



2026:AHC:191523-DB

Reserved On: 03.08.2026

Delivered On: 14.09.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 24828 of 2006

Tota Ram And Others

.....Petitioner(s)

Versus

State of U.P. and Others

.....Respondent(s)

Counsel for Petitioner(s)	: Ashfaq Ahmad Ansari, Madhusudan Dikshit
Counsel for Respondent(s)	: C.S.C.

Court No. - 40

**HON'BLE SARAL SRIVASTAVA, J.
HON'BLE SUDHANSHU CHAUHAN, J.
(Delivered by Hon'ble Sudhanshu Chaunha, J.)**

1. Heard learned counsel for the petitioners and Shri Mohan Srivastava, learned Standing Counsel for State respondents.
2. The present writ petition has been filed seeking a direction to expunge the entries in the name of the State Government in the revenue records and also to restrain the respondents from interfering in the peaceful possession of the petitioners over the land in dispute.
3. The present controversy arises out of proceedings under U.P. Urban Land (Ceiling and Regulations) Act, 1976, herein after referred to as, "the Act, 1976". The land in dispute is comprised in Khasra No. 488/2, situated at Village Manak Mau, Post Khas, District Saharanpur, having an area of 0.648 hectares.
4. The petitioners submit that the father of the petitioners, late Tungal, was the recorded tenure holder of the land in dispute. Further the petitioners or their father at no point in time have received any notice under Section 8(3) of the Act, 1976, nor were they served any notice for taking physical possession of the land in dispute under Section 10(5) and/or Section 10 (6) of the Act, 1976. Further, the possession of the land in dispute continues with the petitioners and has never been transferred to the respondents even as on date. The petitioners in support of their contention that they are in possession of the land in dispute have placed reliance upon Khasra from Fasli year 1400 to 1414. Besides, it is also

submitted that the petitioners are paying irrigation charges to the Irrigation Department in respect of the land in dispute.

5. However, on 08.02.2006, the Halka Lekhpal came to the land in dispute and informed the petitioners that the land was vested in the State in pursuance to proceedings initiated under the Act, 1976 and the petitioners had no right to remain in possession of the same. Consequently, the petitioners had engaged a counsel, and it is only thereafter that the petitioners came to know about the order dated 11.02.1981 passed under Section 8(4) of the Act, 1976. Further it is stated that the petitioners continue to remain in possession of the land in dispute in pursuance of the interim order dated 05.05.2006 passed by this Court.

6. The respondents, despite being afforded ample opportunities, have not filed a counter affidavit to contest the contention of the petitioners raised in the writ petition. On 03.08.2026, when the matter was taken up, once again the learned Standing Counsel had sought time to file counter affidavit on behalf of the respondents. However, we are of the view that the respondents have not cared to file the counter affidavit despite a passage of more than twenty years since, the filing of the present writ petition, and as the matter is very old, it would not be appropriate to grant any further time to the respondents. Hence the present controversy is being decided in the absence of a counter affidavit of the respondents and in view of the same contention of the petitioner made in the writ petition remains unrebutted.

7. The petitioners have filed the order dated 11.02.1981 passed by the Competent Authority under Section 8(4) of the Act, 1976 wherein it was found that out of the land of the petitioners comprised in Khasra No. 488/2 an area of 8494.16 sq meters was found to be within the urban agglomeration. Further after leaving the land within the ceiling limit i.e 2000 sq meters, the excess vacant land was determined as 6494.16 sq meters.

8. It is the specific case of the petitioners that the petitioners or their father was never served with the notices under Section 8(3), 10 (1) and 10 (5) of the Act, 1976. Further the petitioners are continuously in possession of the land in dispute prior to initiation of declaration of surplus land till date, as such, the respondents cannot interfere in the peaceful possession

of the petitioners. The submission so made by the petitioners remains uncontroverted despite several opportunities being granted to the respondents to file their counter affidavit for the past twenty years. Thus, there is no reason for us to not rely upon the averment so made in the writ petition.

9. The Apex Court in the case of **Naseem Bano (Smt) v. State of U.P. and others, 1993 Supp (4) Supreme Court Cases 46** in respect of averments made in the writ petition which remained uncontroverted had held:-

“10. In the instant case the said presumption, instead of being rebutted, is strengthened by the affidavit filed on behalf of respondents 1 to 4 in the High Court wherein the averments contained in paragraphs 20, 21 and 22 of the writ petition that 40 per cent of posts had not been filled up by promotion, were not controverted.”

10. In the case of **Choksi Tube Company Ltd. v. Union of India and others (1997) 11 Supreme court Cases 179** where too no affidavit in reply was filed to the writ petition has held as under:-

“5. On 10-3-1992 and 11-3-1992 this writ petition and the civil appeals were part heard before this Court. On 11-3-1992, the Court noted that no counter-affidavit had been filed to the writ petition; that, having regard to the averments in the writ petition, a counter-affidavit was necessary; and that the counter affidavit should be filed within 8 weeks. No affidavit having been filed, the matter was adjourned on 30-10-1996. On 28-11-1996, it was adjourned again, it being made clear that this would be the last opportunity,. Despite the clear terms of the order dated 11-3-1992, no affidavit in reply to the writ petition has been filed up to date. An affidavit has been filed in reply to the civil appeals. There too the ground of arbitrariness has been taken and the reply is that a notification under Section 25(2) of the Customs Act is in the discretion of the Government and cannot be claimed as a matter of right.

6.

7..... Having regard to the determined stand of the respondents not to state their case on paper, we must assume that there was neither any public interest nor any circumstances of exceptional nature involved and that others placed in circumstances similar to that in which the said mills were placed must have the same benefit as was advanced to the said mills.....”

11. Thus in view of the above there is no reason for us not to rely upon the contention of the petitioners that the petitioners continued to remain in

continuous possession of the land in dispute prior to declaration of surplus land till date. Hence the petitioners being in possession of the land in dispute at the time of enforcement of the Repeal Act, 1999 are entitled to remain in possession thereof.

12. In view of the above that the petitioners are in continuous possession of the land in dispute, the aforesaid contention of the petitioners is further fortified by the Khasra from Fasli year 1400 to Fasli year 1411, corresponding to 1993 CE to 2004 CE, the Khasra for all the eleven years commencing from 1993 CE to 2004 CE reveals that crops were being sown over the land in dispute, which was recorded in the name of the respondents. The khasra is a document prepared by the revenue authorities under the control of the District Magistrate-respondent no.2 and thus, supports the contention of the petitioners of being in possession.

13. Thus, it is difficult to understand as to how and when the possession of the land in dispute was taken by the respondents, when crops were being cultivated by the petitioners over the land in dispute. Even otherwise the orders for recording revenue entries in the name of the State are passed after publication of notification under Section 10 (3) of the Act, 1976 which is in respect of vesting of excess vacant land in favour of the State and as such would be inconsequential in the present case, where the possession of the land in dispute was never handed over/ taken by the respondents.

14. Under the circumstances, the petitioners cannot be deprived of the benefit of the Repeal Act, 1999.

15. Thus, the present writ petition is allowed and the respondent no.2-District Magistrate, Saharanpur is directed to expunge the revenue entries in the name of the State/ Urban Ceiling in the revenue records in respect of Khasra No. 488/2 measuring 2.935 hectares situated in Village Manak Mau, Post Khas, District Saharanpur to restore the same in the name of the legal heirs of Tungal, the original land holder and the respondent are further restrained from interfering in the physical possession over the land in dispute.

(Sudhanshu Chauhan,J.) (Saral Srivastava,J.)

September 14, 2026

Nadeem