



2025:AHC:177916

Judgment Reserved on 26.09.2025
Judgment Delivered on 08.10.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 51434 of 2012

Brij Raj Yadav And Another

.....Petitioner(s)

Versus

State of U.P. and Others

.....Respondent(s)

Counsel for Petitioner(s)	:	S.P. Singh
Counsel for Respondent(s)	:	C.S.C.

Court No. - 2

HON'BLE PRAKASH PADIA, J.

1. The petitioners have preferred the present writ petition challenging the order dated 06.06.2012 passed by the Commissioner, Gorakhpur Division, Gorakhpur / Respondent No. 2. By the aforesaid order, the application moved by the petitioners for cancellation of the lease of land in favour of the Respondent No.4, Ram Adhar has been rejected in the proceedings under Section 27(4) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 hereinafter Act, 1960.

2. Facts in brief as contained in the writ petition are that the land in question was subject matter to the settlement proceedings under the U.P. Consolidation of Holdings Act, 1953 hereinafter referred Act, 1953. The land claimed by the petitioners are 2 Acres 76 decimals of village Pakri Urf Pakriyar, Tappa Khan, Pargana Siduhua, Jobna Tehsil Kasya, District (Deouria) now Kushi Nagar and the plot nos. are 352M, 43/1, 260, 187M, 188M, 189M and 190M of Khata No.42. It is stated that during the consolidation operations the petitioners filed objection under Section 9-A(ii) of the Consolidation of Holdings Act, 1953 stating therein that they have been in possession over the land from the time of their ancestors long back. It is further stated that the recorded names of the tenure holder deserves to be expunged and their names should be recorded as tenure holders of the plots in question. In the said proceedings the State of U.P. through the Collector and the relevant Gaon Sabha through its village

head were made parties and notices were issued in the Consolidation proceedings that were served. It is further stated that the petitioners filed irrigation slips as well as a revenue receipts and the record of their possession recorded in column-III of Khatauni of 1355 Fasli (1948) and 1359 Fasli (1992). Notices have also been issued to the persons who were recorded in the settlement record and they put their appearance conceding the claim of the petitioners that they were in possession of the property since a long adverse to the recorded tenure holders that was supported by the relevant record of rights "remarks column" referred to above. The said order in the Consolidation Proceedings dated 02.12.1983 has been annexed as Annexure-4 to the Writ Petition. A restoration application had been filed by one of the recorded tenure holders but the same was also withdrawn on 08.12.1992 and accordingly the order of the Consolidation Authority according to the petitioners became final.

3. Thereafter petitioners moved A Misc. Case under Rule 109 of the U.P. Consolidation of Holdings Rules, 1954 in which an order was passed on 13.01.1986 and the same was given effect in the revenue records on 28.01.1990. It is further stated that the Ceiling Proceedings had been initiated against the original recorded tenure holders and it appears that in the said proceedings some land was declared surplus including the land in question. The original tenure holder filed Writ Petition No.47383 of 2003 which was admitted and interim order was granted thereafter the writ petition was heard on merit and the judgment was reserved on 10.09.2025.

4. It is stated in the writ petition that the Respondent No.4 seems to have been allotted a lease over the same land that has been given new numbers after the consolidation settlement for an area of 41 decimals over plot No. 108M and 177M. Since the said land could not have been allotted as it was in the possession and cultivation of the petitioners, the petitioners filed an application before the Commissioner, praying for cancellation of the said lease in favour of the Respondent No. 4 in terms of Sub-Section (4) of Section 27 of the Act, 1953. The said application has been rejected on the ground that it was barred by time and consequently, this cannot be a matter of declaration under the cancellation of lease proceedings and ought to have been raised in the main ceiling proceedings.

5. It is argued by the counsel for the petitioners that main ceiling proceedings are concerned, the entire litigation has been contested by the original recorded tenure holder in Writ petition No.47383 of 2003 and the fate of this petition is directly dependent upon the fate of that petition. It is further argued on behalf of petitioners that the impugned order is liable to be set aside and the possession of the petitioners should not be disturbed with liberty to the petitioners to contest their rights in appropriate proceedings.

6. Vide order dated 04.10.2012, learned Standing Counsel was directed to seek instructions in the matter. Order dated 04.10.2012 reads as follows:-

"It is contended by Sri S.P.Singh, learned counsel for the petitioners that the land in dispute of which lease has been granted is still subject matter of Writ Petition No. 47383 of 2003 in which an interim order has been granted by this Court, therefore no lease could be granted on the aforesaid land.

Learned Standing Counsel is directed to seek instructions in this matter.

Put up as fresh on 16th October, 2012 along with record of Writ Petition No. 47383 of 2003. "

7. When the matter was taken up on 16.10.2012, this Court framed the issues that prima-facie case is made out and matter is under consideration before this Court, therefore, it is expected from the respondents to maintain status quo as on date till 08th November, 2012. Order dated 16.10.2012 reads as follows:-

"The only question involved in this case is as to whether an application under Sub-section 4 of Section 27 can be filed after expiry of the period of limitation along with application for condonation of delay. In the submission of learned counsel for the petitioners, in view of provisions contained under Section 42 of the Act, the Section 5 Limitation Act would be applicable even in the application filed under Sub-section 4 of Section 27. Sri Sanjai Goswami, learned Additional Chief Standing Counsel submits that Section 5 Limitation Act would not be attracted in a case where proceeding is original in nature. Another question would arise as to whether on the basis of judgment, that too with the consent of original tenure holders passed by the consolidation courts, the petitioners can

claim right over the land which has been declared surplus.

As an interim measure, since the matter is under consideration before this Court and the date is fixed, therefore it is expected from the respondents to maintain status quo as on date till 8th November, 2012.

Put up on 8th November, 2012 in the additional cause list. "

8. The aforesaid interim order was extended from time to time.
9. Counter affidavit and rejoinder affidavit have been exchanged between the petitioners and state-respondent.
10. It is argued that the State has taken the stand that the order of the Consolidation Authorities is liable to be ignored under Section 5(6) of the Act, 1960 as the said order relied on by the Petitioners have been passed after the due date of 24.01.1971. It is further stated that the land was allotted to the Respondent No.4 after the same had been declared surplus in the hands of the original tenure holder. In the rejoinder affidavit it is stated that order of the Consolidation Authorities does not fall within the ambit of Section 5(6) of the Act, 1960. It is further argued that once the writ petition of the tenure holder is allowed setting aside the orders of the Ceiling Authorities, the land remains no longer surplus and therefore, the lease holder cannot get better right than the State itself.
11. Though the respondent no. 4 is represented through counsel but no counter affidavit has been filed, though more than 12 years has already been lapsed. It is argued by the counsel for the respondent no.4 that since pure legal question of law is involved in the present case and the detailed counter affidavit has already been filed by the State, he is relying upon the allegations made in the counter affidavit filed on behalf of State.
12. In this view of the matter it is argued that he does not wish to file the counter affidavit and the writ petition could be disposed of only on the basis of the counter affidavit filed on behalf of State.
13. Heard counsel for the parties and perused the record.
14. From perusal of records and the facts as narrated above, it appears that

the petitioners claim possession over the land in terms of their recorded entries in 1355 Fasli (1948) and 1359 Fasli (1952). Their claim is therefore, that they were in possession of land prior to the abolition of Zamindari and having perfected their possession, their title over the land as on the date when the Ceiling Act came into force in 1960 had already come into existence. From perusal of aforesaid it also appears that since they were in possession of the land for more than 12 years even on the date when the Ceiling Act came into force then they have perfected their title and even it is recorded by the Consolidation Officer and the correction of the entries was carried out relating on the said evidence. In view of the aforesaid, evident value cannot be ignored and the land could not have been included in the ceiling proceedings for allotment to the Respondent No.4. It also appears that if the lease has to be cancelled and corrections have to be carried out accordingly.

15. The allotment of land seems to have been made in favour of the Respondent No.4 on 12.11.1996. It is therefore, obvious that the allotment was made during the pendency of the ceiling proceedings and long after the order had been passed in favour of the petitioners in the settlement proceedings before the Consolidation Authorities. The allotment seems to have been made without putting the petitioners to notice. It is settled law that for the purpose of proceedings to declare land surplus recorded, even unrecorded tenure holders are required to be put to notice before including the land within the surplus area. A reference has been made of the judgment passed in the case of **Dilbag Singh vs. State of U.P.** reported in **(1978) AWC page 393**. The judgment in the case of **Jugal Kishore vs. State of U.P.** reported in **1997 RD page 577** has held that tenure holder cannot be dispossessed till ceiling proceedings are finalized. It seems that the land was allotted to the Respondent No.4 ignoring these facts and without any opportunity of hearing to the petitioners to contest the matter. In the counter affidavit filed by the State it is stated in paragraph-6 that if the petitioners are aggrieved then they can submit objections under Section 11(2) of the Act, 1960 and initiate proceedings before the Ceiling Authorities to get any relief.

16. In view of aforesaid observations and in light of the fact that the writ petition No.47383 of 2003 has been allowed by this Court vide order

dated 26.09.2025, the present writ petition is also **disposed of finally** with the liberty to the petitioners to approach the appropriate authority as conceded by the State in paragraph-6 of its counter affidavit seeking such relief as may be available under the Ceiling Act or Revenue Law for the time being in force. Since the status quo over the land has been maintained the same shall continue to operate till any other order is passed by the authority concerned in accordance with law. The impugned order dated 06.06.2012 shall abide by this order and any other order to be passed by the authority concerned as the allotment to the Respondent No.4 becomes unenforceable due to the reasons stated above. No order as to costs.

(Prakash Padia,J.)

October 8, 2025

Swati