Manorey v. Board of Revenue 2003 (5) SCC 521, wherein the Supreme Court while dealing with the said provision and its application, vide paragraph 9 of the judgment has held thus:-

"9. Thus, sub-Section (4F) of Section 122B not merely provides a shield to protect the possession as opined by the High Court, but it also confers a positive right of Bhumidhar on the occupant of the land satisfying the criteria laid down in that sub-Section. Notwithstanding the clear language

in which the deeming provision is couched and the ameliorative purpose of the legislation, the learned single Judge of the High Court had taken the view in *Ramdin Vs. Board of Revenue (supra)* (followed by the same learned Judge in the instant case) that the Bhumidhari rights of the occupant contemplated by sub-Section (4F) can only blossom out when there is a specific allotment order by the Land Management Committee under Section 198. According to the High Court, the deeming provision contained in sub-Section (4F) cannot be overstretched to supersede the other provisions in the Act dealing specifically with the creation of the right of Bhumidhar. In other words, the view of the High Court was that a person covered by the beneficial provision contained in sub-Section (4F) will have to still go through the process of allotment under Section 198 even though he is not liable for eviction. As a corollary to this view, it was held that the occupant was not entitled to seek correction of revenue records, even if his case falls under sub-Section (4F) of Section 122B. We hold that the view of the High Court is clearly unsustainable. It amounts to ignoring the effect of a deeming provision enacted with a definite social purpose. When once the deeming provision unequivocally provides for the admission of the person satisfying the requisite criteria laid down in the provision as Bhumidhar with non-transferable rights under Section 195, full effect must be given to it. Section 195 lays down that the Land Management Committee, with the previous approval of the Assistant Collector in-charge of the Sub Division, shall have the right to admit any person as Bhumidhar with non-transferable rights to any vacant land (other than the land falling under Section 132) vested in the Gaon Sabha. Section 198 prescribes "the order of preference in admitting persons to land under Sections 195 and 197". The last part of sub-Section (4F) of Section 122B confers by a statutory fiction the status of Bhumidhar with non transferable rights on the eligible occupant of the land as if he has been admitted as such under Section 195. In substance and in effect, the deeming provision declares that the statutorily recognized Bhumidhar should be as good as a person admitted to Bhumidhari rights under Section 195 read with other provisions. In a way, sub-Section (4F) supplements Section 195 by specifically granting the same benefit to a person coming within the protective umbrella of that sub-Section. The need to approach the Gaon Sabha under Section 195 read with Section 198 is obviated by the deeming provision contained in sub-Section (4F). We find no warrant to constrict the scope of deeming provision. That being the legal position, there is no bar against an application being made by the eligible person coming within the four corners of sub-Section (4F) to effect necessary changes in the revenue record. When once the claim of the applicant is accepted, it is the bounden duty of the concerned revenue authorities to make necessary entries in revenue records to give effect to the statutory mandate. The obligation to do so arises by necessary implication by reason of the statutory right vested in the person coming within the ambit of sub-Section (4F). The lack of specific provision for making an application under the Act is no ground to dismiss the application as not maintainable. The revenue records should naturally fall in line with the rights statutorily recognized. The Sub-Divisional Officer was therefore within his rights to allow the application and direct the correction of the records. The Board of Revenue and the High Court should not have set aside that order. The fact

that the Land Management Committee of Gaon Sabha had created lease hold rights in favour of the respondents herein is of no consequence. Such lease, in the face of the statutory right of the appellant, is nonest in the eye of law and is liable to be ignored."

14. From the aforesaid, it is apparent that Section 122-B(4-F) of the Act of 1950 is a beneficial and deeming provision enacted with a definite social purpose and this deeming provision unequivocally provides for the admission of the person satisfying the requisite criteria laid down in the provision as Bhumidhar with non-transferable rights under the Act of 1995 and full effect must be given to it and this provision as per the Hon'ble Apex Court is not a mere shield to protect the possession of a person who fulfills the conditions indicated in sub-section (4-F) but also confers positive right of being recognized as Bhumidhar or occupant satisfying the condition /criteria provided under the Act of 1950 and further, this provision provides rights to defend, if such person is to be evicted or dispossessed from the land of Gaon Sabha.

15. In view of the aforesaid, it is now to be considered the effect of rights provided to an occupant of Gaon Sabha land under Section 122-B(4-F) of the Act of 1950, after enforcement of Code of 2006, w.e.f. 11.02.2006 and on this aspect, it would be relevant to consider Section 230 of the Code of 2006, which reads as under:-

"230.Repeal.(1) *The enactments specified in the First Schedule are hereby repealed.*

(2) *Notwithstanding anything contained in sub-section (1), the repeal of such enactments shall not affect-*

(a) *the continuance in force of any such enactment in the State of Uttarakhand;*

(b) *the previous operation of any such enactment or anything duly done or suffered there under; or*

(c) *any other enactment in which such enactment has been applied, incorporated or referred to; or*

(d) *the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title or obligation or liability already acquired, accrued or incurred (including, in particular, the vesting in the State of all estates and the cessation of all rights, title and interest of all the intermediaries therein), or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted or the proof of any past act or thing; or (e) any principle or rule of law or established jurisdiction,*

form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction, exemption, office or appointment:

Provided that anything done or any action taken (including any rules, manuals, assessments, appointments and transfers made, notifications, summonses, notices, warrants, proclamation issued, powers conferred, leases granted, boundary marks fixed, records of rights and other records prepared or maintained, rights acquired or liabilities incurred) under any such enactment shall, insofar as they are not inconsistent with the provisions of this Code, be deemed to have been done or taken under the corresponding provisions of this Code, and shall continue to be in force accordingly, unless and until they are superseded by anything done or action taken under this Code.

16. From a bare reading of above quoted provision, it is crystal clear that the repeal of the Act of 1950 shall not affect any right acquired or accrued.

17. The case set up by the petitioner, in the instant case, is that in terms of Section 122-B(4-F) of the Act of 1950, he had acquired the rights over part of Gata No. 458/0.2960 Hect.

18. Upon conjoint reading of aforesaid, this Court is of the view that plea based upon Section 122-B(4-F) of the Act of 1950 was available to the petitioner in the proceedings instituted under Section 67 of the Code of 2006 and he has rightly took the same.

19. Now the question is that as to whether the plea of the petitioner based upon Section 122-B(4-F) of the Act of 1950 has rightly been considered by the respondent nos.2 & 3 and for coming to the conclusion on this aspect, this Court considered observations made in the impugned orders dated 05.02.2024 and 15.07.2023, quoted above, in the light of settled law on the benefit provided under Section 122-B(4-F) of the Act of 1950 to an occupant of Gaon Sabha land and upon due consideration, this Court is of the opinion that in considering and rejecting the plea of the petitioner based upon Section 122-B(4-F) of the Act of 1950, the respondent nos.2 and 3 erred in law and facts both. It is for the following reasons:

(i) the respondent nos.2 and 3 have not considered the effect of Section 122-B(4-F) of the Act of 1950 and Section 230 of the Code of 2006.

(ii) the respondent nos.2 and 3 have not recorded any finding after considering the period of possession pleaded by the petitioner and cut off date provided under the relevant provisions i.e. Section 122-B(4-F) of the Act of 1950.

(iii) the respondent nos.2 and 3 have not recorded the finding after considering the area i.e. 1.26 Hectares (3.125 acres) indicated under Section 122-B(4-F) of the Act of 1950 and the area of the land of which the petitioner and his wife are Bhumidhar with transferrable rights.

(iv) the respondent nos.2 and 3 have not recorded the findings, as required, on the issue as to whether the petitioner fulfills the criteria to seek benefit of Section 122-B(4-F) of the Act of 1950.

20. For the reasons aforesaid, this Court is of the view that the impugned orders dated 05.02.2024 and 15.07.2023 passed by respondent nos.2 and 3, respectively, are liable to be set-aside.

21. Accordingly, the petition is **allowed**. The impugned orders dated 05.02.2024 and 15.07.2023 passed by respondent nos.2 and 3, respectively, are hereby set-aside. The matter is remanded back to respondent no.3-Tehsildar (Nyayik), Mandal-Ayodhya, District- Barabanki, Tehsil-Nawabganj to decide the matter afresh, most expeditiously, strictly in accordance with law.

Order Date :- 19.3.2024

Harshita