

Writ C No.11232 of 2025

Savitri Sonkar Vs. State of U.P. and others

Hon'ble Alok Mathur, J.

1. Heard Sri Vivek Raj Singh, Senior Advocate assisted by Sri Akshat Kumar, Shantanu Sharma, Kunwar Naresh Vardhan Singh, Utkarsh Singh, Sukrit Singh and Siddhartha Misra on behalf of the petitioner, as well as Sri Satish Kumar, Senior Advocate, assisted by Sri Prem Singh on behalf of the State.
2. The facts in the present case demonstrate a very sorry state of affairs about the proceedings undertaken by the revenue authorities in dealing with the exercise of statutory power to determine the right and title of the property, their lack of sensitivity and deliberate disregard for the rule of law and the directions of the Courts, including the Hon'ble Supreme Court.
3. In the instant case suo moto proceedings were initiated under Section 38 (5) of U.P. Revenue Code for correction of revenue records which was unilaterally corrected on 10.2.2025 without giving any notice or opportunity of hearing to the petitioner who is the recorded tenure holder of the said land, declaring the said land to be Gaon sabha land and subsequently a revenue team was constituted to demolish the said structure. It has been submitted

that the proceedings for demolition had also taken place on 24.3.2025.

4. The factual aspect of this case has been duly considered by this Court on a previous occasion, and for the sake of convenience, the order dated 3.12.2025 is quoted as under:-

"1. Heard Sri Vivek Raj Singh, Senior Advocate assisted by Sri Akshat Kumar on behalf of the petitioner as well as learned Standing counsel on behalf of State-respondent No.s 1, 2, 3, 5 and 6.

2. An oral request has been made on behalf of the petitioner to make Sub District Magistrate (Judicial), Tehsil Sadar, District Raebareli as a party in the memo of the petition.

3. The oral request is allowed. The petitioner is directed to make Sub District Magistrate (Judicial), Tehsil Sadar, District Raebareli as a party in the memo of the petition. during course of the day.

4. It has been submitted on behalf of the petitioner that the present dispute pertains to the property situated at gata No.431 Kha measuring 0.7740 hectare situated in Village -Devanandpur, Pargana Tehsil and District Rae Bareli. It has been submitted that with regard to the said land one Santdeen had filed a suit for declaration under Section 229 B of U.P.Z.A. and L.R.Act before Parganadhikari, Sadar, District Raebareli and the suit was decreed in his favour vide judgment and decree dated 18.3.1975. It is on the basis of the said judgment

and decree dated 18.3.1975 that name of Santdeen was recorded in the revenue records and thereafter his son, namely, Ratan Lal and his brothers became the owners of the land whose names were also recorded in the revenue records.

5. The petitioner and her sister purchased the said land by a registered sale deed from Ratan Lal son of Santdeen on 24.2.2021 and the petitioner and her sister became owner of a part of the said plot No.431 Kha measuring an area of 3036 square meters. The petitioner and her sister thereafter also moved an application under Section 34 of U.P. Revenue Code and their names have been mutated in the revenue records by means of order dated 24.2.2021 passed by Tehsildar, Tehsil Sadar, District Raebareli. It has been stated that the petitioner and her sister have been in possession of the said land when on 24.3.2025 opposite party No.s 4, 5 and 6 came with a JCB machine and demolished the structure that has been raised by the petitioner. It is only then that the petitioner came to know about the impugned order dated 10.2.2025 passed by opposite party No.4 in exercise of the powers under Section 38 (5) of U.P. Revenue Code whereby the said land has also been handed over to GST Department.

6. It has been submitted that despite the fact that petitioner's name was entered into the revenue records neither has she been made a party in the proceedings under Section 38 (5) nor any notice has been given to her and in a most illegal and arbitrary manner the respondents have proceeded to firstly pass the impugned order dated 10.2.2025 and immediately thereafter proceeded to demolish the structure of the petitioner existing on the disputed land.

7. It has further been submitted that the statutory prescription to file a revision against an order passed under Section 38 (5) is sixty days and, therefore, the opposite parties could not have rushed into demolishing the disputed premises without expiry of the statutory period of filing a revision. It has been submitted that aforesaid facts clearly indicate the high handedness in which the respondents have proceeded to take the land in their own hands clearly ignoring the orders passed under Section 229 B of U.P.Z.A .and L.R. Act where there is a declaration existing in favour of the predecessors-in-interest of the petitioner. It has been submitted that in case the respondents were aggrieved by the orders passed under Section 229 B of U.P.Z.A. and L.R.Act then appropriate remedy for them would have been to file an appeal or approach higher court assailing the said order but during currency of the aforesaid judgment the respondents could not have exercised the powers under Section 38 (5) to decide the disputed questions of title which is clearly barred under Section 38 of U.P. Revenue Code.

8.Learned Senior Advocate has relied upon the judgment & order dated November 13,2024 in the case of Writ Petition(Civil) No. 295 of 2022InRe : Directions in the matter of demolition of structures rendered by Supreme Court where it was held that no demolition is permissible without a show cause notice and further that adequate time has to be granted to respond to the same or to challenge the demolition notice. He has further submitted that detailed guidelines have been framed by Supreme Court even where demolition has to take place and in clear violation of the aforesaid judgment of Supreme Court the respondents under the garb of the

order dated 10.2.2025 have proceeded to demolish the structure existing at the disputed land.

9. The matter requires consideration. Let a personal affidavit be filed by respondent Nos.3 & 7 after making necessary inquiries and indicate as to how and under which jurisdiction the orders have been passed under Section 38 of U.P.Revenue Code ignoring the orders passed under Section 229B of U.P.Z.A. and L.R. Act and also the urgency in proceeding to demolish the constructions existing on the disputed land.

10. List on 15.12.2025 in top ten cases.

11. Till the next date of listing, status-quo as existing today shall be maintained on the property in dispute.

12. Let a copy of this order be served upon District Magistrate, Raebareli by the office of Chief Standing Counsel forthwith. The District Magistrate after perusing the record with regard to the proceedings under Section 38 (5) in connection with the order dated 10.2.2025 shall seal the entire original records forthwith and ensure production of the same before this Court on the next date of listing."

5. Learned counsel for the petitioner has submitted that with regard to the property situated on gata No.431 Kha area 0.7740 hectare in Village Devanandpur, Pargana, Tehsil and District Raebareli, a suit for declaration was filed under Section 229 B of U.P.Z.A. and L.R. Act before Parganadhikari, Sadar and the suit was decreed in favour of predecessor in interest of the petitioner on 18.3.1975. The said judgment and decree became final, and

accordingly name of the predecessor-in-interest of the petitioner was recorded in the revenue records.

6. It has been submitted that despite the petitioner having established his rights to the said property in the said proceedings under Section 229B of U.P.Z.A. & L.R. Act, the Sub Divisional Magistrate, Tehsil Sadar, Raebareli, had initiated proceedings under Section 38 (5) of U.P. Revenue Code without issuing any notice and proceeded to delete the name of the petitioner from the revenue records. In the said proceeding, despite the fact that the land was recorded in the name of the petitioner, no notices were given to him and merely on the basis of the revenue report, his name was deleted, and the name of Gaon Sabha was inserted.
7. Learned counsel for the petitioner has submitted that the order dated 10.2.2025 passed by Sub Divisional Magistrate, Raebareli is illegal and arbitrary inasmuch as firstly no opportunity of hearing was given to the petitioner and secondly in exercise of the powers under Section 38 right, title or interest of any person cannot be adjudicated. He submits that a perusal of the impugned order itself would indicate that the case was initiated based on the report submitted by Naib Tehsildar, Sadar, District Raebareli, on 1.2.2025
8. We have perused the aforesaid report of revenue official according to which Ratan Lal, the legal heir of Sant Deen, has sold the land in favour of various people, whose names are

recorded in the revenue record. In the report it has been stated that there is no order on the basis of which the name of Sant Deen has been entered into the revenue records, from which he has expressed an opinion that the said entry is forged. A perusal of the said report indicates that Naib Tehsildar has clearly noticed that the land is recorded in the name of various persons, but he has deliberately not given the name of the tenure holders whose names are recorded in the revenue records on the basis of the sale deed executed by the successor-in-interest of Sant Deen. On the basis of the report dated 10.2.2025, a notice was sent only to Ratan Lal, son of Sant Deen. There is no dispute with regard to the fact that the petitioners whose name is duly mutated in revenue records were neither made parties to the proceedings under Section 38 (5) nor were they ever served.

9. Armed with only the report of the Naib Tehsildar, Sadar, the Sub Divisional Magistrate proceeded to decide the case and deleted the name of the tenure holders and declared the same as *Ushar* (Gaon Sabha land) and forwarded the copy of the said order to Tehsildar, Sadar, District Raebareli to make necessary correction in the revenue records and similarly the copy was forwarded to government counsel to initiate the proceedings for cancellation of the sale deed.

10. Further, from the record, subsequently it is evident that on the strength of the order dated 10.2.2025, which in turn is based

on the report of the Lekhpal a revenue team was constituted to remove the alleged illegal structure from the said land and immediately thereafter, on 24.3.2025 exercise for demolition was carried out and land handed over for construction of building for G.S.T. Department.

11. Learned counsel for the petitioner submits that firstly there was a total violation of rule of law in as much as entire proceedings were ex parte, illegal and arbitrary and totally contrary to the statutory provisions. It was submitted that even a perusal of the Section 38 of U. P. Revenue Code which pertains to correction of error and omissions, in the explanation clause clearly provides that the power to correct any error or omission under this section shall not be construed to include the power to decide a dispute involving question of title.

12. Apart from the above, it is submitted that once the suit proceedings under Section 229B of U. P. Z. A. and L. R. Act had declared the interest of the petitioner in the disputed land and the said decision was never assailed by the State nor any other person in appeal and therefore it became final and was binding even on the revenue authorities who most surreptitiously and in a clandestine manner conducted an illegal exercise behind the back of the petitioner who is the recorded tenure and proceed to make changes in records and subsequently in the garb of changed record proceeded to demolish the petitioner's dwelling. There is

no dispute that no opportunity of hearing was given before the correction was made in the record or while proceeding for demolition of the building. Apart from the above, it was found that even for a moment, it is assumed that the land vested in gaon sabha, in such a situation also any action for has to be carried out it has to be carried out only under Section 67 of U. P. Revenue Code. For the sake of convenience, Section 67 of U. P. Revenue Code is quoted as under:-

“67. Power to prevent damage, misappropriation and wrongful occupation of Gram Panchayat property.-

(1) Where any property entrusted or deemed to be entrusted under the provisions of this Code to a Gram Panchayat or other local authority is damaged or misappropriated, or where any Gram Panchayat or other authority is entitled to take possession of any land under the provisions of this Code and such land is occupied otherwise than in accordance with the said provisions, the Bhumi Prabandhak Samiti or other authority or the Lekhpal concerned, as the case may be, shall inform the Assistant Collector concerned in the manner prescribed.

(2) Where from the information received under sub-section (1) or otherwise, the Assistant Collector is satisfied that any property referred to in sub-section (1) has been damaged or misappropriated, or any person is in occupation of any land referred to in that sub-section in contravention of the provisions of this Code, he shall issue notice to the person concerned to show cause why compensation for damage,

misappropriation or wrongful occupation not exceeding the amount specified in the notice be not recovered from him and why he should not be evicted from such land.

(3) If the person to whom a notice has been issued under sub-section (2) fails to show cause within the time specified in the notice or within such extended time as the Assistant Collector may allow in this behalf, or if the cause shown is found to be insufficient, the Assistant Collector may direct that such person shall be evicted from the land, and may, for that purpose, use or cause to be used such force as may be necessary, and may direct that the amount of compensation for damage or misappropriation of the property or for wrongful occupation, as the case may be, be recovered from such person as arrears of land revenue.

(4) If the Assistant Collector is of opinion that the person showing cause is not guilty of causing the damage or misappropriation or wrongful occupation referred to in the notice under sub-section (2), he shall discharge the notice.

(5) Any person aggrieved by an order of the Assistant Collector under sub-section (3) or subsection (4), may within thirty days from the date of such order, prefer an appeal to the Collector.

(6) Notwithstanding anything contained in any other provision of this Code, and subject to the provisions of this section every order of the Assistant Collector under this section shall, subject to 1. Subs. by U.P. Act No. 7 of 2019, Sec 4 31 the provisions of sub-section (5) be final.

(7) The procedure to be followed in any action taken under this section shall be such as may be prescribed.

13. It is noticed that even in a situation where a person has made encroachment on the gaon sabha land, provision has been made in the Revenue Code to give due opportunity to such a person and after seeking his response order for eviction and imposition of penalty can be passed.
14. Learned Standing counsel does not dispute the fact that merely on noticing that some construction has arisen or is existing on any gram sabha land does not give *suo moto* power to any authority to proceed to demolish the said structure in absence of any proceedings under Section 67 of U.P. Revenue Code.
15. Accordingly, it was stated that there was no semblance of following any procedure established by law; rather, the respondents, in a very high-handed manner, have acted illegally and arbitrarily in the present case by firstly *suo moto* correcting the revenue records, deleting the name of the petitioner from the revenue records, and subsequently proceeding to demolish the said structure.
16. Learned counsel for the respondents, on the other hand, have opposed the writ petition. It is submitted that in the affidavit filed by opposite party No.7 much emphasis has been laid with regard to the validity of the order dated 18.3.1975 passed in

proceedings under Section 229 B of U. P. Z. A. and L. R. Act. It has been submitted that there was an infirmity in the order dated 18.3.1975, and the said order could not have vested any right and title to the property of the petitioner. It has further been submitted that against the order dated 10.2.2025, one revision was preferred by one Hamza Khan, who was also a tenure holder in the disputed land and similarly placed with the petitioner, which revision was dismissed by the Commissioner, Lucknow Division, Lucknow, by means of an order dated 15.5.2025.

17. Considering the facts of the present case, we find that each and every direction of the Supreme Court has been flouted with impunity by the respondent. Neither was any notice given to the petitioner nor any opportunity of hearing was given to him, and an order under Section 38 was passed behind the back of the petitioner, and immediately thereafter, demolition was carried out without giving him any opportunity to file appeal against the said order or to take legal recourse against the order passed by the respondents in the present case.
18. The respondents were fully aware of the existence of the order dated 18/03/1975 in favour of the predecessor in interest of the petitioner, but deliberately did not deal with the said order while passing the impugned order, most illegally and arbitrarily. This action of the respondents clearly shows the malafide in proceeding against the petitioner in the present case. Despite

existence of an order in regular proceedings in favour of the petitioner, the respondents have chosen to ignore and not to take into consideration the said order, and in the most illegal and arbitrary manner proceeded to delete his name from the revenue records purportedly in exercise of correcting the revenue records.

19. It was further submitted by learned counsel for the petitioner that the petition ought to be allowed while imposing exemplary cost on the respondents. In support of his submissions he relied upon the judgment in the case of **Julfiqar Haider and another Vs. State of U.P. and others, 2025 SCC online, SC 766.**

20. Accordingly, from the aforesaid, we have no hesitation in holding that the impugned order dated 10.2.2025 is illegal and arbitrary, and even the demolition carried out by the respondents is illegal and arbitrary and contrary to law.

21. Right to property is a constitutional right provided for in Article 300A of the Constitution of India, which provides that no one shall be deprived of his property except by a procedure established by law.

22. It is in aforesaid circumstances that the Supreme Court in the case of ***Writ Petition (Civil) No. 295 of 2022, In Re : Directions in the matter of demolition of structures, 2024 SCC OnLine SC 3291*** decided on November 13, 2024 has duly considered the entire aspect pertaining to the power to the State

to initiate demolition, the Supreme Court while considering the aspect of demolition has firstly emphasized upon the concept of rule of law wherein it has been observed as under:-

“16. There can also be no doubt with the principle that, under the constitutional framework there is no scope for arbitrariness by officials, and that no one can be punished or made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. It is only the courts which are independent adjudicators of the rights of the parties and under the constitutional framework it is only they which can impose punishment.

17. Though the basic principle, as conceptualized by Dicey, largely remains the same, the concept of ‘rule of law’ has been discussed subsequently by various scholars. It has been described to mean that “government officials and citizens are bound by and have to abide by the law” and that there “must be mechanisms or institutions that enforce the legal rules if they are breached”³. It ensures that “courts should be available to enforce the law and should employ fair procedures”⁴. The law must be just and fair, and “protect the human rights and dignity of all members of society”⁵. Above all, “the essential purpose of the rule of law is to prevent the abuse of power”⁶. Lord Bingham sets out as one of the facets of the rule of the law, the following:

“(4) Ministers and public officers at all levels must exercise the powers conferred on them in good

faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably.”

23. There can also be no doubt with the principle that, under the constitutional framework, there is no scope for arbitrariness by officials, and that no one can be punished or made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. It is only the courts which are independent adjudicators of the rights of the parties, and under the constitutional framework, it is only they which can impose punishment. Though the basic principle, as conceptualised by Dicey, largely remains the same, the concept of 'rule of law' has been discussed subsequently by various scholars. It has been described to mean that "government officials and citizens are bound by and have to abide by the law" and that there "must be mechanisms or institutions that enforce the legal rules if they are breached"³. It ensures that "courts should be available to enforce the law and should employ fair procedures". The law must be just and fair, and "protect the human rights and dignity of all members of society"s. Above all, "the essential purpose of the rule of law is to prevent the abuse of power". The rule of law has also been described as "an umbrella concept for a number of legal and institutional instruments to protect citizens against the power of the state. Moreover,"Rule of law is integral to and necessary for

democracy and good governance", because "attempts to democratize without a functional legal system in place have resulted in social disorder"⁹ • 19. It can thus be seen that the law must be just and fair, and also protect the human rights and dignity of all members of society. At the same time, the essential purpose of the rule of law is to prevent the abuse of power. The rule of law is an umbrella concept to protect citizens against the power of the State. It is integral to and necessary for democracy and good governance.

24. It has further been emphasized by the Supreme Court that the rule of law provides a framework and value system to ‘rein in the arbitrary exercise of state power and to prevent the abuse of power, to ensure predictability and stability, to make sure that individuals know that their lives, their liberty, their property will not be taken away from them arbitrarily and abusively’.

“93. It will also be informed that violation of any of the directions would lead to the initiation of contempt proceedings in addition to the prosecution.

94. The officials should also be informed that if the demolition is found to be in violation of the orders of this Court, the officer/ officers concerned will be held responsible for restitution of the demolished property at his/ their personal cost in addition to payment of damages.”

“72. The chilling sight of a bulldozer demolishing a building, when authorities have failed to follow the basic principles of natural justice and have acted

without adhering to the principle of due process, reminds one of a lawless state of affairs, where “might was right”. In our constitution, which rests on the foundation of ‘the rule of law’, such high-handed and arbitrary actions have no place. Such excesses at the hands of the executive will have to be dealt with by the heavy hand of the law. Our constitutional ethos and values would not permit any such abuse of power, and such misadventures cannot be tolerated by the court of law.”..

*“77...7. In **State of Karnataka v. Narasimhamurthy** [(1995) 5 SCC 524 : JT (1995) 6 SC 375] (SCC p. 526, para 7 : JT at p. 378, para 7), this Court held that the right to shelter is a fundamental right under Article 19(1) of the Constitution. To make the right meaningful to the poor, the State has to provide facilities and opportunity to build houses. Acquisition of the land to provide house sites to the poor houseless is a public purpose as it is the constitutional duty of the State to provide house sites to the poor.*

8. In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the

Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the constitutional animation of right to equality,

economic justice, fundamental right to residence, dignity of person and right to live itself. To bring the Dalits and Tribes into the mainstream of national life, providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights.”

Hon’ble Supreme Court issued following directions:

i. No demolition should be carried out without a prior show cause notice returnable either in accordance with the time provided by the local municipal laws or within 15 days' time from the date of service of such notice, whichever is later.

ii. The notice shall be served upon the owner/occupier by a registered post A.D. Additionally, the notice shall 88 also be affixed conspicuously on the outer portion of the structure in question.

iii. The time of 15 days, stated herein above, shall start from the date of receipt of the said notice.

iv. To prevent any allegation of backdating, we direct that as soon as the show cause notice is duly served, intimation thereof shall be sent to the office of Collector/District Magistrate of the district digitally by email and an auto generated reply acknowledging receipt of the mail should also be issued from the office of the Collector/District Magistrate.

24. Considering the affidavit filed by the opposite party No7, we do not find that he has answered any of the queries raised by this Court in its previous order, nor is it disputed that he had exercised the powers under Section 38 without any authority or jurisdiction

or that the demolition was carried out in accordance with law. We find that there is serious infringement of the rights of the petitioner pertaining to the right to property, and basic fundamental rights cannot be left in the hands of such authorities who themselves failed to uphold the rule of law.

25. The question whether the "element of compensation" is necessarily involved in the idea of eminent domain arose much controversy. According to one school of thought (See Lewis, Eminent Domain, 3rd Edition, 1909) opined that this question must be answered in the negative, but another view (See Randolph Eminent Domain in the United States (Boston 1894 [AWR])), the claim for compensation is an inherent attribute of the concept of eminent domain. Professor Thayer (cases on Constitutional law Vol 1.953), however, took a middle view according to which the concept of eminent domain springs from the necessity of the state, while the obligation to reimburse rests upon the natural rights of individuals. Right to claim compensation, some eminent authors expressed the view, is thus not a component part of the powers to deprive a person of his property but may arise, but it is not as if, the former cannot exist without the other. Relationship between Public Purpose and Compensation is that of "substance and shadow". Above theoretical aspects of the doctrine have been highlighted only to show the reasons, for the inclusion of the principle of eminent domain in the deleted Article 31(2) and in the present Article 30

(1A) and in the 2nd proviso of Article 31 A of our Constitution and its apparent exclusion from Article 300 A.

26. Our Constitution makers were greatly influenced by the Western doctrine of eminent domain when they drafted the Indian Constitution and incorporated the right to property as a Fundamental Right in Article 19 (1) (f), and the element of public purpose and compensation in Articles 31 (2). Of late, it was felt that some of the principles laid down in the Directive Principles of State Policy, which had its influence in the governance of the country, would not be achieved if those articles were literally interpreted and applied. The Directive Principles of the state policy lay down the fundamental principles for the governance of the country, and through those principles, the state is directed to secure that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Further, it was also noticed that the fundamental rights are not absolute but subject to law of reasonable restrictions in the interest of the general public to achieve the above objectives specially to eliminate Zamindari system.
27. While examining the scope of the Bihar Land Reforms Act, 1950 conflicting views were expressed by the Judges with regard to the meaning and content of Article 19 (1) (f) and Article 31 as

reflected in **Sir Kameshwar Singh's case (supra)**. Suffice it to say that the Parliament felt that the views expressed by the judges on the scope of Articles 19 (1) (f) and 31 might come as a stumbling block in implementing the various welfare legislations which led to the First Constitutional Amendment 1951 introducing Articles 31 A and 31 B of the Constitution.

28. Article 31 A enabled the legislature to enact laws to acquire estates which also permitted the State in taking over of property for a limited period either in the 'public interest' or to 'secure the proper management of the property', amalgamate properties, and extinguish or modify the rights of managers, managing agents, directors, stockholders etc. Article provides that such laws cannot be declared void on the grounds that they are inconsistent with Articles 14 and 19. Article 31B protected the various lands reform laws enacted by both the Parliament and the State Legislatures by stating that none of these laws, which are to be listed in the Ninth Schedule, can become void on the ground that they violated any fundamental right.

29. This Court in a series of decisions viz. In **State of West Bengal Vs. Bella Banerjee and others, AIR 1954 SC 170** and **State of West Bengal Vs. Bella Banerjee and others AIR 1954 SC 92** took the view that Article 31, clauses (1) and (2) provided for the doctrine of eminent domain and under clause (2) a person must be deemed to be deprived of his property if he was "substantially dispossessed" or his right to use and enjoy the

property was "seriously impaired" by the impugned law. The Court held that under Article 31 (1) the State could not make a law depriving a person of his property without complying with the provisions of Article 31 (2). In *Bella Banerjee's case* (supra), this Court held that the legislature has the freedom to lay down principles which govern the determination of the amount to be given to the owners of the property appropriated, but the Court can always, while interpreting Article 31(1) and Article 31(2), examine whether the amount of compensation paid is just equivalent to what the owner had been deprived of.

30. The Parliament, following the above judgment, brought in the Fourth Amendment Act of 1955 and amended clause (2) of Article 31 and inserted clause (2-A) to Article 31. The effect of the amendment is that clause (2) deals with acquisition or requisition as defined in clause (2-A) and clause (1) covers deprivation of a person's property by the state otherwise than by acquisition or requisition. The amendment enabled the State to deprive a person of his property by law. Under amended clause (2), the property of a citizen could be acquired or requisitioned by law, which provides for compensation for the property so acquired or requisitioned and either fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined. However, it was also provided that no such law could be called in question

in any court on the ground that the compensation provided by that law was not adequate.

31. This Court in **Kavalappara Kottarathil Kochuni's** case (supra) held that Articles 31 (1) and (2) are different fundamental rights and that the expression "law" in Article 31 (1) shall be a valid law and that it cannot be a valid law, unless it imposes a reasonable restriction in public interest within the meaning of Article 19 (5) and therefore be justiciable.

32. The Constitution was again amended by the Seventeenth Amendment Act of 1964, by which the State extended the scope of Article 31 A and Ninth Schedule to protect certain agrarian reforms enacted by the Kerala and Madras States and Jagir, Inam, muafi or any other grant, janmam, ryotwari etc. were included within the meaning of "estate". It also added the 2nd proviso to clause (1) to protect a person of being deprived of land less than the relevant land ceiling limits held by him for personal cultivation, except on payment of full market value thereof by way of compensation.

33. This Court in **P. Vajravelu Mudaliar's** case (supra) examined the scope of the Land Acquisition (Madras Amendment) Act 1961 by which the lands were acquired for the purpose of building houses which move was challenged under Articles 31 and 14. The Court held that if the compensation fixed was illusory or the principles prescribed were irrelevant to the

value of the property at or about the time of acquisition, it could be said that the Legislature had committed a fraud on power and therefore the law was inadequate. Speaking for the Bench, Justice Subha Rao stated that *"If the legislature, through its ex facie purports to provide for compensation or indicates the principles for ascertaining the same, but in effect and substance takes away a property without paying compensation for it, it will be exercising power it does not possess. If the Legislature makes a law for acquiring a property by providing for an illusory compensation or by indicating the principles for ascertaining the compensation which do not relate to the property acquired or to the value of such property at or within a reasonable proximity of the date of acquisition or the principles are so designed and so arbitrary that they do not provide for compensation at all, one can easily hold that the legislature made the law in fraud of its powers."* Justice Subha Rao reiterated his view in ***Union of India Vs. Metal Corporation of India Ltd. & Another, AIR 1967 SC 637.***

34. In the aforesaid circumstances, this Court is of the considered view that proceedings for correction of record under section 38 of the U.P. Revenue Code are illegal and arbitrary as no opportunity of hearing was provided to the petitioner, apart from the fact that the decree dated 18.03.1975 already exists in their favour regard to the disputed property and provisions of section 38 of the U.P. Revenue code could not have been deployed for

correction of record in the facts and circumstances the present case, further, the demolition carried out subsequently was also illegal and arbitrary for having not followed the statutory prescription under section 67 of the Revenue Code, as well as the guidelines of the Hon'ble Supreme Court in the case of ***In Re : Directions in the matter of demolition of structures, 2024 SCC OnLine SC 3291***. Mere setting aside of the impugned order will not be sufficient to render complete justice to the petitioner whose property has been illegally demolished by the State authorities. For the aforesaid action, adequate cost has to be imposed, taking into account the conduct of the state officials and the damage caused to the citizen whose property has been subjected to illegal demolition. Accordingly, the impugned order dated 10.2.2025 is set aside. The writ petition is **allowed** with a cost of Rs. 20 lakhs, which has to be paid to the petitioner within the next two months by the State.

35. The respondents are directed to hand over the possession of the vacant land to the petitioners within two weeks from the date a certified copy of this order is produced before them.

36. The State is also directed to conduct an inquiry and recover the cost from all the responsible officials, including the highest officer who was responsible for the conduct of the entire exercise, including the orders passed under Section 38 of U.P. Revenue Code and subsequent demolition.

37. We further direct that an inquiry into the said matter be conducted by an officer not below the rank of Additional Chief Secretary to the Government of U.P. During this inquiry, the conduct of the officials who have passed any orders in the present case shall also be looked into.

38. We further observe that it is not merely a case of violation of the rule of law, but even the directions of the High Court and the Supreme Court have been disobeyed with impunity. We further observe that the conduct of the Tehsil / Sub Divisional Magistrate, indicates that the highest revenue officials of the District are clearly oblivious of the rights and duties which has been conferred on them by the law and also ignorant of direction of various courts. The State should take immediate steps to adequately train the revenue officials as they are dealing with serious property rights of the entire population living in rural Uttar Pradesh, who are entitled to speedy and quality dispensation of justice.

39. The writ petition thus stands **allowed** with costs.

Order Date: 18.12.2025

(Alok Mathur, J.)

RKM