

AFR

Neutral Citation No. - 2024:AHC:105926

Reserved On:24.5.2024

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Court No. - 33

Case :- WRIT - B No. - 14553 of 1981

Petitioner :- Mewa Lal

Respondent :- D.D.C. And Others

Counsel for Petitioner :- S.L.Yadav

Counsel for Respondent :- N.S.Chaudhary,Abhishek
Kumar Tripathi,Anil Kumar Dubey,G.C.

Tiwari,G.C.Dwivedi,K.

Shahi,N.C.Chaudhary,R.S.Kushwaha,S.C.,Satya

Mohan,V.Shahi,V.Singh

Hon'ble Chandra Kumar Rai,J.

1. Heard Mr. Upendra Nath Yadav, learned counsel for the petitioner, Mr. Raghvendra Pratap Singh, Advocate holding brief of Mr. Abhishek Kumar Tripathi, learned counsel for the contesting respondent and Mr. Tarun Gaur, learned Standing Counsel for the State-respondents.

2. Brief facts of the case are that plot no.376 & 377 situated at Village- Narainpur, Manwarpara, Pargana-Nagar West, Tahsil- Haraya, Basti was recorded in the name of respondent nos.2 & 3, namely, Prabhakar Singh & Sudhakar Singh sons of Uma Shankar Singh in the basic year of consolidation operation. Petitioner nos.1, 2 & 3 filed objection under Section 9-A (2) of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as "U.P.C.H. Act") in respect to plot no.377

and petitioner nos.4 to 7 filed objection in respect to plot no.376 alleging that they are Shikami tenant of Ram Anjor Singh and after date of vesting they became Adhivasi later on Sirdar. It is further alleged that right of main tenant extinguished before he executed sale deed dated 3.1.1963 in favour of respondent nos.2 & 3 and petitioners continued in possession since prior to the date of vesting till the start of consolidation operation hence name of respondent nos.2 & 3 be expunged and petitioners be recorded as Sirdar of the plot in question. The suit under Section 229B of U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as "U.P.Z.A. & L.R. Act) filed by petitioners were ultimately abated. Respondent nos.2 & 3 claimed right of bhumidhar on the basis of sale deed executed on 31.1.1963 by Ram Anjor Singh. The issues were framed before Consolidation Officer and parties lead evidence in support of their cases. Consolidation Officer vide order dated 8.9.1975 disposed of the objection directing to record the name of petitioners as Sirdar declaring their share after expunging the name of respondent nos.2 & 3. Appeals under Section 11 (1) of U.P.C.H. Act were filed by respondent nos.2 & 3 against the order of Consolidation Officer dated 8.9.1975 which were registered as Appeal Nos.73 & 74. Settlement Officer of Consolidation vide order dated 21.11.1980 dismissed the aforementioned appeals. Respondent nos.2 & 3 filed two revisions under Section 48 of U.P.C.H. Act against the order of Settlement Officer of Consolidation which were registered as Revision No.498

& 499. The aforementioned revisions were heard and allowed vide order dated 2.11.1981 setting aside the orders of Consolidation Officers and Settlement Officer of Consolidation as well as declared the respondent nos.2 & 3 as bhumidhar of the plot in question hence this writ petition on behalf of the petitioners challenging the impugned revisional order dated 2.11.1981 passed by respondent no.1/ Deputy Director of Consolidation, Basti.

3. This Court admitted the writ petition on 1.12.1981 and stayed the operation of the impugned order dated 2.11.1981. On the stay vacation application filed on behalf of respondent nos.2 & 3, the interim order dated 1.12.1981 was confirmed subject to condition that the petitioners shall deposit Rs.750/- annually till the decision of the writ petition. According to petitioners they are depositing Rs.750/- annually till date.

4. Learned counsel for the petitioners submitted that the petitioners acquired Adhivasi & Sirdari right after the date of vesting and right of Ram Anjar (main tenant) came to an end, as such, Ram Anjar had no right to execute the sale deed in favour of respondent nos.2 & 3 in respect to plot in question. He further submitted that no case has been setup by contesting respondents that the petitioners are mortgage hence entry of Bil Ewaj Sood was fictitious. He further submitted that the petitioners actual cultivatory possession in respect to the plot in question is fully proved from the entry of 1359 fasli, as such, petitioners

Adhivasi right & Sirdari right after date of vesting is fully established. He further submitted that in view of oral statement of Ram Anjor himself that he has been issuing rent receipt to petitioners there was no necessity to issue P.A.- 10 to main tenant. He further submitted that Consolidation Officer & Settlement Officer of Consolidation has rightly ordered to record the name of the petitioners as Sirdar on the basis of oral and documentary evidence on record but Deputy Director of Consolidation has exceeded his revisional jurisdiction in holding otherwise that petitioners are entitled to be recorded as Sirdar over the plot in question, as such, impugned revisional order is liable to be set aside. He further placed the revenue entry of the plot in support of his argument. He further placed reliance upon the judgment of this Court passed in Writ-B No.2111 of 1976 (Pritam Singh vs. D.D.C. & Others) dated 12.9.2023.

5. On the other hand, learned counsel for respondent nos.2 & 3 submitted that interpolations have been made in the Khasara & Khatauni of 1359 fasli which is proved by Registrar Kanungo, as such, no right will accrue to petitioners in respect to plot in question. He further submitted that the sale deed executed in favour of respondent nos.2 & 3 was neither illegal nor void, as such, petitioners are not entitled to be recorded over the plot in dispute. He further submitted that the suit filed under Section 229B of U.P.Z.A. & L.R. Act was ultimately abated due to consolidation operation, as

such, no right can be claimed by petitioners on the basis of judgment and decree passed under Section 229-B of U.P.Z.A. & L.R. Act which has been ultimately abated. He also submitted that at the time of partial, respondent nos.2 & 3 have been found in possession of the plot in dispute. He further submitted that the petitioners have not initiated any proceeding for Adhivasi right, as such, petitioners are not entitled to be recorded over the plot in question. He further submitted that the petitioners have manipulated certain entry in collusion of Lekhpal, as such, petitioners are not entitled to any relief in respect to the plot in dispute. He further submitted that the Consolidation Officer & Settlement Officer of Consolidation have not decided the dispute considering the evidence on record but Deputy Director of Consolidation after considering the evidence on record has found that petitioners were not Sikami tenants, as such, they cannot acquire Sirdari rights by operation of law. He further submitted that finding of fact has also been recorded by Deputy Director of Consolidation that P.A.-10 was neither issued to Ram Anjor Singh nor to respondent nos.2 & 3 and the rent receipt alleged to be issued by Ram Anjor Singh in favour of petitioners is collusive and manipulated. He further submitted that the proceeding under Section 240A & 240B of U.P.Z.A. & L.R. Act were never initiated with respect to disputed plots, as such, no right will accrue to petitioners in respect to disputed plots. He further placed reliance upon the following judgments of

Hon'ble Apex Court as well as of this Court in support of his argument:

i. (2023) 4 S.C.R. 18 M/S South Indian Bank Ltd & Others Vs. Naveen Mathew Philip & Another.

ii. (1964)5S.C.R. 64 Syed Yakoob vs. K.S. Radha Krishnan and Others.

iii. 2022(156)RD602 Bhagwati Deen Vs. Sheetladin and Others.

iv. Neutral Citation No.- 2019:AHC:60861 Mukhtar Ali & Others vs. D.D.C. Fatehpur and Others.

6. I have considered the argument advanced by learned counsel for the parties and perused the records.

7. There is no dispute about the fact that the Consolidation Officer in the proceeding under Section 9-A (2) of U.P.C.H. Act has ordered vide order dated 8.9.1975 to record the name of petitioners as Sirdar after expunging the names of respondent nos.2 & 3. There is also no dispute about the fact that the appeals filed by respondent nos.2 & 3 against the order of Consolidation Officer were dismissed by Settlement Officer of Consolidation vide order dated 21.11.1980. There is also no dispute about the fact that revisions filed by respondent nos.2 & 3 were allowed by Deputy Director of Consolidation vide order dated 2.11.1981 setting aside the orders of Consolidation Officer & Settlement Officer of Consolidation as well as respondent nos.2 & 3 were declared as bhumidhar of the plot in dispute.

8. On the basis of rival submission of learned counsel for the parties the issues which are to be examined are as to whether the petitioners can be treated as Shikami tenant of the plot in question at the relevant point of time on the basis of revenue entry relied upon by the petitioners accordingly adhivasi / sirdar of the plot in question as well as the exercise of revisional jurisdiction under Section 48 of U.P.C.H. Act is in accordance with law.

9. In order to appreciate the controversy involved in the matter the perusal of Section 20 of U.P.Z.A. & L.R. Act will be relevant which is as under:

“20. - [Every person who-

(a) on the date immediately preceding the date of vesting was or has been deemed to be in accordance with the provisions of this Act]-

(i) except as provided in [sub-clause (i) of Clause (b)] [Substituted by U.P Act No. 20 of 1954.], a tenant of sir other than a tenant referred to in Clause (ix) of Section 19 or in whose favour hereditary rights accrue in accordance with the provisions of Section 10; or

(ii) except as provided in [sub-clause (i) of Clause (b)] [Substituted by U.P Act No. 20 of 1954.], a sub-tenant other than a sub-tenant referred to in proviso to sub-section (3) of Section 27 of the United Provinces Tenancy (Amendment) Act, 1947 (U.P. Act X of 1947), or in sub-section (4) of Section 47 of the United Provinces Tenancy Act, 1939 (U.P. Act XVII of 1939) of any land other than grove land,(

b) was recorded as occupant,-(i) of any land [other than grove land or land to which Section 16 applies or land referred to in the proviso to sub-section (3) of Section 27 of the U.P. Tenancy (Amendment) Act, 1947][Substituted by U.P. Act No. 20 of 1954.]in the khasra or khatauni of 1356-F prepared under Section 28 [33] [Substituted by U.P Act No. 20 of 1954, for '32'.] respectively of the U.P. Land Revenue Act, 1901 (U.P. Act III of 1901), or who was on the date immediately preceding the date of vesting entitled to regain

possession thereof under Clause (c) of sub-section (1) of Section 27 of the United Provinces Tenancy (Amendment) Act, 1947 (U.P. Act X of 1947); or

(ii) of any land to which Section 16 applies, in the [khasra or khatauni of 1356 fasli prepared under Sections 28 and 33 respectively of] [Substituted by U.P Act No. 20 of 1954.] the United Provinces Land Revenue Act, 1901 (U.P. Act III of 1901), but who was not in possession in the year 1356-F;

shall, unless he has become a bhumidhar of the land under sub-section (2) of Section 18 or an asami under Clause (h) of Section 21, be called adhivasi of the land and shall, subject to the provisions of this Act, be entitled to take or retain possession thereof.

Explanation I. - Where a person referred to in Clause (b) was evicted from the land after June 30, 1948, he shall notwithstanding anything in any order, be deemed to be a person entitled to regain possession of the land.

Explanation II. - Where any entry in the records referred to in Clause (b) has been corrected before the date of vesting under or in accordance with the provisions of the U.P. Land Revenue Act, 1901 (U P. Act III of 1901), the entry so corrected shall for the purposes of the said clause, prevail].

[Explanation III. - For the purposes of Explanation II an entry shall be deemed to have been corrected before the date of vesting if an order or decree of a competent Court requiring any correction in records had been made before the said date and had become final even though the correction may not have been incorporated in the record.

Explanation IV. - For purposes of this section 'occupant' as respects any land does not include a person who was entitled as an intermediary to the land or any share therein in the Year 1356 fasli.][Added by U.P. Act No. 20 of 1954.]”

10. In order to examine the plea of petitioners regarding Shikami tenant the revenue entry of the plot in question will be relevant. The Khasara entry of plot nos. 376 & 377 are annexed as Annexure Nos.10 to 14 to the writ petition. Annexure Nos.10, 11 & 12 are the Khasara entry of plot no.376, which are as under:

Khasra Number	Fasli Year	Name of Kastkar	Plot Number	Khana Kafiyat
376	1358	Ram Anjor & Kunwar Bhadur Singh	1119-19	-----
376	1359	Ram Anjor & Kunwar Bhadur Singh	1119-19	Sabha Singh
376	1361	Ram Anjor & Kunwar Bhadur Singh	1119-19	Sabha Singh
376	1362	Ram Anjor & Kunwar Bhadur Singh	1119-19	Sabha Singh
376	1363	Ram Anjor & Kunwar Bhadur Singh	1119-19	Sabha Singh
376	1364	Ram Anjor & Kunwar Bhadur Singh	1119-19	Sabha Singh 97 <hr/> 4.10.1956
376	1365	Ram Anjor & Kunwar Bhadur Singh	1119-19	Sabha Singh 136 <hr/> 10.10.1957
376	1366	Ram Anjor & Kunwar Bhadur Singh	1119-169	Sabha Singh 89 <hr/> 12.10.1958
376	1367	Ram Anjor & Kunwar Bhadur Singh	1119-19	Nirahoo 7 <hr/> 9.10.1959
376	1371	Ram Anjar	1119-19	Nirahoo 59 <hr/>

				22.9.1963
376	1372	Prabhakar Singh & Sudhakar Singh sons of Uma Shankar Singh	1119-19	Ghrahoo, Nirhoo, Nar Singh & Rajendra 76 <hr/> 12.10.1964

11. Annexure No.14 to the writ petition is the khasara entry of plot no.377, which are as under:

Khasra Number	Fasli Year	Name of Asal Kastkar	Name of Shikami Kastkar	Area	Khana Kafiyat
377	1357	Ram Anjor & Indra Bahadur		113-2	
377	1358	Ram Anjor & Indra Bahadur	Bhawani Prasad	113-12	Ram Anjor Sonar "K.W. Sood"
377	1359	Ram Anjor & Indra Bahadur		113-9	Ram Anjor Sonar "K.W. Sood"
377	1361	Ram Anjor & Indra Bahadur		113-12	Ram Anjor Sonar
377	1362	Ram Anjor		113-12	Ram Anjor Sonar
377	1363	Ram Anjor &		42-12	Ram Anjor

		Indra Bahadur			Sonar
377	1364 to 1368	Ram Anjor		113-12	Ram Anjor Sonar

12. The finding of fact which has been recorded by revisional Court with respect to plot nos.376 & 377 considering the revenue entry including the khasara entry which are annexed along with writ petition as well as quoted above will be relevant for perusal, which is as under:

"न्यायालय श्री जनार्दन उपाध्याय उ०स०च० बस्ती

पुनरीक्षण सं० 498 प्रभाकर आदि बनाम मेवालाल आदि
 प्रभाकर आदि बनाम निरहू
 ग्राम नरायनपुर मनवरपार
 परगना नगर पश्चिम
 त० हरैया, जिला-बस्ती

10. जहाँ तक गाटा सं० 376 का संबंध में मौखिक साक्ष्य का संबंध है केवल निरहू सिंह को परीक्षित कराया गया है। जो स्वयं पक्ष्य है इसलिये उनका साक्ष्य स्वतन्त्र नहीं है। उन्होने 8-5-74 के बयान में अ नी आयू 30 वर्ष बताई है जिसका अर्थ यह है कि जमींदारी बिनास के समय वे केवल 8 वर्ष के थे। उन्होने जिरह में स्वीकार किया है कि जब उनकी पिता ने रामअजोर सिंह से खेत लिया उस समय वे मौजूद नहीं था। इस प्रकार उनके बयान से भी शिकमी पर खेत लेने बात विलकुल सिद्ध नहीं होती। इस प्रकार मौखिक तथा अधि लेखित साक्ष्य किसी से भी गाटा सं० 376 पर शिकमी ओर अधिवासर से सीरदार होने का केस बिलकुल सिद्ध नहीं होता है। ओर अधिनस्थ नयायालयो ने निरहू सिंह आदि को गाटा सं० 376 की सीरदार और भूमिधर मानकर गलती की है। वास्तव में यह भूखण्ड रामअजोर सिंह तथा और बैनामे से प्रभाकर और सुधाकर इसके भूमिधर हो चुके हैं।

11. जहाँ तक गाटा सं० 377 का प्रश्न है 1357 फ० की खतौनी में यह भूखण्ड भी रामअजोर सिंह व कुवर बहादुर की जमीन 6 की आराजी दर्ज है। 1357 फ० से 1379 फ० के खसरो की उनके दाखिल की गई है जिनके अनुसार 1357 फ० तथा 358 फ० में विवादित भूखण्ड सं० 377 राम अजोर और कुवर बहादुर की जनम 6 की आराजी दर्ज है। और उस पर

किसी का कोई कब्जा दर्ज नहीं है। 1359 फ० में कैफियत के खाने में काविज रामअजोर सोनार बावजूद सूद लिखा हुआ है। 1361 फ० में केस खसरे में भी केप्युत के खाने में काबिज रामअजोर सोनार व बावजूद सूद लिखा हुआ है। इस संबंध में उल्लेखनीय बात यह है कि 1358 फ० के संबंध में दो खसरे कर नकले दाखिल की गई हैं। जिसमें कैफियत के खाने में गाटा सं० 377 प्रार्थी का कोई कब्जा दर्ज नहीं है किन्तु दूसरे में कैफियत के खाने में रामअजोर सोनार का कब्जा बावजूद सूद 1358 फ० में भी दर्ज है यह दोनों नकले तहसीलदार हरेंय वदार क्रमशः दि० 11-12-63 और 13-2-3 को जारी की गई हैं। और परस्पर विरोधी हैं। इस प्रकार राम अजोर सुनार कब्जा 1361 फ० तक 1381 तक कैफियत के खाने में दर्ज है। 1367 फ० में इस भूखण्ड पर मेवा का नाम कबजे में दर्ज है और 1368 फ० में काबिज मेवालाल और रामलाल दर्ज है। यह इन्द्राज 1372 फ० तक दोहराया गया है। फिर 1373 फ० 7 से 1370 फ० तक कबजे का कोई इन्द्राज नहीं है। एक कच्ची रसीद दाखिल की गई है जिसके द्वारा 27-6-51 को रामअजोर सिंह ने गाटा सं० 372/37 का 8 रु० लगान वसूल किया है। और रसीद पर अपनी अंगुठा निसानी बनाई है। रामअजोर सिंह अब मर चुके हैं। 226 बी के मुकदमें में रामअजोर सिंह के बयान दि० 26-10-65 की प्राप्ति प्रतिलिपि दाखिल की गई है जिसमें रामअजोर सिंह ने स्वीकार किया है कि इस रसीद पर उनकी अंगुठा निसानी है। और यह रसीद उन्होंने मेवा के पिता को दी थी। उजरने अपने इस बयान में यह भी स्वीकार किया है कि मेवा के अलावा उन्होंने अन्य किसी को रसीद नहीं दी। इसके आधार पर अधिनस्थ न्यायालयों ने मेवा लाल तथा उनके पिता रामअजोर सुनार को रामअजोर सिंह द्वारा सिकमी पर भूमि उठाने की बात को सही नहीं माना है किन्तु रामअजोर सिंह का उक्त साक्ष्य निम्नलिखित कारणों से विश्वासनीय नहीं है

1- रामअजोर सिंह ने अपने उक्त बयान में यह भी स्वीकार किया है कि उन्होंने अभीराजी बनाम उमाशंकर ना मुकदमें उमाशंकर प्रभाकर और संधाकर के पिता को विरुद्ध गवाही दी है। इससे यह स्पष्ट है कि रामअजोर सिंह से तथा पुनरीक्षण करता गण के पिता उमाशंकर सिंह से बैनामा के बाद किसी कारण शत्रुता हो गई थी। जिसके फलस्वरूप मन केवल इस मुकदमें में बल्कि दूसरे रामअजोर सिंह ने उमाशंकर सिंह के विरुद्ध बयान दिया था इससे स्पष्ट है कि उक्त बयान पुनरीक्षण करतागण के पिता से दुश्मनी के कारण रामअजोर सिंह ने दिया था।

2- 1358 फ० 1359 फ० और 1361 फ० के खसरे में मेवालाल तथा उनके पिता राम अजोर सुनार का कब्जा बावजूद सूद लिखा हुआ है। जिससे स्पष्ट है कि मेवालाल आदि का कब्जा शिकमी का कब्जा नहीं था बल्कि रीकदाता का कब्जा मुर्तअहल के साथ था। इस प्रकार रामअजोर सिंह का साक्ष्य अभिलेखीय साक्ष्य से गलत सिद्ध होता है। और यह तथ्य गलत साबित होते हैं कि रामअजोर सिंह ने सिकमी पर जमीन उठाई थी।

3- स्वयं मेवालाल ने अपनी जिरह दि० 14-2-74 के अन्त में यह स्वीकार किया है कि रामअजोर सिंह और उमाशंकर सिंह के बीच आपस में बनाम

के बाद खिलाफत अर्थात् शत्रुता हो गई। इस प्रकार स्वयं मेवालाल के बयान से ही रामअजोर सिंह की शत्रुता उमाशंकर से सिद्ध हो जाती है।

4- धारा 220 बी के मुकदमे में मेवालाल के बयान दि० 17-2-64 की नकल दाखिल की गई है। जिसमें मेवालाल ने कहा है कि रसीद पर रामसुन्दर सिंह ने उनके सामने अंगुठा लगाया था। किन्तु जो रसीद दाखिल की गई है उस पर रामसुन्दर सिंह की कोई अंगुठा निसानी नहीं है।

12- उपयुक्त कारणों से मे रामअजोर सिंह के बयान को विश्वासनीय नहीं मानता। और उक्त रसीद फरजी सिद्ध होता है। उक्त रसीद के लेखक तथा गवाह रामसोहरत तिवारी तथा केशव प्रसाद मिश्र जिनके हस्ताक्षर रसीद पर हैं को परीक्षित नहीं कराया गया है। अतः उक्त रसीद सिद्ध नहीं है।

13- जहां तक मौखिक साक्ष्य का प्रश्न है मेवा लाल आदि की ओर से पहले गवाह राम लौट है जिन्होंने 14-2-74 को बयान दिया है कि उन्हें होश संभाले केवल 8 वर्ष हुए इसका यह स्पष्ट अर्थ हुआ कि 1966 के पहले और क्या हुआ। इस संबंध में उनके बयान का कोई मुल्य नहीं है। वे यह भी कहते हैं कि सीवाय इस खेत के वे गाँव के अन्य किसी खेत का खसरा न० नहीं जानते। और यहाँ तक कि अपने खेतों के खसरा न० भी नहीं जानते। इससे स्पष्ट है कि इस गवाह को कोई ही है। और इसका साक्ष्य अविश्वासनीय है। दूसरे गवाह स्वयं मेवालाल है जो पक्ष है उसका साक्ष्य स्वतन्त्र नहीं है। मेवालाल और उनके गवाह रामलाल ने खेत की जो चौहद्दी बताई है वह एक दुसरे से नहीं मिलती। इस प्रकार दोनों गवाहों के साक्ष्य एक दुसरे के विरुद्ध होने के कारण विश्वासनीय नहीं है। इसके अतिरिक्त अन्य कोई स्वतन्त्र साक्षी इस केस में पेश नहीं किया गया है।

14. उपयुक्त विवरण से यह स्पष्ट है कि विवादित भूमि रामअजोर सिंह ने करजा के सूद में एवज में राम अजोर सोनार को दी थी। और इस प्रकार राम बजोर सोनार और उसके पुत्रगण मेवालाल आदि का कब्जा केवल कर्ज देने वाले मुर्तहीन का अनुमतिपण कबजा मात्र था जिसके आधार पर मेवालाल आदि को विवादित भूमि पर कोद अधिकार प्राप्त नहीं हुआ। विवादित भूमि सिकमी पर इन लोग का नहीं उठाई गई थी क्योंकि सिकमी पर भूमि उदरनक का जो साक्ष्य है वह विश्वासनीय नहीं है। बल्कि अभिलेखीय साक्ष्य में सूद पर भूमि दिये जाने की बात को सिद्ध करता है इसका दूसरा प्रमाण यह है कि 1359 फ० से 1362 फ० की खतौनी की कोई नकल ऐसी नहीं दाखिल की गई है जिसमें मेवालाल आदि विवादित भूमि के शिकमी या अधिवासी अंकित हो। इससे भी स्पष्ट है कि यह लोग सिकमी या अधिवासी नहीं थे। 1362 फ० की खतौनी का नकल में भी जबकि रामअजोर सिंह के अन्य भूखण्डों पर लोगों को अधिवासी से सीरदारी अधिकार दिये गये हैं गाटा सं० 367 पर मेवालाल आदि को न तो अधिवासर माना गया और न कोई अधिकार ही दिया गया। 1362 फ० में अन्य अधिवासियों की तरह मेवालाल आदि ने अधिवासी से सीरदार जिनके लिये कोई आपत्ति नहीं की और धारा 240 के अन्तर्गत कोई कार्यवाही नहीं हुई। 1963 में पुनरीक्षणकर्ता गण के बैनामा लेने के बाद तब प्रतिउत्तरदातागण ने अपने को अधिवासी से सिरदार कहना प्रारंभ किया। इस प्रकार शिकमी से अधिवासी और सिरदार होने का बात बिलकुल गलत सिद्ध होती है। जहाँ तक वीपरीत

कब्जे का प्रश्न है ऐसा कोई केय प्रतिउत्तरदातागण का नहीं है। अतः प्रतिउत्तरदातागण को विवदित भेमि पर सिरदार तथा भेमिधरी अधिकार देकर अधिनस्थ न्यायालयों ने गलती की है। और उसके आदेश निरस्त होने योग्य है।

आदेश

दोनो पुनरीक्षण स्वीकार कर लिये जाते है। तथा अधिनस्थ न्यायालयो के निर्णयो को निरस्त करते हुये दोनो भूखण्डों को पुनरीक्षण करतागण की भूमिधरी घोषित किया जाता है। तदनुसार अभिलेखों में अमलदरामद की जाय। इस आदेश की एक एक आदेश की एक एक प्रति दोनो पत्रावलियो पर रखी जाय।

तद० 2-11-1981

ह० जनार्दन उपाध्याय
उप संचालक चकबन्दी बस्ती"

13. On the point of entry of 1356 & 1359 fasli the judgment of the full Bench of Hon'ble Apex Court reported in **1968 RD 151 (Sonawati and Others Vs. Sri Ram and Others)** will be relevant in which it has been held that a person cannot acquire status as 'adhivasi' against bhumidhar merely by occupying land after 1358 fasli by force. Paragraph nos.9, 10 & 11 of the judgment rendered in Sonawati (supra) are relevant for perusal, which are as under:

"9. The scheme of s. 3 of the U.P. Land Reforms (Supplementary) Act, 1952 is different from the scheme of s. 20(b) of the U.P. Zamindari Abolition and Land Reforms Act 1 of 1951. Whereas under Act 1 of 1951 the entry is made evidence without further enquiry as to his right of the status of the person who is recorded as an occupant under s. 3 of the U.P. Land Reforms (Supplementary) Act, 1952, a person who claims the status of an asami or an adhvasi must establish that he was in "cultivatory possession" of the land during the year 1359 Fasli. The expression "cultivatory possession" is not defined in the Act, but

the Explanation clearly implies that the claimant must have a lawful right to be in possession of the land, and must not belong to the classes specified in the explanation. "Cultivatory possession" to be recognized for the purpose of the Act must be lawful, and the whole year 1359 Fasli. A trespasser who has no right to be in possession by merely entering upon the land forcibly or surreptitiously cannot be said to be a person in "cultivatory possession" within the meaning of s. 3 of U.P. Act 31 of 1952. We are of the view that the Allahabad High Court was in holding in Ram Krishna v. Bhagwan Baksh Singh [1961] A.L.J. 301 that a person who through force inducts himself over and into some land and succeeds in continuing his occupation over it cannot be said to be in cultivatory possession of that land so as to invest him with the rights of an asami or an adhivasi, and we are unable to agree with the subsequent judgment of a Full Bench of the Allahabad High Court in Nanhoo Mal v. Muloo and others I.L.R. [1963] All. 751 that occupation by a wrongdoer without any right to the land is "cultivatory possession" within the meaning of s. 3 of the U.P. Act of 31 of 1952.

10. A person who has no right to occupy land may rely upon his occupation against a third person who has no better title, but he cannot set up that right against the owner of the land. It must be remembered that by s. 3 of U.P. Act 31 of 1952 the Legislature conferred right upon persons in possession of land against the tenure holders, and in the absence of any express provision, we are unable to hold that it was intended by the Act to put a premium upon forcible occupation of land by lawless citizens. We have no doubt therefore that by forcibly occupying the land

after 1358 Fasli, Pritam Singh could not acquire as against the bhumidhar of the land rights of an adhvasi by virtue of s. 3 of U.P. Act 31 of 1952.

11. Counsel for the appellants contended that the finding recorded by the First Appellate Court that Pritam Singh was in "cultivatory possession" in 1359 Fasli was binding upon the High Court in Second Appeal. For reasons already set out, possession of a person in wrongful occupation cannot be deemed cultivatory possession. Again the Appellate Judge in arriving at his conclusion ignored very important evidence on the record, and on that account also the conclusion was not binding on the High Court. Pritam Singh's name was recorded in the khasra for the year 1359 Fasli as sub-tenant "without settlement of rent." Pritam Singh did not offer to give evidence at any stage of the trial before the Assistant Collector, and it was not his case that he had entered into any contact of sub-tenancy with Tota Ram and Lajja Ram. The entry which records him as a sub-tenant of Tota Ram and Lajja Ram for the year 1359 Fasli is on his own case untrue. There is further no oral evidence in support of the case of Pritam Singh that he was in actual "cultivatory possession" of land and the entry relied upon by him does not support his case. To get the benefit of s. 3 of U.P. Act 31 of 1952, it had to be established that Pritam Singh was in actual cultivatory possession of the land and that fact is not established by direct evidence of possession, nor is it established by the entry relied upon by him. The conclusion of the learned Appellate Judge that Pritam Singh was in "cultivatory possession" was partially founded on the conclusion recorded by him that in 1356 Fasli Pritam Singh was in possession of the land.

We have already pointed out that in so concluding he misread the khasra entry for 1356 Fasli and gave no effect to the khasra Barahsala which showed that Pritam Singh was not in possession of the land till the end of 1358 Fasli. The learned Judge also inferred that because it was stated by Sir Ram the first plaintiff and his witness Maharaj Singh that no crops were cultivated during the Kharif season and as the khasra for 1359 Fasli showed that Bajra was sown in one of the plots in 1359 Fasli and gram was raised in all the plots, Pritam Singh must have been in possession as a sub-tenant and must have cultivated the land in the Kharif season of 1359 Fasli. This was, in our judgment, a far-fetched inference. The Appellate Judge also did not refer to other evidence to which pointed attention was directed in support of his conclusion, by the Assistant Collector Agra : for instance, Banwari Lal, Naib Registrar examined on behalf of the plaintiffs had clearly stated that Pritam Singh was not in possession of the land prior to 1359 Fasli and that Tota Ram who was examined as a witness stated that Pritam Singh was not in possession of the land and he had not given the land to Pritam Singh on lease, and that he did not receive rent from Pritam Singh. We are unable, therefore, to hold that a conclusion arrived at only from an entry in the revenue records which does not prima facie support the case of Pritam Singh, that he wrongfully trespassed upon the land and cultivated it may be regarded as conclusive in Second Appeal. The High Court was, in our judgment, right in reaching the conclusion that Pritam Singh was not in "cultivatory possession" of the land in 1359 Fasli within the meaning of s. 3 of Act 31 of 1952."

14. The procedure for making entries of sub-tenants and others in Column- 6 of the Khasra has been provided under Paragraph no.87 of the U.P. Land Record Manual, which is as under:

“87. Entries of sub-tenants and others (Column 6).- (i) In Column 6 of the khasra will be entered the persons of the following description:

(a) Tenants under permanent tenure-holders in Agra, Class 16 of the khatauni.

(b) Tenants of sir, tenant of khudkasht of 1333-34 Fasli admitted in 1335 Fasli or subsequently and tenants of khudkasht of not less than 12 year's standing in 1309 Fasli and still so recorded [in Agra Class (17) and in Avadh Class (10) of the khatauni].

(c) Tenants under rent-free grantees at a favourable rate of rent [in Agra Class (18) and in Avadh Class (10-A) of the khatauni].

(d) Sub-tenants [in Agra class (19); and in Avadh class (11) of the khatauni].

(e) Occupiers of land without the consent of the person whose name is entered in Column 5 of the khasra [in Agra Class (20) and in Avadh Class (12) of the khatauni].

(ii) In any case in which a person whose name was recorded in Column 6 in the preceding year is still entitled to have his name recorded in the same column, it would be sufficient to record his name, in black ink, with the word "badastur" (as before) appended at the end.

(iii) If there was no entry in Column 6 of the khasra in the preceding years and in Lekhpal finds at the time or partial some person belonging to one of the classes mentioned in sub-paragraph (i) in cultivatory occupation of the land, he will enter in Column 6 in red ink the name, parentage and rent, if any, of such person together with his status:

Provided that he shall not record any such person as belong the classes (a), (b), (c) or (d) of sub-paragraph (i) unless he is satisfied by an inquiry from the parties concerned that a contractual relation of landholder and tenant exist between them. If he is not so satisfied, he shall record the person as belonging to class (e) pending such

inquiry; the Lekhpal shall note the name and parentage of such person in the remarks Column of the khasra.

(iv) If any entry already exists in Column 6 of the khasra and the Lekhpal finds at the partial that some person other than the recorded person is in cultivating occupation of the land, then following contingencies may arise:

(a) The recorded person is dead and the occupier claims as an heir. In this case the Lekhpal shall proceed as provided in paragraph 82.

(b) The occupier claims as sub-tenant of the recorded person. The Lekhpal shall proceed as provided in paragraph 88.

(c) The occupier claims to be sajhi or marifatdar of a person belonging to class (a) or (c) of sub-paragraph (1). The Lekhpal shall proceed as provided in paragraph 83. A sajhi or marifatdar of a person belonging to class (b), (d) or (e) of sub-paragraph (i) shall be ignored.

(d) The occupier claims to be recorded in Column 6 to the exclusion of the recorded person. The Lekhpal shall proceed as follows:

(i) If the recorded person belongs to classes (b), (d) or (e) of sub-paragraph (i), the Lekhpal will substitute the name of the actual occupier in place of the name of the recorded person but he shall not enter the name in class (b) or class (d) unless the condition laid down in the proviso to sub-paragraph (iii) are fulfilled. If he finds that a contractual relationship has not arisen between the occupier and the person entitled to subject he will treat the occupier as belonging to class (e).

(ii) If the recorded-person belongs to class (a) or (c) of sub-paragraph (i), the Lekhpal shall provisionally enter in red ink the name of the actual occupier in the remarks Column of the khasra and shall proceed, as far as possible, as laid down in sub-paragraphs (b) to (d) of paragraph 84, provided that in a case falling under class (d) the name and other particulars of the actual occupier with the words "Qabiz Dawedar" shall be entered below the name and other particulars of the person already recorded in Column 6.

(v) A cross mark shall be made at the time of rabi partial, in red ink, so as to occupy the whole space in Column 6 against any plot which has not been held by person of the classes mentioned in sub-paragraph (i) in either crop and no entry shall subsequently be made in the Column without the written order of the '[Revenue Inspector] or higher authority. Such an order if made by the '[Revenue Inspector], shall be written out by him in the remarks Column of the khasra and shall be signed and dated by him."

15. In the instant matter entry which has been made in the remark column/ khana kafiyaat that is not according to the provisions contained under Paragraph no.87 of the U.P. Record Manual, as such, no reliance can be placed upon the entry of the plot nos.376 & 377 as mentioned in the khasra annexed along with writ petition as well as quoted in the earlier paragraph of this judgment in order to claim Adhivasi right/ Sirdari right.

16. So far as the judgment passed under Section 229-B of U.P.Z.A. & L.R. Act are concern, the proceedings of the suit under Section 229-B of U.P.Z.A. & L.R. Act had abated due to consolidation operation, as such, no reliance can be placed upon the judgment passed under Section 229-B of U.P.Z.A. & L.R. Act. The Deputy Director of Consolidation has rightly held that judgment passed under Section 229B of U.P.Z.A. & L.R. Act cannot be relied upon in the consolidation proceeding due to abatement of the proceeding. The revisional Court has however examined the some of the evidence which were adduced in the suit under Section 229B of U.P.Z.A. & L.R. Act, which is correct exercise of revisional jurisdiction under Section 48 of U.P.C.H. Act.

17. The Consolidation Officer and Settlement Officer of Consolidation have decided the matter without considering the provisions of Section 20 of U.P.Z.A. & L.R. Act as well as the principle laid down by Hon'ble Apex Court in ***Sonawati (Supra)***, as such, the orders passed by Consolidation Officer & Settlement Officer of

Consolidation have been rightly set aside by revisional Court under Section 48 of U.P.C.H. Act considering the revenue entry of the plot in question w.e.f. 1356 fasli as well as other evidence on record.

18. So far as jurisdiction under Section 48 of U.P.C.H. Act is concern, the legislature has made amendment under Section 48 of U.P.C.H. Act by inserting explanation-3 with effect from 10.11.1980 by U.P. Act no.3 of 2002 by which power has been given to revisional Court to examine the correctness, legality or propriety of any order which includes the power to examine any finding whether of fact or law as well as re-appreciate any oral or documentary evidence. In the instant matter revisional order was passed on 2.11.1981 against the appellate order dated 21.11.1980, as such, amended provisions of Section 48 of U.P.C.H. Act will be applicable.

19. This Court in the case reported in **2020 (148) RD 114, Lakshmania Vs. D.D.C. Deoria and Others** has considered the scope of Section 48 Explanation 3 of U.P.C.H. Act. Paragraph No.44 of the judgment rendered by this Court in Lakshmania (supra) will be relevant for perusal which is as under:

"44. In this case, the objections were filed in the year 1981, and, therefore, the amended provisions of Section 48, operative retrospectively, would squarely apply. Under the amended statute, the Revisional Court has been conferred with unique powers by virtue of the added Explanation 3 to go into the correctness, legality or propriety of an order passed by

an Authority below, whether on fact or law, and includes the powers to appreciate any oral or documentary evidence. Thus, to the understanding of this Court, in view of the added Explanation by U.P. Act no. 3 of 2002, retrospectively w.e.f. 10.11.1980, the Revisional Court is in no manner inhibited from examining any question of fact or law, or appreciating evidence whether documentary or oral, virtually like any other Court of fact and law. It is a unique position that the Revisional Authority enjoys, under Section 48 of the Act, conventionally not associated with the exercise of revisional jurisdiction."

20. The plea of Shikami tenant, Adhivasi right, Sirdari right on the basis of alleged entry in the revenue record in respect to plot nos.376 & 377 setup by the petitioners has failed, as such, respondent nos.2 & 3 are entitled to be recorded as bhumidhar on the basis of sale-deed executed on 31.1.1963 by Ram Anjor Singh in favour of respondent nos.2 & 3 as held under the impugned revisional order dated 2.11.1981.

21. Learned counsel for the petitioners has not pressed the plea of the adverse possession, as such, issuance of P.A. 10 is not required to be considered.

22. Considering the entire facts and circumstances of the case, there is no illegality in the impugned judgement dated 2.11.1981 passed by respondent no.1/ Deputy Director of Consolidation, Basti.

23. The writ petition stands ***dismissed.***

24. It is further directed that entire amount deposited by the petitioners with effect from 1983 under the

interim order of this Court dated 20.9.1983 be released in favour of respondent nos.2 & 3 within period of six weeks from the date of production of certified copy of this order before the authority concern.

25. No order as to costs.

Order Date :- 3.7.2024

Rameez