

Neutral Citation No:- 2025:AHC:54613

AFR

Court No. 50

WRIT – B No. - 4903 of 1993

Petitioner :-	Sumer Singh
Respondent :-	Board of Revenue and Others
Counsel for Petitioner:-	Mr. Adya Prasad Tewari and Mr. S.K. Tiwari, Advocates
Counsel for Respondent :-	Mr. Indrasen Singh Tomar, Addl. C.S.C., Mr. Deepak Gaur, Advocate

Hon'ble Chandra Kumar Rai,J.

1. Heard Sri Adya Prasad Tewari and Sri S.K. Tiwari, learned counsel for the petitioner, Sri Indrasen Singh Tomar, learned Addl. C.S.C. for the state-respondents and Sri Deepak Gaur, learned counsel for the respondent-Land Management Committee.

2. Brief facts of the case are that petitioner nos.1, 2, 3, 4 and father of respondent no. 5/6 were allotted plot in dispute, situated in village- Khiriya Chhatara, Tehasil & District- Lalitpur, area measuring about 34.95 acres in the year 1959 (1366 *fasli*). During C.L.R.D. Scheme, leases were executed to the occupants of the land by the Sub Divisional Officer. According to the petitioners, after execution of the lease deed, petitioners remained in possession. No complaint or proceeding of any nature were initiated against the petitioners till the year 1978. A *suo moto* proceeding was initiated by the State of U.P. against the petitioners in the year 1979 on the ground that the lease holders already had enough land, as such, lease executed in

favour of the petitioners should be cancelled. Another ground was taken that brother of one of the petitioners, was member of the Land Management Committee, as such, lease cannot be granted in favour of the petitioners coupled with the fact that petitioners did not come in the category of landless agricultural labourer, therefore, the lease should be cancelled. Petitioners appeared before the trial court and filed their objection, stating that the petitioners were granted lease under the CLRD Scheme and after that they are in peaceful possession of the allotted land since 1959 and their lease remained unchallenged for a period of about 20 years, as such, lease of the petitioners cannot be cancelled. The trial court/Collector vide order dated 16.10.1982 cancelled the petitioners' lease. Against the order dated 16.10.1982, petitioners filed revision before the Commissioner which was registered as Revision No.96/1982-83. The Commissioner vide order dated 8.8.1983 sent the reference before the Board of Revenue to allow the revision, set aside the order of the Collector and remand the matter before the Collector to decide the proceeding afresh. The aforementioned reference was registered as Reference Case No.113/1983-84 before the Board of Revenue, U.P. at Allahabad. The Board of Revenue vide order dated 12.11.1992 has not accepted the reference sent by the Commissioner and dismissed the revision. Hence, this writ petition for the following reliefs:-

“(i) To issue with direction or order in the nature of certiorari to call for the record of the case and quash the judgement and order dated 12.11.1992 passed by the respondent no.1 and that of the order dated 16.10.1982 passed by respondent no.2 contained in Annexure Nos. 3 and 1 respectively.

(ii) To issue with direction or order in the nature of mandamus directing the respondents not to dispossess the petitioners or re-allot this land to any other person during the pendency of this writ petition."

3. This Court admitted the writ petition on 18.2.1993 and stayed the operation of the impugned orders. In pursuance of the orders of this Court dated 18.2.1993, counter affidavit has been filed by the Land Management Committee only. On behalf of the petitioners, a supplementary affidavit has been filed, stating that petitioners are still recorded in the revenue records and continuing in possession over the plot in question since 1959.

4. Counsel for the petitioners submitted that respondent nos. 1 & 2 have illegally passed the impugned orders, cancelling the lease executed in favour of the petitioners in the year 1959 as well as dismissing the revision of the petitioners. He further submitted that *suo moto* cancellation proceeding has been initiated after about 20 years from the date of execution of lease in favour of the petitioners, as such, same cannot be entertained. He further submitted that the petitioners are in possession of the plot in question since 1959 and this Court while entertaining the writ petition, has also granted interim order, staying the operation of the impugned orders, as such, the impugned orders should be set aside. He also submitted that the procedure prescribed under The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the "U.P. Z.A. & L.R. Act") and the Rules framed thereunder, are to be followed in proper manner. He also submitted that even the *suo moto* proceeding cannot be

initiated at any time in respect to the lease executed in favour of the person concerned. He placed reliance upon the following judgments of this Court in order to demonstrate that time-barred proceeding cannot be entertained and allowed after the period prescribed under the Act and the Rules framed thereunder:-

“(i) Prabhu Dayal and Another in Civil Misc. Writ No.3367 of 1978, decided on May 11, 1984;

(ii) Suresh Giri and Others vs. Board of Revenue, U.P. Allahabad and Others, 2010 (2) ADJ 514;

(iii) Shanti Devi and Others vs. Board of Revenue and Others in Writ B No.14704 of 2013, decided on 10.2.2025;

(iv) Rishi Pal and Others vs. State of U.P. and Others, 2017 (7) ADJ 391;

(v) Yadram and Others vs. State of U.P. and Others, 2020 (146) RD 780;

(vi) Jitendra Kumar @ Gopal vs. State of U.P. and Others, 2018 (8) ADJ 503;

(vii) Chhidda and Others vs. State of U.P. and Others, 2019 (8) ADJ 122;

(viii) Dev Sharma and Another vs. Board of Revenue and Others, 2011 (9) ADJ 716;

(ix) Jiyachhi vs. State of U.P. and Others, 2014 (124) RD 805.”

He further placed the provisions contained under Section 198 of the U.P. Z.A. & L.R. Act as well as Section 337 of the U.P. Z.A. & L.R. Act in support of their arguments.

5. On the other hand, learned counsel for the respondent-gaon sabha submitted that petitioners were not entitled for the lease as petitioners have sufficient land in their name at the relevant point of time, as such, they cannot be treated as landless agricultural labourer. He further submitted that father of the lease holders were *Zamindar*, as such, they cannot be allotted lease of the plot in question. He submitted that the Board of Revenue has further held that the petitioners can file a suit for declaration for their right and title as the petitioners are also claiming that the land was allotted to them under CLRD Scheme. He submitted that no interference is required in the matter and the writ petition is liable to be dismissed.

6. On the other hand, Mr. Indrasen Singh Tomar, learned Additional Chief Standing Counsel for the State respondents submitted that petitioners were not entitled for the agriculture lease of the plot in question as they have already had sufficient land at the relevant point of time. He further submitted that petitioners were not landless agriculture labourer, as such, the agriculture lease cannot be executed in their favour. He submitted that finding has been recorded by the Divisional District Magistrate that petitioners' father was zamindar and had sufficient land in his name, as such, the allotment of 34.95 acre of land in the name of five petitioners was wholly illegal. He further placed reliance upon the 8th amendment made in the year 1975 in Section 198 of U.P.Z.A. and L.R. Act in order to demonstrate that cancellation proceeding initiated in the year 1979/1980 was within limitation. He further submitted that in the instant matter, the suo motto proceeding was initiated according to the provisions of the U.P. Z.A. & L.R. Act in view of the Full

Bench Judgement of Board of Revenue reported in **1994 RD 540 Virendra Singh Vs. State of U.P and Others**. He further submitted that land was not vacant on the date of allotment, as such, the allotment made in favour of the petitioners was wholly illegal. He further submitted that the Schedule 3 prepared under Rule 338 of the U.P.Z.A. and L.R. Rules provides limitation for cancellation of lease on the basis of *suo motu* proceeding within period of three years from the date when the Collector knew about the allotment of land. He further submitted that limit for grant of agriculture lease was 3.125 acre, as such, the allotment made for about 34.95 acre = 17.47 acres for Bundelkhand region cannot be made to the five petitioners who were residing together along with his father. He further submitted that one of the family member of the petitioners was member of the Land Management Committee, as such, the allotment cannot be made in favour of petitioners in respect to the land recorded as banjar in the revenue records. He submitted that Additional District Magistrate has rightly cancelled the agriculture lease executed in the favour of petitioners. He further submitted that Commissioner has illegally made the reference for allowing the revision to Board of Revenue but Board of Revenue has rightly dismissed the petitioners' revision and rejected the reference with finding that petitioners can avail proper remedy for declaration of their right on the basis of proceeding taken place under C.L.R.D. Scheme. He further submitted that there is no pleading in the writ petition to the effect that petitioners' family member was not member of the Land Management Committee at the relevant point of time, as such, the argument advanced by counsel for

the petitioners cannot be accepted. He submitted that in view of the finding of fact recorded by Board of Revenue, no interference is required in the matter and writ petition is liable to be dismissed.

7. I have considered the arguments advanced by learned counsel for the parties and perused the records.

8. There is no dispute about the fact that proceeding for cancellation of petitioners' lease under Section 198 (4) of the U.P.Z.A. and L.R. Act was initiated in the year 1979-80 and Additional District Magistrate vide order dated 16.10.1982 cancelled the petitioner's lease. There is also no dispute about the fact that in revision, Commissioner Jhansi Division Jhansi sent the reference before Board of Revenue to allow the revision, setting aside the order of Additional District Magistrate. There is also no dispute about the fact that Board of Revenue has dismissed the revision and rejected the reference sent by the Commissioner.

9. In order to appreciate the controversy involved in the matter, the perusal of Section 198 of U.P.Z.A. and L.R. Act at the relevant point of time, will be relevant which is as under:-

S. 198. Order of preference in admitting persons to land under sections 195 and 197- (1) In admitting any person as sirdar or asami under section 195 or 197, the [Land Management Committee] shall subject to the rules framed or order made by the court under section 178 observe the following order of preference-

(I.a) a recognised educational institution for a purpose connected with instruction in agriculture, horticulture or animal husbandry;

(a) a landless agricultural labourer or an asami, residing in the circle, who does not hold any land whether as bhumidhar, sirdar, or adhivasi,

(b) a bhumidhar, sirdar or adhivasi who is holding land less than $6\frac{1}{4}$ acres in area in the circle,

(c) a co-operative farm established under this Act holding land within the jurisdiction of the [Land Management Committee] to enable it to possess a suitable area of land, and

(d) any other person:

Provided that the land allotted to a co-operative farm under clause (c) shall, if the registration of such farm is cancelled within two years of the allotment, revert upon such cancellation to the Gaon Samaj, and any person holding or retaining possession of such land shall be deemed to be a person occupying it without title liable to ejectment under clause (b) of section 209:

Provided further that in the cases to which clause (b) applies only so much land shall be allotted to such tenure-holder as shall be sufficient to bring the total area held by him to be six and a quarter acres.

Provided also that no person mentioned in clause (a) shall be admitted to less than $3\frac{1}{8}$ acres of land, if available, but in no case to more than $6\frac{1}{4}$ acres.

Explanation.- A person shall be deemed to be a landless agricultural labourer if he holds land not exceeding such maximum as may be prescribed in that behalf by the State Government either generally or for any particular area].

[2) The [Assistant Collector Incharge of the sub-division] may on his own motion and shall on the application of any person aggrieved by an order of the Land Management Committee passed under sub-section (1) enquire in the manner prescribed into an allotment made under sub-section (1) and if he is

satisfied that the [Land Management Committee] has acted with substantial irregularity or otherwise than in accordance with the provisions of this Act, he may pass thereon such order as he thinks fit]

[(3) Where an Assistant Collector Incharge of the sub-division cancels an allotment, the right title and interest of the provisions of sub-section (4), cease in the land allotted thereunder which shall revert to the Goan Samaj and any person holding or retaining possession of such land shall be deemed to be a person who has encroached upon such land and shall be liable to ejectment in the manner prescribed.

(4) Any person aggrieved by the order of cancellation passed under sub-section (2) may institute a suit to establish the right claimed by him but subject to the results of such suit the order of cancellation shall be final.]

10. The perusal of Section 337 of the U.P.Z.A. and L.R. Act at the relevant point of time, will also be relevant which is as under:-

[S. 337. Computation of the area fixed in certain districts – For the purposes of computing the area fixed under any of the provisions of this Act, 2 acres shall count as 1 acre in the following areas:-

(a) Bundelkhand;

[(aa) the Tarai and Kashipur sub-divisions of Nainital District.]

(b) Trans Jamuna portions of the Allahabad, Etawah, Agra and Mathura districts;

(c) the portion of the Mirzapur district south of Kaimur Range;

- (d) Tappa Upraudh and Tappa Chaurasi (Balai Pahar) of tahsil Sadar in district Mirzapur;
- (e) portion of tahsil Robertsganj, district Mirzapur which lies north of Kaimur Range; and
- (f) pargana Saktेशgarh and the villages mentioned in lists 'A' and 'B' of Schedule VI in hilly patties of parganas Ahraura and Bhagwat of tahsil Chunar of district Mirzapur];

11. Perusal of Appendix-III prepared under Rule 338 of the U.P. Z.A. & L.R. Rules

APPENDIX III

(See rule 338)

Section of the Act	Description of suit application and other proceeding	Period of limitation	Time from which period begins to run	Proper court fees
198(2)	(1) Application for setting aside the order of [Land management Committee] about allotment of land.	Six months	From the date of the order of the [Land Management Committee]	One Rupee.
	(2) Suo moto action by sub-divisional officer for setting aside an order of the [Land Management Committee] about allotment of land.	Three years	When the S.D.O. First knew of the irregular allotment of land.	Nil.

12. The perusal of Section 337 of the U.P.Z.A. and L.R. Act of the relevant point of time demonstrate that the allotted area measuring 34.95 acre will come to about 17.45 acres. The petitioners are five in numbers and petitioners are claiming that they are residing separately from their father, as such, 17.45 acres area will be divided in five parts, accordingly, each petitioner was allotted 3.49 acre area while the maximum limit

for allotment as provided under Section 198 of the U.P. Z.A. & L.R. Act is 6 ¼ acre, as such, the allotment was made to the petitioner under permissible limit.

13. This Court in the case of *Prabhu Dayal (Supra)* has held that holding in the name of father will not be treated to be holding of the son in view of the provisions contained under Explanation A of Section 198 of the U.P.Z.A. and L.R. Act. The relevant portion of the judgement rendered by this Court in *Prabhu Dayal (Supra)* is as under:-

"Explanation I to Section 198 of the U.P.Z.A. and L.R. Act in the year 1970 reads as below:-

"For the purposes of this Sub-section (i) 'landless' means a person or persons who or whose spouse or minor children hold no land as bhumidhar, sirdar or asami; and except in clause (c) also held no land, as such, within two years immediately preceding the date of allotment; and

(ii) "agricultural labourer" means a person whose main source of livelihood or agricultural labourer or assistance in participation with any person in the actual performance of agricultural operations on any land in consideration of a right to share in the produce grown on such land."

Since the revisional Court in its order dated August 17, 1977 has upheld the cancellation of lease in favour of the petitioner only on the ground that the father of the petitioners had sufficient land. I think that the revisional Court has failed to examine the Explanation I to Section 198 of U.P.Z.A. and L.R. Act. The bare perusal of Explanation (I) would indicate that even if the father had sufficient land, the petitioners could be termed as landless and this aspect of the matter has escaped the notice of the revisional Court. The only limitation prescribed for a person being 'landless' is that he or she or their spouse and their minor children should not hold land as bhumidhar, sirdar or asami. Father of a person has not been included in the definition, hence the revisional Court has patently erred in holding the judgement of the first Appellate Court without addressing itself to the Explanation. As revisional Court has based its judgement

only on the ground that the petitioners' father had sufficient land, I have no option but to quash the impugned judgement and ask the revisional Court to re-examine the claim of the petitioners in the light of the relevant law.

Had the revisional Court confirmed the judgement of the first Appellate Court also on the ground that the mandatory R. 173 and 174 of the U.P.Z.A. and L.R. Act were not complied with, the result might have been different, but the revisional Court has confined its judgement only on one ground to the effect that petitioner's father had sufficient land, I think that the ends of justice demand that the revisional Court should be asked to decide the claim of the petitioners strictly in accordance with law. "

14. Hon'ble Apex Court in the case reported in 2024 (164) 206, **Shyamo Devi and Others vs. State of U.P. and Others** has held that exercising *suo motu* power after several year and not within reasonable period, even in the proceeding where no limitation is provided for cancellation, cannot be permitted. Paragraph Nos.15 & 18 of the judgment rendered in **Shyamo Devi** (supra) will be relevant for perusal which is as under:-

"15. In Ibrahimpatnam's case (supra) wherein sub-section (4) of Section 50-B was pressed into service discloses that the expression 'the collector may, suo moto at any time; is occurring while such expression is conspicuously absent in sub-section (6) of Section 122-(C) of UPZALR Act. In the aforesaid case, it came to be held by the Apex Court that suo moto power should be exercised within a reasonable period even in case of fraud and within a reasonable time from the date of discovery of fraud and it depends on facts and circumstances of each case. It came to be further held:

“12. The learned Single Judge has referred to and relied on various decisions including the decisions of this Court as to how the use of the words “at any time” in sub-section (4) of Section 50-B of the Act should be understood. In the impugned order the Division Bench of the High Court approves and affirms the decision of the learned Single Judge. Where a statute provides any suo motu power of revision without prescribing any period of limitation, the power must be exercised within a reasonable time and what is “reasonable time” has to be determined on the facts of each case.

13. In the light of what is stated above, we are of the view that the Division Bench of the High Court was right in affirming the view of the learned Single Judge of the High Court that the suo motu power under subsection (4) of Section 50-B of the Act is to be exercised within a reasonable time.

18. Yet another factor which has swayed in our mind to quash the impugned order is the fact pursuant to the allotment made on 27.06.1994 the allottees who are poor rustic villagers have constructed there houses and the allotment was made based on the approval granted by the then sub-district magistrate and they have been residing in the residential building so constructed by them for the last several year and to unsettle the same would result in heaping injustice

to those poor hapless persons and particularly when the subject land has been utilized for allotment to the poor and house-less persons.”

15. The perusal of the judgement rendered by this Court in **Prabhu Dayal** (supra) as well as judgment rendered by Hon’ble Apex Court in **Shyamo Devi** (supra), the impugned judgment passed by Board of Revenue, cannot be sustained in the eye of law.

16. In the instant matter, the petitioners are claiming on the basis of allotment for agriculture purpose made in the year 1959 and the cancellation proceeding has been initiated in the year 1979-80, as such, the cancellation proceeding initiated in the instant matter is abuse of process of law.

17. This Court in the case of **Jitendra Kumar @ Gopal (Supra)** has held that even in the suo motu proceeding, the Collector cannot cancel the lease in respect to the plot which was allotted to the tenure holder and due to the operation of law, he became bhumidhar with transferable rights. The paragraph Nos. 7 and 8 of the judgement rendered by this Court in **Jitendra Kumar @ Gopal (Supra)** will be relevant which are as under:-

"(7) Having heard the learned counsel for the parties, I am of the view that the impugned orders cannot be sustained. First of all, the notice was barred by limitation. Secondly, the petitioner by an order of the State had been declared a bhumidhar with transferable rights and the cancellation of the patta was of no consequence and thirdly the ground taken for the cancellation of the patta was also not in existence. If the period of limitation as is prescribed under the Act of 1950 expires then no notice can be issued even if there are irregularities

in the patta. Further even if a suo motu notice is to be issued by the Collector then also the question of limitation would arise and notices have to be issued well within the time prescribed by the 1950 Act.

(8). What is more, once when a tenure holder who was earlier granted a patta becomes a bhumidhar with transferable rights, then howsoever much the patta which was granted earlier is cancelled it would not affect his right as a bhumidhar and he shall continue to remain a bhumidhar over the land in question."

18. The argument advanced by Mr. Indrasen Singh Tomar, learned Addl. Chief Standing Counsel that land in dispute was not vacant on the date of execution of lease deed and cancellation proceeding initiated in respect to petitioner's lease was within limitation according to 8th amendment made in the year 1975 in Section 198 of the U.P. Z.A. & L.R. Act, cannot be accepted considering the fact that lease was executed or arrangement was made under the C.L.R.D. scheme in the year 1959 in favour of petitioners, as such, the cancellation proceeding initiated in the year 1979-80 in respect to petitioners' lease cannot be said to be within reasonable period.

19. Considering the entire facts and circumstances as well as the judgement rendered by this Court in *Prabhu Dayal (Supra)* where it has been held that holding of the father will not be included in the holding of their sons as well as the situation of the plot in question in the Bundelkhand area, the impugned order dated 12.11.1992 passed by respondent no.1/Board of Revenue and order dated 16.10.1982 passed by respondent no.2/Additional District Magistrate cannot be sustained in the eye of law and the same are hereby set aside.

20. Writ petition stands **allowed** and the authorities are directed to record the name of petitioners over the plot in question forthwith.

21. No order as to costs.

Order Date :- 9.4.2025

C.Prakash/Vandana Y.

(Chandra Kumar Rai, J.)