

AFR

Reserved

Neutral Citation No. 2025:AHC:143135

Court No. - 34

Case :- WRIT - C No. - 719 of 2022

Petitioner :- Mohan Lal Srivastava And 4 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- M.N. Singh, Mahesh Narain Singh

Counsel for Respondent :- C.S.C., Sudhir Bharti

with

Case :- WRIT - C No. - 721 of 2022

Petitioner :- Shubham And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- M.N. Singh, Mahesh Narain Singh

Counsel for Respondent :- C.S.C., Sudhir Bharti

with

Case :- WRIT - C No. - 724 of 2022

Petitioner :- Bhakoli

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- M.N. Singh, Mahesh Narain Singh

Counsel for Respondent :- C.S.C., Sudhir Bharti

with

Case :- WRIT - C No. - 727 of 2022

Petitioner :- Chokat

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- M.N. Singh, Mahesh Narain Singh

Counsel for Respondent :- C.S.C., Sudhir Bharti

with

Case :- WRIT - C No. - 730 of 2022

Petitioner :- Singhasan

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- M.N. Singh, Mahesh Narain Singh

Counsel for Respondent :- C.S.C., Sudhir Bharti

with

Case :- WRIT - C No. - 732 of 2022

Petitioner :- Nagendra Lal Shrivastava And 2 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- M.N. Singh, Mahesh Narain Singh

Counsel for Respondent :- C.S.C., Sudhir Bharti

with

Case :- WRIT - C No. - 740 of 2022

Petitioner :- Banarasi And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- M.N. Singh, Mahesh Narain Singh

Counsel for Respondent :- C.S.C., Sudhir Bharti

with

Case :- WRIT - C No. - 802 of 2022

Petitioner :- Bachchan

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- M.N. Singh, Mahesh Narain Singh

Counsel for Respondent :- C.S.C., Sudhir Bharti

Hon'ble Rohit Ranjan Agarwal, J.

1. These bunch of writ petitions arise out of proceedings initiated under Section 67 of U.P. Revenue Code, 2006 (hereinafter referred as the 'Code of 2006') for evicting petitioners from the land of Gaon Sabha. The order passed under Section 67 (1) of the Code of 2006 was subjected to appeal under Section 67 (5) which confirmed the order of eviction leading to filing of the present writ petitions.

2. The issue raised in all the connected matters are one and the same and related to the same village and, as such, all the matter have been tagged together and with the consent of learned counsel for the parties all the writ petitions are being heard together and decided by a common judgment/order.

3. Facts, in brief, of the leading writ petition being Writ-C No. 719 of 2022, are that dispute relates to old Khasra No. 137, which has been renumbered in consolidation proceedings as Khasra No. 1275 situated in Village Bhaluhi Madari Patti, Tappa Mainpur, Pargana Sidhua Jobna, Tehsil Kasaya, District Kushinagar. Petitioners claim the land to be of abadi nature and in possession since the time of their ancestors. After the enforcement of U.P. Act No. 1 of 1952 (U.P.Z.A. & L.R. Act 1950) the

abadi site stood settled with the petitioners. A show cause notice in RC Form 20 under Rule 67 (2) of U.P. Revenue Code Rules, 2016 (hereinafter referred as the 'Rules of 2016') was issued but no objections were filed nor petitioners appeared before the court of Assistant Collector/Tehsildar, consequently, an order was passed for eviction on 3.12.2020 and also imposing the damages amounting to Rs. 3,28,500/- for unauthorized occupation of land in question.

4. Petitioners challenged the said order and filed Appeal No. 1273 of 2021 under Section 67 (5) of the Code of 2006, which was dismissed on 14.12.2021. Hence, present writ petition. Similarly, in other bunch of cases the eviction order was passed against various petitioners which was subjected in appeal, which was dismissed. Dismissal of appeal led to filing of the connected writ petitions.

5. Learned counsel for petitioners submits that the land in question stood settled in favour of petitioners in terms of Section 9 of the Act No. 1 of 1952 as abadi was existing of the ancestors of petitioners. According to him without dealing with the issue of Section 9, the revenue authorities have proceeded to pass the order of eviction confirming the same in appeal. It was further submitted that the land in question is not a public utility land as defined under Section 132 of the Act No. 1 of 1952 as well as Section 67 of the Code of 2006 and, thus, the same can be settled in favour of petitioner under Section 67-A of the Code of 2006.

6. It was also contended that the RC Form 19 & 20 was never served upon the petitioners before the order of eviction was passed and in garb of the fact that extension of Kushinagar Airport has to be done the State authorities are forcibly evicting the petitioners to deprive them of their rights as accrued under Section 9 of the Act No. 1 of 1952. Reliance has been placed upon the decision rendered in **Manorey @ Manohar Vs. Board of Revenue, AIR 2003 SC 4102, Rishipal Singh Vs. State of U.P. and others, 2023 (160) RD 204, Sharda Industries through partner Mayank Vs. The Additional District Collector, District Unnao and**

others, Writ-C No. 9500 of 2022 decided on 14.2.2023, **Pushpa Pathak Vs. State of U.P. and others, Writ-C No. 9433 of 2023** decided on 28.10.2023 **and Writ-C No. 19804 of 2021, Babu Ram Vs. State of U.P. and others**, decided on 13.8.2021.

7. Sri Sudhir Bharti, learned counsel appearing for Gaon Sabha/respondent no. 4, submitted that the notices were served upon the petitioners but they do not file any objection nor they appeared before the revenue authorities. The land in question i.e. Gata No. 1275 (area 0.174 hectare) is recorded under category – 5 (3) as Banjar land liable for agricultural use in the revenue records. According to him, petitioners could not prima facie establish through any document that they are in lawful possession in respect of Gata No. 1275. According to him, the issue stand settled by the decision of the Apex Court rendered in case of **Budhan Singh Vs. Nabi Bux, 1970 ALJ 903 SC**.

8. It is next contended that unless petitioners establish that they were lawfully holding the land they cannot be extended the benefit of Section 9 of the Act No. 1 of 1952. Learned counsel next contended that to get the benefit of Section 67-A of the Code of 2006 petitioners have to establish that they come under the preferential category provided in Section 64 of the Code of 2006 in respect of the land referred in Section 63. Petitioners being members of general category and not living below the poverty line and their ancestors having house at another place in village they are not covered under the preferential category enumerated in Section 64, thus, the land under Section 67-A cannot be settled.

9. He lastly contended that as the land in question lies in close vicinity of the airport area it would be treated as reserved land for the aforesaid public purpose and cannot be settled in favour of petitioners under Section 67-A. Reliance has been placed upon the decision of Division Bench of this Court rendered in case of **Jagat Narain & others Vs. State of U.P. and others, Writ-C No. 54062 of 2013**, decided on 9.2.2015.

10. Sri Manish Goyal, learned Additional Advocate General, appearing on behalf of the State, submitted that claim of petitioners that Khasra No. 1275 has been formed from old Gata No. 137 is false and incorrect. In fact, Gata No. 1275 measuring 0.174 hectare was carved out from old Gata No. 2230/227 in consolidation operation recorded it as Banjar in the year 1990 with publication of notification under Section 52 of U.P. Consolidation of Holding Act 1953 (hereinafter referred as the 'Act of 1953') which can be ascertained from the extract of CH Form 45 appended as annexure No. 5 to the supplementary counter affidavit.

11. According to him, the old Gata No. 137 was renumbered and new Gata Nos. 25, 26, 27 and 28 were carved out in consolidation proceedings and they were recorded as chak, bhumidhari land, chak marg, nali etc. These gata numbers are not at all related to the petitioners which can be ascertained from the extract of CH Form 45. He then contended that benefit of Section 67-A cannot be extended as petitioners do not fall in preferential category.

12. It was also argued that petitioners never participated in consolidation proceedings to get their alleged right establish nor the averments made in the supplementary counter affidavit has been controverted. He lastly contended that Kushinagar International Airport is currently serving as VFR (Virtual Flight Rule) Airport. For extension of airport additional land including the land in dispute has been proposed for extending approximately 190 meter each on either side of the runway central line for facilitating upcoming ILS (Instrument Landing System) – Glide Path. On account of interim order operating the extension of runway to facilitate upcoming ILS (Instrument Landing System) – Glide Path is hampered to meet prescribed safety and operational standards.

13. I have heard respective counsel for the parties and perused the material on record. Before advertng to decide the issue in hand a glance of Section 9 of the Act No. 1 of 1952 is necessary for better appreciation of the case, which is extracted hereasunder;

“9. Private wells, trees in abadi and buildings to be settled with the existing owners or occupiers thereof. - [All wells,] trees in abadi and all buildings situate within the limits of an estate belonging to or held by an intermediary or tenant or other person whether residing in the village or not, shall continue to belong to or be held by such intermediary tenant or person, as the case may be, and the site of the wells or the buildings within the area appurtenant thereto shall be deemed to be settled with him by the State Government on such terms and conditions as may be prescribed.”

14. According to the said provision, all wells, trees in abadi and all buildings situate within the limits of an estate belonging to or held by an intermediary or tenant or other person whether residing in the village or not, shall continue to belong to or be held by such intermediary tenant or person, as the case may be. The issue regarding interpretation of Section 9 came for consideration before the Apex Court in case of **Budhan Singh (Supra)** wherein the Apex Court interpreted Section 9 and held that the word ‘held’ shall be read as ‘lawfully held’. Relevant paragraph nos. 11, 12 and 13 are extracted hereasunder;

“11. It is true that according to the dictionary meaning the word "held" can mean either a lawful holding or even a holding without any semblance of a right such as holding by a trespasser. But the real question is as to what is the legislative intent? Did the legislature intend to settle the concerned building with a person who was lawfully holding or with any person holding lawfully or otherwise? Mr. Misra contended that there is no justification for us to read into the section the word "lawfully" before the word "held". According to him, if the legislature intended that the holding should be a lawful one, it would have said "lawfully held". He wanted us to interpret the section as it stands.

12. It is true that the legislature could have used the word "lawfully held" in place of the word "held" in Section 9 but as mentioned earlier one of the dictionary meanings given to the word "held" is, "lawfully held". In Webster's New Twentieth Century Dictionary (Second Edition), it is stated that in legal parlance the word "held" means to possess by "legal title". In other words the word "held" is technically understood to mean to possess by legal title. Therefore by interpreting the word "held" as "lawfully held", we are not adding any word to the section. We are merely spelling out the meaning of that word. It may further be seen that the section speaks of all buildings within the limits of an Estate, belonging to or held by an intermediary or tenant or other person" The word "belonging" undoubtedly refers to legal title. The words "held by an intermediary" also refer to a possession by legal title. The words "held by tenant" also refer to holding by legal title. In the sequence mentioned above it is proper to construe the word "held" in Section 9 when used in relation to the words "other person" as meaning "lawfully held" by that person. That interpretation flows from the context in which the word "held" has been used. We have earlier mentioned that the said interpretation accords with justice.

13. The expression "held" has been used in the Act in various other sections—see Sections 2(1) (c), 13, 17, 18, 21, 144, 204, 240A, 298, 304, and 314 to connote possession by legal title. Mr. Misra, learned Counsel for the appellants does not deny that the expression "held" in those sections means held lawfully. But according to him that is because of the context in which the word is used. Mr. Misra is right in saying so but he overlooks the context in which that expression is used in Section 9. We have already made reference to that context. He failed to point out to us any section in the Act, leaving aside Section 9 for the time being where the word "held" has been used as meaning mere holding, lawful or otherwise. In [K.K. Handique v. The Member, Board of Agricultural Income Tax, Assam](#)(1) this Court was called upon to consider the meaning of the word "holds" in Sections 12 and 13 of the [Assam Agricultural Income Tax Act](#). Subba Rao, J. (as he then was) speaking for the Court observed that the expression "holds" includes a two-fold idea of the actual possession of a thing and also of being invested with a legal title though some times it is used only to mean actual possession. After reading Sections 12 and 13 together he observed that the word "holds" in those sections means holding by legal title. In [Eramma v. Verrupanna & Ors.](#)(2), this Court considered the meaning of the word (1) A.I.R. 1966 S.C. 1191. (2) [1966] 2, S.C.R. "possessed" in Section 14 (1) of the [Hindu Succession Act](#) which laid down that "any property possessed by a female Hindu whether acquired before or after the commencement of this Act shall be held by her as full owner thereof and not as a limited owner". It held that the property possessed by a female widow, as contemplated in the section, is clearly a property to which she has acquired some kind of title whether before or after the commencement of the Act. It is true that in arriving at that conclusion the Court took into consideration the language of the provision as a whole and also the explanation to the section. The scheme of the Act is to abolish all Estates and vest the concerned property in the State but at the same time certain rights were conferred on persons in possession of lands or buildings. It is reasonable to think that the persons who were within the contemplation of the Act are those who were in possession of lands or buildings on the basis of some legal title. Bearing in mind the purpose with which the legislation was enacted, the scheme of the Act and the language used in Section 9, we are of opinion that the word "held" in Section 9 means "lawfully held". In other words we accept the correctness of the view taken by Mukerji and Dwivedi, JJ. For the reasons already mentioned we are unable to agree with Desai, C.J. that the fact that the appellants had demolished the buildings put up by the respondents and put up some other building in their place had conferred any rights on them under Section 9.”

15. Thus, petitioners, who are claiming the benefit of Section 9, have to demonstrate that they are lawfully holding the land after the enforcement of the Act No. 1 of 1952. No document was placed to substantiate the argument advanced by them in regard to Section 9.

16. Further, the State has come up with specific plea that consolidation proceedings took place in the aforesaid village and publication of

notification under Section 52 of the Act of 1953 was made in the year 1990 and the land in question was recorded as Banjar in CH Form No. 41 and 45. Moreover, the State has demonstrated from the documents appended as annexure Nos. 1 to 3, filed alongwith supplementary counter affidavit that Gata No. 1275 measuring 0.174 hectare was carved out from the old Gata No. 2230/227 in consolidation proceedings and not from Gata No. 137, as claimed by the petitioners.

17. Paragraph no. 7 of the supplementary counter affidavit specifically reflect that Gata Nos. 25, 26, 27 and 28 were carved out in consolidation proceedings from the old Gata No. 137 and were recorded as chak, bhumidhari land, chak marg, nali etc. These gata numbers are not at all related to petitioners, which can be verified from CH Form 41 appended with the said affidavit.

18. There is no specific denial in terms of Order VIII Rule 5 CPC in respect of paragraph nos. 5 to 10 of supplementary counter affidavit that Gata No. 1275 was carved out from the old Gata No. 2230/227 and Gata Nos. 25, 26, 27 and 28 were carved out from Gata No. 137. The case of petitioners falls flat in view of non denial of the fact brought by the State through their supplementary counter affidavit that Gata No. 1275 was never carved out from Gata No. 137, which was the case set-up by the petitioners.

19. Once the petitioners themselves are not sure of the land over which they are claiming the benefit under Section 9 and in consolidation proceedings new Gata Nos. 25, 26, 27 and 28 have been carved out from Gata No. 137 and have been recorded as chak, bhumidhari land, chak marg, nali etc. not belonging to the petitioners. Their claim under Section 9 cannot be entertained as the chain remain uncompleted and no case for settling the abadi site in their favour arise under Section 9 of the Act No. 1 of 1952.

20. The Apex Court in **Budhan Singh (Supra)** had clearly held that to claim benefit under Section 9 the party has to demonstrate that it is lawfully holding the land over which it is claiming, mere assertion that land settled in terms of Section 9 would not suffice but has to be demonstrated from some cogent evidence.

21. Now coming to the second limb of the argument raised by petitioners for extending the benefit under Section 67-A of the Code of 2006. A glance of Sections 63 and 64 is necessary before arriving at conclusion for extending the benefit of Section 67-A is concerned. Relevant Sections 63, 64 and 67-A of the Code of 2006 is extracted hereasunder;

“63. Land which may be allotted for abadi sites.- (1) The Sub-Divisional Officer may of his own motion or on the resolution of the Bhumi Prabandhak Samiti earmark the following classes of land for the provision of abadi sites for allotment to persons specified in section 64:-

(a) all lands entrusted or deemed to be entrusted to a Gram Panchayat under clause (i) of sub-section (2) of section 59;

(b) all lands coming into possession of Gram Panchayat under any other provisions of this Code.

(2) Notwithstanding anything contained in any other provision of this Code or in the U.P. Panchayat Raj Act, 1947, the Bhumi Prabandhak Samiti may, with the previous approval of the Sub-Divisional Officer, allot the following classes of land for the purposes of building houses:-

(a) any vacant land referred to in sub-section (1);

(b) any land earmarked for abadi sites under the Uttar Pradesh Consolidation of Holdings Act, 1953;

(c) any land acquired under the provisions of Land Acquisition Act, 1894 (Act No.1 of 1894) and The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No.30 of 2013).

64. Allotment of abadi sites.- (1) The following order of preference shall be observed in making allotment of land referred to in section 63:-

(a) an agricultural labourer or a village artisan residing in the Gram Sabha and belonging to a scheduled caste or scheduled tribes or other backward classes or a person of general category living below poverty line as determined by the State Government;

(b) any other agricultural labourer or a village artisan residing in the Gram Sabha;

(c) any other person residing in the Gram Sabha and belonging to a scheduled caste or scheduled tribe or other Backward Classes or a person of general category living below poverty line as determined by the State Government:

Provided that preference will be given to widow and physically handicapped person within same category.

Explanation.- For the purposes of this sub-section-

(1) “other backward class” means the backward classes of citizens specified in Schedule-I of the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (U.P. Act No.4 of 1994);

(2) “person of general category living below poverty line” means such persons as may be determined from time to time by the State Government.

(2) In making an allotment under this section, preference shall be given to a person who either holds no house or has insufficient accommodation considering the requirements of his family.

(3) Every land allotted under this section shall be held by the allottee on such terms and conditions as may be prescribed:

Provided that if the allottee is a married man and his wife is alive, she shall be co-allottee of equal share in the land so allotted.

67-A Certain house sites to be settled with existing owners thereof.-

(1) If any person referred to in sub-section (1) of section 64 has built a house on any land referred to in section 63 of this Code, not being land reserved for any public purpose, and such house exists on the November 29, 2012, the site of such house shall be held by the owner of the house on such terms and conditions as may be prescribed.

(2) Where any person referred to in sub-section (1) of section 64, has built a house on any land held by a tenure holder (not being a government lessee) and such house exists on November 29, 2000, the site of such house, notwithstanding anything contained in this Code, 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 purpose of sub-section (2), a house existing on November 29, 2000, 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.”

22. From the reading of Section 63 it is clear that the revenue authorities either on their own motion or on the resolution of the Land Management Committee earmark the land mentioned therein for the provision of abadi sites for allotment to persons specified in section 64, meaning thereby that abadi sites can be allotted only to the persons specified in Section 64. Section 64 lays down the order of preference in making the allotment of the land referred in Section 63. The said

provision provides for preferential allotment of a land to an agricultural labourer or village artisan residing in village and belonging to scheduled caste or scheduled tribe or backward class or a person of general category living below the poverty line. It also provides that preference will be given to a widow and physically handicapped person within the same category.

23. Section 67-A clearly speaks that if any person referred to in Sub-section (1) of Section 64 has built a house on any land referred to in Section 63, not reserved for public purpose and the house exist on November 29, 2012 it may be settled with the person on the terms and conditions as may be prescribed, meaning thereby that benefit under Section 67-A can only be extended taking into consideration Sections 63 and 64 of the Code of 2006.

24. Section 64 is of great relevance as it provides the order of preference for allotment of land for abadi sites referred in Section 63. Petitioners before this Court clearly do not fall within the category enumerated in Section 64 nor they have come up with a case that they are entitled for the benefit under Section 64 to be read with Section 67-A.

25. The entire claim of petitioners hinges basically on two arguments i.e. either the land in question be settled in terms of Section 9 of the Act No. 1 of 1952 or in the alternative they should be extended the benefit of Section 67-A and the land in question be settled in their favour.

26. On both these issues, petitioners have miserably failed to substantiate their claim as consolidation proceedings already stood concluded in the village in the year 1990 and notification under Section 52 of the Act of 1953 was published. Gata No. 137 over which they are claiming possession has been carved out as Gata Nos. 25, 26, 27 and 28 recording it to be chak, bhumidhari land, chak marg and nali and revenue records demonstrate that petitioners have no concern with the said gata numbers. Their claim under Section 9 is belied from the records of the

consolidation proceedings which had remained unchallenged for the last 35 years and no effort was made by petitioners to challenge the entries standing in the revenue records against them.

27. It was only when the eviction proceedings were initiated against them and notices having been served upon them that they had filed an appeal and raised the plea of Section 9. Petitioners' finding that they were standing on a sticky wicket took an alternative plea that the abadi site be settled with them in terms of Section 67-A. It has been clearly demonstrated that they do not fall in the preferential category of Section 64 and, thus, cannot be allotted the land in question.

28. It is clear from the facts of the case and pleading of the parties that the international airport is coming up in the District Kushinagar for which additional land is needed for ILS (Instrument Landing System) – Glide Path for which Gaon Sabha is transferring the land to the authorities for extension of the airport and the runway central line.

29. Considering the facts and circumstances of the case, I find that no interference is required with the orders impugned. Petitioners are liable to be evicted from the land of Gaon Sabha, which has been recorded as Banjar Category 5 (3) land since the consolidation proceedings of the year 1990.

30. All the writ petitions fail and are hereby **dismissed**. Interim order, if any, stands discharged. Revenue authorities to comply the eviction order within a period of three weeks.

Order Date :-21.8.2025
Shekhar

[Rohit Ranjan Agarwal, J.]