

Neutral Citation No. - 2025:AHC:93152

Judgment reserved on 24.04.2025

Judgment delivered on 30.05.2025

Court No. - 35

Case :- WRIT - C No. - 38041 of 2024

Petitioner :- Tasawwar Ali

Respondent :- Jitendra Singh And 6 Others

Counsel for Petitioner :- Gulrez Khan, Mohd. Monis

Counsel for Respondent :- Arun Kumar, C.S.C., Manvendra Singh, Suresh Singh

Hon'ble Manish Kumar Nigam, J.

1. Heard learned counsel for the parties and perused the records.

2. This writ petition has been filed for the following reliefs:-

“I) A writ order or direction in the nature of Certiorari quashing the impugned order dated 24.09.2024 passed by respondent no. 6 and order dated 16.02.1993 passed by respondent no. 7 (Annexure 1 & 2),

II) A writ order or direction in the nature of mandamus directing the respondents not to change the nature of the Public utility land and further record the remaining land 0.975 in favour of Nagar Palika as Public Utility Land,

III) Any other writ, order or direction as this Hon'ble Court may deem fit and proper under the circumstances of the case,

IV) Award the cost of writ petition to the petitioner.”

3. Brief facts of the case are that an application was filed by predecessor in interest of the respondent nos. 1 to 3 under Section 161 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, for exchange of land being Gata No. 163/0.194 Hec., 158Kha/0.140 Hec., 164/0.057 Hect, 165/0.057 Hec., total four numbers, area 0.448 hectare, situated at Abdul Kasimpur, Pargana, District & Tehsil Fatehpur belonging to the predecessor in interest

of the respondent nos. 1 to 3. As per the application moved by the predecessor in interest of the respondent nos. 1 to 3, aforesaid gata numbers of the predecessor in interest of respondent nos. 1 to 3 were adjoining to the Gata No. 166/1.975 belonging to the Gaon Sabha which was recorded as pasture land. One hectare land of Gata No. 166 was allotted to the agricultural Department for construction of their office and residential houses for their employees. The land allotted to the Agricultural Department was on both sides of the By-pass. The land of the petitioner was in between the land of the Agricultural Department on the eastern side of the By-pass and because of constructions proposed to be raised by Agricultural Department, the petitioner's right of way to reach his plots was going to be obstructed and therefore, the petitioner requested that the land of the petitioner be exchanged with the land allotted to the Agricultural Department on the other side of the By-pass so that entire chunk of the land be available to Agricultural Department for construction. The said application filed by the predecessor in interest of the respondents was allowed by the Sub Divisional Magistrate by order dated 16.02.1993 on the ground that the land belonging to the respondent is adjoining the land allotted to the Agricultural Department and because of proposed construction to be raised by Agricultural Department, the right of way of the respondents was going to be affected causing inconvenience to the respondents in agricultural work and as per Section 161 of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, the valuation was not more than 10%. Against the order dated 16.02.1993, the petitioner filed a revision on 26.08.2014 along with a delay condonation application. The revision was entertained by respondent no. 6 and the delay was condoned in filing the revision by order dated 26.09.2014. Thereafter, respondent nos. 1 to 3 filed an application for recalling the order passed condoning the delay in filing the revision in July, 2016. During pendency of the revision, a

report was called by respondent no. 6 which was submitted by the Sub Divisional Magistrate on 13.12.2017 mentioning therein that order dated 16.02.1993 was passed and there is no summon available on record as to service upon Nagar Palika. Thereafter, another report was called by respondent no. 6 on which the Sub Divisional Magistrate Sadar has submitted its report on 25.10.2019 mentioning therein that the land of the respondents was lying between the land allotted to the Agricultural Department and in case of constructions, the right of way of the respondents was likely to be obstructed and for the said reason, the application was moved by the respondents for exchange of land and it was also informed by the Agricultural Department by its letter dated 28.01.1993 that in case, the exchange is accepted that will be beneficial for the department as all the buildings likely to be constructed will be constructed in one complex. On the basis of report of Sub Divisional Magistrate Sadar, respondent no. 6 by order dated 21.09.2024, rejected the revision filed by the petitioner.

4. It has been contended by learned counsel for the petitioner that the land which was being exchanged with the land of the contesting respondents was recorded as pasture and the same being public utility land cannot be exchanged. It has also been contended by learned counsel for the petitioner that Gaon Sabha / Nagar Palika was not given any notice before passing any order for exchange. Learned counsel for the petitioner relied upon the judgment of this Court passed in case of **Shiv Murat v. Board of Revenue, U.P. at Allahabad and others** reported in **2017(7) ADJ 252** and judgment in case of **Shiva Kant v. State of U.P. and others** reported in **2022 (1) AWC 160** and submitted that no exchange can be made with the private land without giving notice to the Gaon Sabha.
5. Per contra, learned Standing Counsel has submitted that order of exchange was passed in the year 1993 and the revision was filed by

the petitioner in the year 2014. It has been further submitted that the petitioner is not aggrieved by the exchange of land and the exchange of land has not been challenged either by Nagar Palika or by Gaon Sabha. Learned Standing Counsel has also submitted that the exchange was allowed as the land of the respondents was coming in between the land allotted to the Agricultural Department and it was for the benefit of both Agricultural Department as well as respondents, therefore, the said exchange was allowed and Agricultural Department was given a entire chunk of land on one side of the road for construction of their office and residential houses for their employees. Because of the exchange, the respondents were also given a land on the other side of the road facilitating the right of way to approach their land which was being obstructed because of allotment of land to the Agricultural Department.

6. Learned counsel for the petitioner relied upon judgment of this Court in case of **Sharad Chand Dwivedi v. State of U.P. and others** reported in **2022 (4) AWC 3917 (LB)** for the contention that any person of the village can challenge the exchange of the land.
7. The facts of the case, in case of Sharad Chand Dwivedi (Supra) are entirely different and therefore, the said observation were made by the Court while entertaining the Public Interest Litigation. Here in this case, the petitioner has challenged the order of allotment after more than 11 years. The land which was exchanged with the land of the respondents was already allotted to Agricultural Department for construction of their office and residence for their employees and therefore, the same cannot be said to be a pasture land. In view of the facts of the case, I do not find it appropriate to disturb the possession after more than 30 years of exchange of land as neither Nagar Palika nor Gaon Sabha has come before this Court complaining the exchange of land.

8. In view of the above, this Court is of the view that no illegality has been committed by the revisional court in dismissing the revision filed by the petitioner.
9. Writ petition lacks merit and is accordingly, **dismissed**.

Order Date :- 30.05.2025
Ved Prakash

(Manish Kumar Nigam, J.)