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AFR

Reserved on:-7.3.2025

Delivered on:-9.4.2025

Court No. - 50

Case :- WRIT - B No. - 26270 of 1997

Petitioner :- Raj Kumar And Others

Respondent :- Board Of Revenue And Others

Counsel for Petitioner :- Anil Kumar Mishra,Nagendra Kumar
Srivastava,Neeraj Tripathi,Pradeep Kumar Rai,Prajyot Rai,Pratima
Srivastava,Rajendra Kuamr,Ramendra Asthana,Sandeep Kumar
Srivastava,Shravan Kumar Mishra,Udai Chandani

Counsel for Respondent :- Aa Khan,Abhinava Krishna
Srivastava,Pradeep Kumar

Hon'ble Chandra Kumar Rai,J.

1. Heard Mr. Ramendra Asthana, Mr. Pradeep Kumar Rai, Mr. Prajyot Rai, learned counsels for the petitioners, Mr. Anshul Nigam, learned Standing Counsel for the State respondents and Mr. M.C. Chaturvedi, learned Senior Counsel assisted by Mr. Abhinava Krishna Srivastava, learned counsel for respondent no.3/ Kanpur Development Authority.

2. Brief facts of the case are that respondent no.3/ Kanpur Development Authority filed a suit under Section 229-B/ 209 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 hereinafter referred to as U.P.Z.A. and L.R. Act in respect to plot Nos. 196, 197, 199 total area 15 bigha 19 biswa situated in Village Chakeri Tehsil and District Kanpur Nagar for declaration that entries of defendant nos. 1 to 9 over the plot in question be expunged and if defendants are found in possession over the same, they may be ejected from the plot in question. The aforementioned suit was registered as suit No. 52/85/46/87 and State of U.P. was impleaded as defendant no.10. Defendants have put in appearance in the aforementioned suit and

filed their written statement. Nine issues were framed before the Trial Court in the aforementioned suit and parties have adduced oral and documentary evidences in support of their cases. Trial Court while deciding the issue Nos. 1 to 4 and 6 has recording finding of fact that defendants are in possession over the plot in question since before the date of vesting accordingly they became adivasi and later on bhumidhar, as such, the entry in respect to the plot in question in the name of defendants cannot be expunged. The Trial Court ultimately dismissed the aforementioned suit vide judgement and decree dated 5.12.1987. Against the judgement and decree of Trial Court dated 5.12.1987, appeal under Section 331 of the U.P.Z.A. and L.R. Act was filed on behalf of respondent no.3/ Kanpur Development Authority before the Commissioner which was registered as appeal No. 8/1987. The aforementioned appeal was heard and dismissed by Additional Commissioner vide judgement and decree dated 1.8.1988. Against the judgement and decree of Additional Commissioner dated 1.8.1988, respondent no.3/ Kanpur Development Authority filed a second appeal before Board of Revenue which was registered as second appeal No. 13 of 1988-89. The Board of Revenue vide judgement dated 23.4.1997 allowed the second appeal setting aside the judgement of Trial Court as well as the First Appellate Court and decreed the plaintiff suit. Hence this writ petition filed for the following relief:-

"Issue a writ, order or direction in the nature of certiorari to quash the order dated 23.4.1997 of opposite party No.1 and restore that of the Courts below."

3. This Court entertained the matter on 12.8.1997 and stayed the operation of the order dated 24.3.1997 passed by Board of Revenue.

4. In pursuance of the order dated 12.8.1997 passed by this Court, the parties have exchanged their pleadings.

5. Mr. Ramendra Asthana, Mr. Pradeep Kumar Rai and Mr. Prajyot Rai, learned counsels for the petitioners submitted that lease deed was executed by Zamindar on 30.6.1949 in favour of Dwarika

Prasad, wife of Dwarika Prasad, Vishwa Nath in respect to disputed plot along with certain other plots. They further submitted that in a suit under Section 59 of the U.P. Tenancy Act a decree was passed on 22.11.1952 in favour of defendants in respect to the plot in question. They further submitted that by operation of law, defendants acquired right of adivasi, sirdars and bhumidhar after issuance of bhoomidhar sanad in their favour. They further submitted that in the suit under Section 229-B/209 of U.P.Z.A. and L.R. Act, Kanpur Development Authority was the sole plaintiff and State of U.P. was arrayed as defendant no. 10. They submitted that Trial Court vide judgement/decree dated 5.12.1987 dismissed the plaintiff suit holding that defendants are in possession of the plot in question since before the date of vesting and the decree of Trial Court was challenged by Kanpur Development Authority only and there was no challenge by the State Government before any Court of law. They submitted that plot Nos. 196,197,199 were recorded as usar and banjar in the revenue record. They submitted that bhumidhari- sanad was issued in favour of defendants accordingly the right which has been created in favour of all the defendants cannot be annulled on the basis of suit under Section 229-B/ 209 of the U.P.Z.A. and L.R. Act filed by Kanpur Development Authority. They submitted that appeal filed by Kanpur Development Authority was dismissed by Additional Commissioner affirming the judgement and decree of the Trial Court. They submitted that second appeal was filed before the Board of Revenue again by Kanpur Development Authority only. They submitted that in view of the provisions contained under Section 4 of the Urban Planning and Development Act, 1973, the suit under Section 229-B/ 209 of the U.P.Z.A. and L.R. Act at the instance of Kanpur Development Authority cannot be entertained. They further submitted that in view of the provisions contained under Section 53 of U.P. Revenue Code, 2006 corresponding to Section 57 of U.P. Land Revenue Act, 1901, there will be presumption of correctness of the entries in revenue record as there was no challenge by the Kanpur Development

Authority or the State regarding the longstanding entry of the plot in question. They submitted that aforementioned suit under Section 229-B/ 209 of the U.P.Z.A. and L.R. Act was filed for the first time in the year 1983 which cannot be entertained in view of the ratio of law laid devidence in accordance with law. own by Hon'ble Apex Court in the case reported in **1996 (7) SCC 767 Mohd. Noorul Hoda Vs. Bibi Raifunnisa and Others**. They further submitted that in view of the provisions contained under Section 20 of the U.P.Z.A. and L.R. Act, the right and title accrued in favour of defendants cannot be negated in any manner. They submitted that judgement and decree passed by Board of Revenue while allowing the second appeal as well as decreeing the plaintiff suit cannot be sustained in the eye of law in view of the ratio of law laid down by this Court in the case reported in **2004 (1997) RD 119 Ved Prakash Vs. Board of Revenue, U.P. Lucknow**. They submitted that judgement of reversal cannot be passed by Appellate Court unless the finding of fact recorded by Trial Court is reversed in proper manner in view of the ratio of law laid down in the case reported in **2024 (3) ARC 641 Ram Chandran and Others Vs. State of U.P. and Others**. They submitted that in any case, the Board of Revenue cannot decree the plaintiff suit in exercise of second appellate jurisdiction rather they should follow the procedure prescribed under Order 41 Rule 23, 23-A, 24, 25, 27 of Code of Civil Procedure. They submitted that due to operation of law, the defendants have been recorded as bhumidhar of the plot in question, as such, the entry of the plot in question cannot be expunged after such a long period on the basis of suit filed under Section 229-B/ 209 of U.P.Z.A. and L.R. Act in view of the ratio of law laid down by this Court in the case reported in **2018 ACJ 1181 Jitendra Kumar Vs. State of U.P. and Others**. They further submitted that in view of the continuous and uninterrupted possession of the defendants over the plot in question, the suit under Section 229-B/ 209 of the U.P.Z.A. and L.R. Act filed by Kanpur Development Authority cannot be decreed in view of the ratio of law laid down by

Hon'ble Apex Court in the case reported in ***AIR 1970 (SC) 1778 State of West Bengal Vs. Dalhousie Institute Society*** .They submitted that in view of the ratio of law laid down by Hon'ble Apex Court in the case reported in ***2019 (5) ADJ 302 Rakesh and Others Vs. Board of Revenue and others***, the right and title created in favour of defendants cannot be taken away on the basis of suit filed by Kanpur Development Authority under Section 229-B/ 209 of U.P.Z.A. and L.R. Act. They further submitted that this Court in the case reported in ***2022 (7) ADJ 16 Bhagwati Deen Vs. Sheetaladin and Others*** has considered the controversy relating to accrual of sirdari/ adivasi/ bhoomidhari right on the basis of entry of 1359 fasli which will be applicable in the instant matter. They submitted that judgement and decree passed by Board of Revenue should be set aside and the plaintiff suit should be dismissed accordingly.

6. On the other hand, Mr. M.C. Chaturvedi, learned Senior Counsel assisted by Mr. Abhinava Krishna Srivastava, learned counsel for respondent no.3/ Kanpur Development Authority submitted that plot in question was vacant land before the date of vesting and after abolition of zamindari, the plot in question was initially vested in State and later on in favour of Gram Sabha. He further submitted that vide notification dated 6.9.1978, the plot in question came under Nagar Maha Palika and later on the same has been vested in Kanpur Development Authority. He further submitted that plot in question was remained recorded up to 1362 fasli in the name of Gram Sabha but after 1962 fasli, the name of defendants were recorded in fraudulent manner in collusion of revenue officials. He submitted that no sirdari or bhumidhari can be accrued in favour of defendants in view of the provisions contained under Section 20 (b) of the U.P.Z.A. and L.R. Act. He further submitted that in view of the provisions contained under Section 24 of U.P.Z.A. and L.R. Act, the case of lease set up by the defendants cannot be entertained and allowed by any Court of law. He further submitted that the judgement passed under Section 59 of U.P. Tenancy Act between two private parties will not be binding

upon the respondent no.3/ Kanpur Development Authority. He further submitted that in view of the provisions contained under Section 56 of the U.P. Tenancy Act, there is no illegality in the impugned judgement passed by Board of Revenue decreeing the plaintiff suit under Section 229-B/209 of U.P.Z.A. and L.R. Act. He submitted that there is no requirement for framing substantial question of law by the Board of Revenue while exercising the second appellate jurisdiction under Section 331 (4) of the U.P.Z.A. and L.R. Act as held by Hon'ble Apex Court in the case of ***State of Uttarakhand (Prev. U.P.) Vs. Mohan Singh 2012 (13) SCC 281***. He further submitted that Board of Revenue has rightly exercised the second appellate jurisdiction in view of the provisions contained under Code of Civil Procedure. He further submitted that second Appellate Court can decide the matter finally rather to remand the matter before the Trial Court. He further submitted that no interference is required against the impugned order passed by Board of Revenue and writ petition is liable to be dismissed. He further placed reliance upon the following judgements of Hon'ble Apex Court as well of this Court in support of his argument:-

- "1. 2018 0 Supreme(All) 2484 Amrit Lal & Ors vs. State of U.P. Thru Collector, Lucknow & Ors***
- 2. 2013 0 AIR (SC) 38 State of Uttarakhand (Previously State of Uttar Pradesh) vs. Mohan Singh & Ors***
- 3. 2005 0 AIR(SC) 3110 the State of Andhra Pradesh & Anr vs. T. Suryachandra Rao***
- 4. 2010(2) ADJ 514 Suresh Giri and Others vs. Board of Revenue, U.P. Allahabad and Others***
- 5. 2003 8 SCC 319 Ram Chandra Singh vs. Savitri Devi & Ors***
- 6. 2012 0 AIR(SC) 3285 Bhartiya Seva Samaj Trust Tr. Pres. & Another vs. Yevidence in accordance with law. ogeshbhai Ambala Patel & Another***
- 7. 2023(9) ADJ 208 Basdev vs. State of U.P. and Others***
- 8. 1964 (7) SCR 800 Amba Prasad Vs. Abdul Noor Khan and Ors.***

9. 2015 (128) RD 24 Raj Kishore (dead) Through LRs and Ors Vs. Heera (dead) Through LRs and Ors

10. SPL (Civil) No. 15774/ 2022 M/S Paul Rubber Industries Private Ltd. Vs. Amit Chand Mitra and Ors

11. Consolidation No. 168 of 1985 Hanuman And Ors Vs. Bansraj and Ors."

7. Mr. Anshul Nigam, learned Standing Counsel for the State respondents submitted that in view of the provisions contained under Section 4 of U.P. Urban Planning and Development Act, there were no illegality in the judgement and decree passed by Board of Revenue while deciding the second appeal decreeing the suit filed by Kanpur Development Authority. He further submitted that in the aforementioned suit under Section 229-B/ 209 of U.P.Z.A. and L.R. Act, State has admitted the plaint allegations of the suit filed by Kanpur Development Authority, as such, there was no illegality in filing of suit by Kanpur Development Authority without associating the State as plaintiff in the suit. He submitted that writ petition filed by petitioners should be dismissed.

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

9. There is no dispute about the fact that suit under Section 229-B of U.P.Z.A. and L.R. Act filed by respondent no.3/ Kanpur Development Authority was dismissed by Trial Court and judgement and decree of Trial Court was maintained in appeal by Additional Commissioner. There is also no dispute about the fact that second appeal filed by respondent no.3/ Kanpur Development Authority was allowed setting aside the judgement and decree of the Trial Court as well as first Appellate Court and the suit of plaintiff was decreed accordingly.

10. The point of determination which are involved in the writ petition is about the scope of suit under Section 229-B, 209 of U.P.Z.A. and L.R. Act as well as the limitation provided for suit under the aforementioned section as well as scope of second appellate jurisdiction of Board of Revenue under Section 331 (4) of the U.P.Z.A.

and L.R. Act. The scope of proceeding regarding grant and cancellation of bhumidhari sanad are also to be considered in the instant petition coupled with the fact regarding acquisition of part of the area of the plot in dispute by the authorities and payment of compensation to the recorded owner of the plot in dispute.

11. So far as the suit under Section 229-B of the U.P. Z.A. & L.R. Act, is concerned, this Court in the case reported in **2005 (99) RD 529 Pan Kumari Vs. Board of Revenue and Others** has held that the suit of aforementioned category, is treated to be a suit of special character and no limitation is provided for suit under Section 229-B of U.P.Z.A. and L.R. Act however in respect to suit under Section 209 of U.P.Z.A. and L.R. Act is concern, the limitation was provided under Appendix III. Paragraph No. 6 of the judgement rendered in **Pan Kumari (Supra)** will be relevant for perusal which is as under:-

"6. Sri R.C. Singh submits that the suit under Section 229-B was barred by limitation. In support of this contention he relies upon [Section 341](#) of the U.P. Zamindari Abolition and Land Reforms Act, which provides that the [Limitation Act](#) would be applicable to proceedings under the [U.P. Zamindari Abolition and Land Reforms Act](#) and limitation in a suit for declaration would be governed by [Article 137](#) of Schedule 1 of the [Limitation Act](#) as there is no period prescribed for such a suit under the [U.P.Z.A. & L.R. Act. Section 341](#) itself provides that the provisions of certain Acts including the [Limitation Act](#) shall apply to the proceedings under the U.P. Z.A. & L. R. Act unless otherwise provided in the [U.P.Z.A. & L.R. Act](#). Rule 338 of the U.P.Z.A. and L.R. Rules provides that the suits, applications and Ors. proceedings specified in Appendix III shall be instituted within the time specified therein for them respectively. Recourse to the provisions of the [Limitation Act](#) would be available only if there is no provision under Rules in respect of the period of limitation for the different classes of suits or proceedings mentioned therein. In Appendix III the period of limitation provided for different classes of suits has been given. As regards suits under [Section 229-B](#) column 4, which prescribes the period of limitation for different classes of suit says "none". It would therefore be treated that there is no limitation for filing a suit under [Section 229-B. Section 9](#) of the Civil Procedure Code provides that all suits of civil nature shall be instituted in the civil court except those, which have been accepted. A suit under [Section 229-B](#) falls within

*the excepted category and such suits even though they involve declaration are suits of a special character. [Article 137](#) of the [Limitation Act](#) relied upon by Sri Singh in any case is applicable only to applications and not to suits and therefore has no play. When the rule making authority has provided different periods of limitation for different classes of suits it would be treated that provisions prescribing period of limitation in the [Limitation Act](#) would not be applicable to suits under the [U.P.Z.A. & L.R. Act](#). Section 189 U.P.Z.A. & L. R. Act sets out the circumstances in which the interest of a bhumidar is extinguished. Clauses (a) (aa) and (b) relate to cases where the bhumidar dies leaving no heir, or where he has let out his holding in contravention of the provisions of the Act or where the land is acquired. Sub-section (C) of [Section 189](#) provides that where a bhumidar has lost possession the bhumidari right would extinguish when the right to recover possession is lost. In *Ram Naresh v. Board of Revenue* 1985 R.D. 444 relied upon by Sri R. C. Singh it was held that the provisions of [Section 27](#) of the [Limitation Act](#) would be attracted to suits instituted under [Section 229-B](#). [Section 27](#) provides that on the determination of the period limited for instituting a suit for possession the right to such property shall be extinguished. The rule is an exception to the general rule that limitation bars the remedy but does not extinguish the right. If however a person is in possession his right can not be extinguished unless the case is covered by Clauses (a) (aa) and (b) of [Section 189](#). He can therefore seek a declaration of his right at any point of time. If a person has been dispossessed he would have to institute a suit under [Section 209](#) U.P.Z.A. & L.R. Act. Appendix III provides the period for limitation for filing a suit under [Section 209](#). It would follow therefore that a suit under [Section 229-B](#) would be barred by limitation the bhumidar is out of possession and his right to file a suit under [Section 209](#) is barred by limitation. The finding of fact recorded on the question of possession is that the plaintiffs have established their continuous possession over the disputed land. The finding is not shown to be vitiated by any error. As the rights of the plaintiff were never extinguished no question of limitation arises. For the reasons given above the writ petition lacks merit and is dismissed. "*

12. This Court in the case reported in **2020 (146) RD 186 Babu vs. Mahavir and Others** has held that the suit under Section 229-B of the U.P. Z.A. & L.R. Act cannot be decided without framing issues and without affording opportunity to lead evidence to the parties.

Paragraph nos. 2, 3 & 4 will be relevant for perusal which are as under:-

“2. The manner in which the suit instituted by the respondent no.1 under Section 229-B of U.P. Z.A. & L.R.Act has been decided by the impugned order dated 28.01.2019 cannot be appreciated. The trial court has neither framed issues nor has provided any opportunity of leading evidence to the parties to prove their respective cases. The provisions contained in Code of Civil Procedure has been given a go bye.

3. As already observed above by the Court in its order dated 21.02.2019, the proceedings under Section 229-B of U.P.Z.A & L.R Act are regular proceedings where declaration of rights in a holding is decided on the basis of evidence.

4. Learned counsel for respondent no.1 has also not been able to defend the impugned order; rather he appears to agree that the matter ought to have been remanded to the Sub-Divisional Officer concerned.”

13. The limitation provided under Appendix III prepared under Rule 338 of U.P.Z.A. and L.R. Rules is as under:-

Sl No.	Section of the Act	Description of suit, application and other proceedings	Period of limitation	Time from which period begins to run	Proper Court fees
1	2	3	4	5	6
	209	Suit for ejectment of a person taking or retaining possession of the land unlawfully and for damages: (I) If the person was in possession of the land on the date of vesting of and the period of limitation for his ejectment specified in the U.P. Tenancy Act, 1939 had not expired. (ii) In case of occupant referred to in Section 144.	Three years Three years	From the date of vesting From the date of declarati on under Section 144	As in the Court Fees Act, 1870, on one year's rent calculated at hereditary rates. Ditto

		(iii) In case of occupants of land held by a bhumidhar in the Government Estates in which the provisions of the Act have been extended from time to time (including 85 settled Bhabar Villages of Tarai and Bhabar Government Estates).	Six years	From 1 st of July following the date of occupation	Ditto
		(iv) In case of occupants of any other land held by bhumidhar or asami where possession of such land is taken or retained unlawfully.	Twelve years	Ditto	Ditto

14. In the instant matter, suit under Section 229-B/209 of the U.P. Z.A. & L.R. Act filed in the 1983 by Kanpur Development Authority was dismissed by the trial court and the decree of the trial court has been maintained in appeal by the 1st Appellate Court/Additional Commissioner but in second appellate jurisdiction, the Board of Revenue has allowed the second appeal and decreed the plaintiff's suit without considering the fact that defendants petitioners have been found in possession of the disputed plot since before the date of vesting.

15. So far as the second appellate jurisdiction under Section 331(4) of the U.P. Z.A. & L.R. Act exercised by the Board of Revenue is concerned, the Hon'ble Apex Court in the case of ***State of Uttarakhand (Supra)*** has held that the second-appeal under Section-331 (4) of U.P.Z.A & L.R. Act, before the Board of Revenue would lie on a question of law rather on substantial question of law. Paragraph Nos. 26, 27 & 28 of the judgment of Hon'ble Apex Court rendered in ***State of Uttarakhand (supra)*** will be relevant for perusal which are as under:-

“26. We are of the view that the principle laid down in Mahindra and Mahindra and the judgments referred to earlier clearly apply when we interpret sub-section (4) of Section 331 of the U.P. Act. Sub-section (4), as we have already indicated, has used the expression “on any of the grounds” specified in Section 100 of the C.P.C. Consequently, the then existing Section 100 (i.e. section 100, as it existed in 1908 unamended) was incorporated in sub-section (4) of Section 331 and substitution of the new Section 100 does not affect or restrict the grounds as incorporated. The right of appeal to the Board of Revenue under sub-section (4) of Section 331 clearly intended to be limited to the grounds set out in the then existing Section 100, since those were the grounds which were before the Legislature and to which the Legislature could have applied its mind and it is reasonable to assume that it was with reference to those specific and known grounds that the Legislature intended to limit the right of appeal.

27. The appeal before the Board of Revenue would, therefore, lie on a question of law. This legal aspect was not considered properly either by the Board of Revenue or by the High Court. Further, we also notice that the Board of Revenue has not examined the provisions of the land record and Lekhpal Diary No., date and P.A. 10. The Additional Commissioner had specifically noticed that P.A. 10 which had been filed pertaining to year 1976 did not bear any signature and the same was found to be doubtful, as to whether the original ‘Kashtkar’ (tillers) of the land in dispute belonged to Tharu tribe, was also not properly examined. Further, the Board of Revenue also should have examined whether the land belonged to Tharu tribe and the plaintiff could claim the benefit of Section 210 of the U.P. Act. All these aspects are very vital for a proper and just adjudication of the dispute, which has not been done.

28. In such circumstances, we are inclined to allow the appeals and set aside the order passed by the High Court as well as that of the Board of Revenue and the matter is remanded to the Board of Revenue for fresh consideration, in accordance with law. However, we are not expressing any opinion on the merits of the case, since we are remitting the matter to the Board of Revenue. The Board of Revenue will pass the final orders within a period of three months from the date of receipt of this order.”

16. This Court in the case reported in **2018 All C.J. 1181 Jitendra Kumar Urf Gopal Vs. State of U.P. and Others** as cited by learned counsel for the petitioners has held that when tenure holder who was earlier granted patta becomes bhumidhar with transferable rights then howsoever much the patta which was granted earlier has cancelled it

would not effect his right has bhumidhar. Paragraph Nos. 8 and 9 of the judgement rendered by this Court in *Jitendra Kumar Urf Gopal (Supra)* will be relevant for perusal which are as under:-

"(8) 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.

(9). 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."

17. It is material to mention that in the instant case, the defendant petitioners are in possession of the plot in question since before the date of vesting and part of the disputed land has been acquired by the authorities as well as award has been made in favour of recorded tenure holders and the amount of compensation has been received by the recorded tenure holders, as such, suit filed by the Kanpur Development Authority for the remaining area which was not acquired was rightly dismissed by the Trial Court as well as the First Appellate Court. It is also material to mention that bhumidhari sanad was issued in favour of defendant- petitioners in accordance with the provisions contained under the U.P.Z.A. and L.R. Act and defendant petitioners were accordingly remained in possession over the plot in question since before the date of vesting. It is material to mention that no proceeding for cancellation of bhumidhari sanad was initiated by State Government as provided under Section 137-A of the U.P.Z.A. and L.R. Act, as such, the filing of suit in 1983 under Section 229-B/ 209 of U.P.Z.A. and L.R. Act is abuse of process of law.

18. The provision relating to grant of bhumidhari sanad as contained under Section 134 to 137-A of U.P.Z.A. and L.R. Act will be also relevant for perusal which were as under:-

"S. 134. Acquisition of bhumidhari rights by a sirdar.-(1) If a sirdar belonging to the class mentioned in clause (a) of section 131 pays or offers to pay to the credit of the State Government an amount equal to ten times the land revenue payable or deemed to be payable on the date of application for the land of which he is the sirdar, he shall, upon an application duly made in that behalf to an Assistant Collector, be entitled, with effect from the date on which the amount has been deposited, to a declaration that he has acquired the rights mentioned in section 137 in respect of such land :

Provided that the right to pay or offer to pay the amount aforementioned shall cease on the expiry of three months from the date to be notified by the State Government.

Explanation I.-In this sub-section 'land' includes share in land.

Explanation II-For the purpose of this section the land revenue payable shall-

(a) in respect of land referred to in the proviso to clause (a) of sub-section (1) of section 246 be an amount arrived at after all the increases have been given effect to; and

(b) in respect of land to which the proviso to section 247 applies, be an amount determined at hereditary rates under that section.

(2) The amount referred to in sub-section (1) may be paid in cash or, if the State Government so prescribes in form of bonds or otherwise.

S. 135. Treasury chalan to accompany the application under section 134-The application referred to in section 134 shall be accompanied where the amount is paid in cash, by a treasury chalan and in any other case, by such document or evidence as may be prescribed showing that the amount aforesaid has been deposited and shall briefly describe the right in which the application claims the land.

S. 136. Amount to be deposited under section 134.-Where a sirdar or his predecessor-in-interest was, on the date immediately preceding the date of vesting, a hereditary tenant of the holding, the amount to be deposited under section 134 shall, notwithstanding anything contained in this Act, be equal to, ["ten times the land revenue payable by him or, if the said land revenue exceeds an amount double that computed at the applicable hereditary rates, ten times such amount].

S. 137. Grant of certificate - (1) If the application has been duly made and the Assistant Collector is satisfied that the applicant is entitled to the declaration mentioned in section 134, he shall grant a certificate to that effect.

(2) Upon the grant of the certificate, under sub-section (1) the sirdar shall, from the date thereof-

(a) become and be deemed to be a bhumidhar of the holding or the share in respect of which the certificate has been granted, and

(b) be liable for payment of such reduced amount on account of land revenue for the holding or his share therein, as the case may be, as shall be one-half of the amount of land revenue payable or deemed to be payable by him therefor on the date of application.

Provided further that in the cases referred to in Explanation II of section 134 the sirdar shall, during the period a reduced amount is payable in accordance with section 246 or 247, be liable for payment of one-half of the amount payable from time to time.

Explanation- For purposes of clause (b) the land revenue payable by a sirdar on the date aforesaid shall, where it exceeds an amount double that computed at the hereditary rates applicable, be deemed to be equal to such amount."

(2-A) Where the certificate is granted on a date other than the first day of the agricultural year, the land revenue payable by the bhumidhar under clause (b) of sub-section (2) for the remainder of the agricultural year in which it is granted shall be determined in such manner as may be prescribed.

S. 137-A. Cancellation of a certificate.-(1) A certificate granted under section 137 may, on the application of the State Government or any person interested, be cancelled or modified by the Assistant Collector for any of the following reasons, namely-

(a) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Assistant Collector of something material to the case;

(b) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;

(c) that a decree or order passed by a competent court in a suit or other proceeding with respect to the holding for which certificate has been granted shows that the applicant was not entitled to the certificate.

(2) Where the certificate is cancelled under sub-section (1), the person who deposited the amount referred to in section 134 shall be entitled to its refund :

Provided that an amount which shall be equal to the reduced amount of land revenue payable under clause (b) of sub-section (2) of section 137 shall be deducted from it."

19. The provision of Section 134, 135, 136 of U.P.Z.A. and L.R. Act was omitted by U.P. Act No. 8 of 1977 (w.e.f. 28.1.1977) and provision contained under Section 137-A of U.P.Z.A. and L.R. Act was omitted by U.P. Act No. 35 of 1976 but Section 136 of U.P.Z.A. and L.R. Act was substituted by U.P. Act No. 35 of 1976 which was as under:-

"section.136 of U.P.Z.A. and L.R. Act- Amount to be deposited under section 134---- where a sirdari or his predecessor-in-interest was, on the date immediately preceding the date of vesting, a hereditary tenant of the holding, the amount to be deposited under section 134 shall, notwithstanding anything contained in this Act, be equal to, ["ten times the land revenue payable by him or, if the said land revenue exceeds an amount double that computed at the applicable hereditary rates, ten times such amount]."

20. The Full Bench of this Court in the case reported in **1971 RD 371 Banshidhar Vs. Smt. Dhirajadhari and Others** as well as Hon'ble Apex Court in the case reported in **2000 (91) RD 277 Deo Narain and another Vs. Ram Saran and Others** has considered the provision regarding grant of bhumidhari sanad. Paragraph Nos. 6 to 9 of the judgement rendered by Hon'ble Apex Court in the case of **Deo Narain (Supra)** will be relevant for perusal which is as under:-

"6. As we have already indicated, the decision in this appeal depends upon the interpretation of [Sections 134](#) and [137](#) of the U.P. Zamindari Abolition and Land Reforms Act. These Sections read as follows :

***"S. 134.** Acquisition of bhumidhari rights by a sirdar. -(1) If a sirdar belonging to the class mentioned in clause (a) of [Sec. 131](#) pays or offers to pay to the credit of the State Government an amount equal to ten times the land revenue payable or deemed to be payable on the date of application for the land for which he is the sirdar, he shall, upon an application duly made in that behalf to an Assistant Collector, be entitled, with effect from the date on which the amount has been deposited, to a declaration that he has acquired the rights mentioned in [Sec. 137](#) in respect of such land.*

Provided that the rights to pay or offer to pay the amount aforementioned shall cease on the expiry of three months from the date to be notified by the State Government.

Explanation I - In this sub-section 'land' includes shares in land.

Explanation II - For the purpose of this section the land revenue payable shall -

(a) in respect of land referred to in the proviso to clause (a) of sub-section (1) of Sec. 246 be an amount arrived at after all the increases have been given effect to; and

(b) in respect of land to which the proviso to Sec. 247 applies, be an amount determined at hereditary rates under that section.

(2) The amount referred to in sub-section (1) may be paid in case or, if the State Government so prescribes, in form of bonds or otherwise."

S. 137. Grant of certificate. - (1) If the application has been duly made and the Assistant Collector is satisfied that the applicant is entitled to the declaration mentioned in [section 134](#), he shall grant a certificate to that effect.

(2) Upon the grant of the certificate, under sub-section (1), the sirdar shall, from the date on which the amount referred to in sub-section (1) of [Section 134](#) has been deposited-

(a) become and be deemed to be a bhumidhar of the holding or the share in respect of which the certificate has been granted; and

(b) be liable for payment of such reduced amount on account of land revenue for the holding or his share therein, as the case may be, one-half of the amount of land revenue payable or deemed to be payable by him therefor on the date of application.

Provided further that in the cases referred to in Explanation II of [section 134](#) the sirdar shall, during the period a reduced amount is payable in accordance with [section 246](#) or 247, be liable for payment of one-half of the amount payable from time to time.

Explanation.- For the purposes of clause (b) the land revenue payable by a sirdar on the date aforesaid shall, where it exceeds an amount double that computed at the hereditary rates applicable, be deemed to be equal to such amount.

(2A) Where the amount referred to in sub-section (1) of [section 134](#) is deposited on a date other than the first day of the agricultural year, the land revenue payable by the bhumidhar under clause (b) of sub-section (2) for the remainder of the agricultural year in which the amount is deposited shall be determined in such manner as may be prescribed."

7. [Section 134](#), from its plain language, indicates and shows that on the application being made and 10 times the land revenue being paid, the sirdar becomes entitled 'with effect from the date on which the amount had been deposited' to a declaration that he has acquired the rights mentioned in [Section 137](#) of the Act. The Section clearly specifies the date with effect from which the rights would stand acquired: The date is the one on which the amount

contemplated by [Section 134](#) is deposited. This clearly obviates the uncertainty of the point of time when the title is transferred by fixing the date as being the one when the amount is deposited. It would be immaterial as to when the declaration under [Section 137](#) is made because that declaration must necessarily take effect from the date when the amount is deposited.

8. Whatever little doubt there may be in this construction of [section 134](#) is eliminated by the perusal of sub-section (2) of [Section 137](#). It is to be noticed that, as observed by the lower appellate court, that before amendment in 1962, sub-section (2) of [Section 137](#) of the Act provided that it is only upon the grant of certificate under sub-section (1) of [Section 137](#) that the sirdar shall from the date thereof become or be deemed to be a bhumidar of the holding or the share in respect of which the certificate has been granted. The amendment of sub-section (2) of [section 137](#) by the Amendment Act 21 of 1962 with effect from 13th December, 1962 brought [Section 137\(2\)](#) in line with [Section 134](#). The two provisions read together clearly provide that as and when the certificate under [Section 137](#) is granted, it must relate back and be effective from the date on which the amount referred to in sub-section (1) of [Section 134](#) has been deposited.

9. It is no doubt true that in the Full bench decision in *Banshidhar Vs. Smt. Dhirajadhari and Others* (supra), in the Single Judge decision in *Mobin Khan Vs. Chunnu Khan and Others* (supra) and in the decision in *Raghunandan Singh and another Vs. Vashwant Singh*, 1978 Revenue Decisions 183, a different view has been expressed by the Allahabad High Court. In the Full Bench decision, the view taken is that it is from the date when the order is passed under [Section 137](#) that the sirdar becomes a bhumidar. In the latter two cases, it has been held that if after filing of the application and making payment of the land revenue the applicant dies, then certificate in his name cannot be granted. In our opinion, the said decisions run counter to the plain language and meaning of [Sections 134](#) and [137](#) as they stood at the relevant point of time. When a certificate is issued under [Section 137](#), it in fact recognises the position as on the date when the application was made and the payment contemplated under [Section 134\(1\)](#) was deposited. The certificate, in other words, will have a retrospective effect and would relate back to the date of the application. There was nothing to prevent the revenue authorities from allowing the application filed under [Section 134\(1\)](#) on the day when it was presented. The underlying intention of the legislature, therefore, clearly is that as and when the said application is accepted and order is passed under [Section 137](#), it must relate back to the date when the application was filed. Such a situation is not unknown to law. Mr. Prem Prasad Juneja,

Learned counsel for the appellants, as an analogy, has drawn our attention to order 22 Rule 6, [C.P.C.](#) which provides that if any of the parties to a suit dies after the hearing has been completed and before the judgment is pronounced, the suit would not abate. The doctrine of relation back has been incorporated in [Sections 134 and 137](#) of the U.P. Zamindari Abolition and Land Reforms Act."

21. So far as the case law cited by learned Senior Counsel for the Kanpur Development Authority is concerned that fraud vitiate every solemn proceeding as well as in exercise of second appellate jurisdiction suit can be decreed will not be applicable in the facts and circumstances of the instant case where the Kanpur Development Authority has himself paid the compensation to the predecessor of the defendant petitioners in lieu of acquisition made in respect to the part of the area of the plot in question on the basis of award passed under the Land Acquisition Act by the competent authority.

22. Considering the entire facts and circumstances of the case the judgement and decree passed by Board of Revenue in exercise of second appellate jurisdiction decreeing the plaintiff- suit and expunging the longstanding entry of the plot in question cannot be sustained in the eye of law, as such, the impugned judgement dated 23.4.1997 passed by respondent no.1, Board of Revenue, U.P. Allahabad is liable to be set aside and the same is hereby set aside. Writ petition stands **allowed** and the judgment/ decree of Trial Court dated 5.12.1987 dismissing the plaintiff's suit is hereby affirmed. The entry of the plot in question shall be corrected accordingly.

23. No order as to costs.

Order Date :- 9.4.2025

Vandana Y.