A.F.R.
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HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

WRIT - C No. - 1000273 of 2005

Sahab Das Objection Filed

…..Petitioner(s)

Versus

Additional Commissionerjudicial Lucknow Division and another

…..Respondent(s)

Counsel for Petitioner(s)	:	Govind Saran Nigam, Abhisht Saran
Counsel for Respondent(s)	:	C.S.C., P.k.singh

Court No. - 4

HON'BLE IRSHAD ALI, J.

1. Heard Sri Abhisht Saran, learned counsel for the petitioner and Sri Shatrughan Chaudhary, learned Additional CSC for respondent - State.

2. The present writ petition has been filed for issuance of a writ in the nature of certiorari quashing the impugned order dated 10.08.2004 passed by respondent No.1 contained as Annexure No.1 to the writ petition.

3. Factual matrix of the case is that the petitioner is a landless agricultural labourer belonging to Schedule Caste. He is a member of Chamar Community and is in possession of Plot No. 147/2 M area 0.400 hectares situated at Village Laglesra, Pargana Asiwan Rasoolabad. Tehsil Hasanganj, District Unnao since before 3rd June of 1995.

4. Plot No. 147/2 is a big plot and is recorded as "Banjar" in revenue records. It belongs to Gram Panchayat. During consolidation, the aforesaid Plot No. 147/2 has been given new no. 264 Ka area 5.415

hectares. Annexure No. 2 is the true copy of the CH-Form 41 and Annexure No. 3 is the true copy of the CH-Form 45.

5. In proceedings under Section 122-B of UP Zamindari Abolition and Land Reforms Act, when the petitioner claimed benefit by virtue of his possession since before 31 June of 1995, an enquiry was made and report was obtained from Tehsil which proved the possession of the petitioner, as such recommendation was made for regularization of his possession and the Pargana Adhikari, Hasanganj Unnao vide order dated 09.01.1998 accepted the recommendation and granted benefit to the petitioner under Section 122-B (4-F) as Bhoomidhar with non-transferable rights. Annexure No.4 is the certified copy of the order-dated 09.01.1998 passed by the Pargana Adhikari, Hasanganj, Unnao.

6. It will not be out of place to mention here that the opposite party No. 2 is the Ex-Pradhan of the Village Laglesra. He himself has his jaundiced eyes over the land in question. However, since he belongs to upper caste and was not entitled to get the land in his name, he was creating every obstacle in the conferment of rights upon the petitioner.

7. At the time of the aforesaid order of Pargana Adhikari, Hasanganj, Unnao, Smt. Mohini Gaur wife of Sri Surendra Kumar Gaur - younger brother of the opposite party No. 2, was the Pradhan. Opposite Party No. 2 thorough her, left no stone unturned to get the aforesaid benefit upon the petitioner refused. However, he could not be succeeded in his evil designs.

8. Soon after the aforesaid order, opposite party No.2 moved an application for recall of the aforesaid order dated 09.01.1998 as Ex-Pradhan of Village Laglesra and the Pargana Adhikari, Hasanganj Unnao vide order dated 18.07.1998 set aside the order dated 09.01.1998 passed by his predecessor even without any notice to the petitioner and even without providing any opportunity to him to meet the allegations of the opposite party No.2.

9. After coming to know about the aforesaid order, the petitioner on 19.04.1999, applied for recall of the same and for providing an opportunity of hearing to him on the application of the opposite party No.2.

10. On the aforesaid application of the petitioner, a notice was issued to opposite party No.2 and the Pargana Adhikari after hearing both the parties allowed the same vide order dated 25.09.2003 and recalled his earlier ex-parte order dated 18.07.1998.

11. As has already been submitted above, opposite party No.2 had his jaundiced eyes over the land in question, as such against the aforesaid order dated 25.09.2003 passed by the Pargana Adhikari, Hasanganj Unnao, he filed a Revision under Section 333 of UP Zamindari Abolition and Land Reforms Act before the Commissioner, Lucknow Division, Lucknow which has been allowed by the opposite party No.1 vide order dated 10.08.2004. Opposite Party No.1 while allowing the Revision has totally forget that the order dated 25.09.2003 was simply an order recalling the earlier order dated 18.07.1998 which was passed ex-parte against the petitioner and by recalling his order, the application of the opposite party No.2 to recall the order dated 09.01.1998 revived and was to be disposed off in accordance with the provisions of law after providing an opportunity of hearing to the petitioner.

12. The said order dated 25.09.2003 is not over the merit of the case. However, opposite party No.1 even without taking into consideration that by recalling the earlier order dated 18.07.1998 the Pargana Adhikari has simply provided an opportunity of hearing to the petitioner against whom the said order was passed without any notice to him and for all intents and purposes it was an ex-parte order.

13. The opposite party No.1 while setting aside the order dated 25.09.2003 and by specifically observing that the order dated 15.07.1998 shall remain in force has deprived the petitioner from his right to contest the move of the opposite party No.2 and protect the legality and proprietary of the order dated 09.01.1998.

14. It will be pertinent to mention here that opposite party No.2 has no locus-standi in the matter. He cannot claim any right in the land in question not can challenge the order of the Pargana Adhikari under Section 122-B (4-F) of U.P. Zamindari Abolition and Land Reforms Act. His Application to recall the order dated 09.01.1998 is highly misconceived

15. It will be further pertinent to mention here that the Village is under consolidation operations. The opposite party No.2 due to his maneuvering tactics, managed to obtain an order dated 17.05.1995 from the Consolidation Officer in his favour. However, the Gram Samaj filed an appeal against the aforesaid order of Consolidation Officer dated 17.05.1995 before the Settlement Officer Consolidation, Unnao - Appeal No. 1431/918 under Section 11(1) of U.P. Consolidation of Holdings Act and the Settlement Officer Consolidation vide his order dated 28.01.1998 has set aside the aforesaid order with the direction that the land will remain recorded in the name of Gaon Sabha.

16. Opposite party No.2 filed revision against the aforesaid order of Settlement Officer Consolidation and the matter is pending before the Deputy Director of Consolidation, Unnao.

17. Opposite party No.1 has allowed the Revision only on the ground that the order dated 18.7.1998 is on merits even without looking into the fact that the same is ex-parte and has been passed without providing any opportunity to the petitioner to place his submission against the application of the opposite party No. 2.

18. Opposite Party No.2 is bent upon to dispossess the petitioner from the land in question even by adopting unlawful means and in case he is succeeded in his evil design, the petitioner will suffer irreparable loss.

19. Submission of learned counsel for the petitioner is that the revisional authority has acted in excess of jurisdiction by setting aside the lawful order dated 25.09.2003 passed by the Pargana Adhikari, Hasanganj, District Unnao. The order dated 25.09.2003 merely recalled an earlier ex-parte order dated 18.07.1998 and restored the matter for decision on merits after affording opportunity of hearing to the petitioner.

20. He further submitted that the revisional authority failed to appreciate that no adjudication on merits had taken place on 25.09.2003 and the order only restored principles of natural justice, therefore, interference in the revision was unwarranted. Consequently, the impugned order is legally unsustainable and liable to be quashed.

21. He next submitted that the ex-parte order dated 18.07.1998 had been passed without issuing notice to the petitioner and without affording him any opportunity to contest the recall application filed by opposite Party No.2. The Pargana Adhikari rightly corrected this illegality by recalling the ex-parte order on 25.09.2003 after hearing both parties. However, the revisional authority restored the ex-parte order, thereby depriving the petitioner of his valuable right to be heard. It is settled law that any order passed without hearing the affected party is void and nonest.

22. He submitted that the petitioner is a landless agricultural labourer belonging to Scheduled Caste and has been in possession of the land in question since prior to 3 June 1995. After due enquiry, the competent authority granted him benefit under Section 122-B (4-F) of the U.P.

Zamindari Abolition and Land Reforms Act vide order dated 09.01.1998, declaring him Bhumidhar with non-transferable rights. This conferment of rights was based on official verification and cannot be lightly disturbed. The revisional authority failed to consider the petitioner's statutory protection as a landless Scheduled Caste cultivator.

23. He submitted that the land in dispute is recorded as "Banjar" and belongs to the Gaon Sabha. Opposite Party No.2 has no legal right, title, or interest in the said land. Being merely an ex-Pradhan, he cannot challenge the conferment of rights upon the petitioner. His recall application was therefore misconceived and not maintainable.

24. He submitted that opposite party No.2 has been persistently attempting to dispossess the petitioner despite lacking any legal claim. His actions are motivated and intended to grab Gaon Sabha land through unlawful means. Even during consolidation proceedings, attempts were made to obtain favourable orders, which were later set aside in appeal, directing that the land remain recorded in the name of Gaon Sabha. The pattern of conduct demonstrates abuse of process of law.

25. He further submitted that the revisional authority proceeded on the erroneous assumption that the order dated 18.07.1998 was passed on merits. In fact, the order was ex-parte and passed without notice to the petitioner. Restoration of such an order defeats justice and perpetuates illegality.

26. He submitted that the petitioner is a landless person whose livelihood depends upon the land. If the impugned order is allowed to stand, the petitioner will be dispossessed without adjudication on merits, however, balance of convenience and equity lie entirely in favour of the petitioner. In support of his submissions, he placed reliance upon following judgments:

a) Manorey @ Manohar Vs. Board of Revenue, U.P. and others; 2003 (94) RD 538.

b) Sushila and others Vs. State of U.P. and others; (2015) 129 R.D.253.

c) Ganga Raman Sharma Vs. State of U.P.; (2016) 132 RD 251.

d) Brahmanand and others Vs. State of U.P. and others; 2019: AHC:120211.

e) Bhola Vs. State of U.P.; 2022: AHC:235747

27. On the other hand, learned Additional CSC for respondent - State submitted that the petitioner claims eligibility for regularization under Section 122-B 4(F) of the U.P. Zamindari Abolition & Land Reforms (Z.A. & L.R.) Act. However, this claim is predicated on a forged and concocted report submitted by the then Area Lekhpal in 1998. The order dated 09.01.1998 passed by the Pargana Adhikari, which initially regularized the land, was passed without any enquiry and without any documentary evidence of the petitioner's possession prior to the cutoff date of 03.06.1995. The said order was rightfully cancelled by the Pargana Adhikari on 18.07.1998 after a proper enquiry revealed the falsity of the Lekhpal's report. Departmental proceedings were also initiated against the Lekhpal, Ram Khelawan for submitting an irregular report.

28. He submitted that the land in question (Gata No. 147/2 Min., area 0.400 Hectare, Village Laglesara) was already reserved for Jwala Devi Bal Vidya Mandir vide an order dated 17.05.1995 passed by the Consolidation Officer. As the land was already reserved for a public/educational purpose prior to the statutory cutoff date for regularization, the petitioner could not have acquired any legal right over the said property.

29. He submitted that the petitioner has consistently engaged in delayed litigation. The restoration application filed by the petitioner on 19.04.1999 was significantly time-barred. The lower court (Pargana

Adhikari) erred in law by allowing this restoration on 25.09.2003 without condoning the delay and without recording any specific findings, which is a violation of settled legal principles. However, the Additional Commissioner, Lucknow Mandal, correctly set aside this flawed order *via* order dated 10.08.2004, which is the subject of the present challenge.

30. He submitted that the petitioner was never in actual physical possession of the land. There is no entry in the Khasra or Khatauni of 1402 Fasli to indicate the petitioner's possession prior to 03.06.1995. To claim rights under the U.P.Z.A. & L.R. Act, it was mandatory for the petitioner to file a declaratory suit under Section 229(B), which the petitioner failed to do.

31. He lastly submitted that the instant writ petition is not maintainable as the petitioner has an efficacious alternative remedy. Under Section 333 of the U.P.Z.A. & L.R. Act, the petitioner ought to have approached the Board of Revenue by filing a revision instead of invoking the extraordinary jurisdiction of this Hon'ble Court. In light of aforesaid facts that the petitioner has approached this Hon'ble Court with "unclean hands" and that the impugned order of the Additional Commissioner is legally sound, it is most respectfully prayed that the writ petition be dismissed with exemplary costs and the interim order obtained by misleading this Hon'ble Court be vacated in the interest of justice.

32. I have considered the submissions advanced by learned counsel for the parties and perused the law reports cited by learned counsel for the petitioner.

33. To resolve the controversy involved in the matter, relevant portion of the judgments relied upon by learned counsel for the petitioner are being quoted below:

a) Manorey @ Manohar (Supra):

6. To appreciate the issue, the reference to Section 122-B is necessary. The said section prescribes the procedure for eviction of a person wrongfully occupying or damaging or misappropriating the property vested in a Gaon Sabha or a local authority. The Land Management Committee or local authority, as the case may be, shall inform the Assistant Collector and thereupon the Assistant Collector should issue notice to the person concerned to show cause. If the Assistant Collector is not satisfied with the explanation, he may direct eviction by using force, if necessary, and may further direct that compensation be recovered from such person as arrears of land revenue. The person aggrieved has a right of revision to the Collector and he can also file a suit to establish his right. Sub-section (4-F) is the crucial provision which at the relevant time read as follows:

"122-B. (4-F) Notwithstanding anything in the foregoing sub-sections, where any agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe is in occupation of any land vested in a Gaon Sabha under Section 117 (not being land mentioned in Section 132) having occupied it from before 30-6-1985 and the land so occupied together with land, if any, held by him from before the said date as bhumidhar, sirdar or asami, does not exceed 1.26 hectares (3.125 acres), then no action under this section shall be taken by the Land Management Committee or the Collector against such labourer, and it shall be deemed that he has been admitted as bhumidhar with non-transferable rights of that land under Section 195."

8. 8. First, the endeavour should be to analyse and identify the nature of the right or protection conferred by sub-section (4-F) of Section 122-B. Sub-sections (1) to (3) and the ancillary provisions up to sub-section (4-E) deal, inter alia, with the procedure for eviction of unauthorised occupants of land vested in the Gaon Sabha. Sub-section (4-F) carves out an exception in favour of an agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe having land below the ceiling of 3.125 acres. Irrespective of the circumstances in which such eligible person occupied the land vested in the Gaon Sabha (other than the land mentioned in Section 132), no action to evict him shall be taken and moreover, he shall be deemed to have been admitted as a bhumidhar with non-transferable rights over the land, provided he satisfies the conditions specified in the sub-section. According to the findings of the Sub-Divisional Officer as well as the Appellate Authority, the appellant does satisfy the conditions. If so, two legal consequences follow. Such occupant of the land shall not be evicted by taking recourse to sub-sections (1) to (3) of Section 122-B. It means that the occupant of the land who satisfies the conditions under sub-section (4-F) is entitled to safeguard his possession as against the Gaon Sabha. The second and more important right which sub-section (4-F) confers on him is that he is endowed with the rights of a bhumidhar with non-transferable rights. The deeming provision has been specifically enacted as a measure of agrarian reform, with a

thrust on socio-economic justice. The statutorily conferred right of bhumidhar with non-transferable rights finds its echo in clause (b) of Section 131. Any person who acquires the rights of bhumidhar under or in accordance with the provisions of the Act, is recognized under Section 131 as falling within the class of bhumidhar. The right acquired or accrued under sub-section (4-F) is one such right that falls within the purview of Section 131(b).

9. Thus, sub-section (4-F) of Section 122-B not merely provides a shield to protect the possession as opined by the High Court, but it also confers a positive right of bhumidhar on the occupant of the land satisfying the criteria laid down in that sub-section. Notwithstanding the clear language in which the deeming provision is couched and the ameliorative purpose of the legislation, the learned Single Judge of the High Court had taken the view in Ramdin v. Board of Revenue [1994 RD 388] (followed by the same learned Judge in the instant case) that the bhumidhari rights of the occupant contemplated by sub-section (4-F) can only blossom out when there is a specific allotment order by the Land Management Committee under Section 198. According to the High Court, the deeming provision contained in sub-section (4-F) cannot be overstretched to supersede the other provisions in the Act dealing specifically with the creation of the right of bhumidhar. In other words, the view of the High Court was that a person covered by the beneficial provision contained in sub-section (4-F) will have to still go through the process of allotment under Section 198 even though he is not liable for eviction. As a corollary to this view, it was held that the occupant was not entitled to seek correction of revenue records, even if his case falls under sub-section (4-F) of Section 122-B. We hold that the view of the High Court is clearly unsustainable. It amounts to ignoring the effect of a deeming provision enacted with a definite social purpose. When once the deeming provision unequivocally provides for the admission of the person satisfying the requisite criteria laid down in the provision as bhumidhar with non-transferable rights under Section 195, full effect must be given to it. Section 195 lays down that the Land Management Committee, with the previous approval of the Assistant Collector in charge of the sub-division, shall have the right to admit any person as bhumidhar with non-transferable rights to any vacant land (other than the land falling under Section 132) vested in the Gaon Sabha. Section 198 prescribes "the order of preference in admitting persons to land under Sections 195 and 197". The last part of sub-section (4-F) of Section 122-B confers by a statutory fiction the status of bhumidhar with non-transferable rights on the eligible occupant of the land as if he has been admitted as such under Section 195. In substance and in effect, the deeming provision declares that the statutorily recognized bhumidhar should be as good as a person admitted to bhumidhari rights under Section 195 read with other provisions. In a way, sub-section (4-F) supplements Section 195 by specifically granting the same benefit to a person coming within the protective umbrella of that sub-section. The need to approach the Gaon Sabha under Section 195 read with Section 198 is obviated by the deeming provision contained in sub-section

(4-F). We find no warrant to constrict the scope of the deeming provision.

10. That being the legal position, there is no bar against an application being made by the eligible person coming within the four corners of sub-section (4-F) to effect necessary changes in the revenue record. When once the claim of the applicant is accepted, it is the bounden duty of the Revenue Authorities concerned to make necessary entries in revenue records to give effect to the statutory mandate. The obligation to do so arises by necessary implication by reason of the statutory right vested in the person coming within the ambit of sub-section (4-F). The lack of specific provision for making an application under the Act is no ground to dismiss the application as not maintainable. The revenue records should naturally fall in line with the rights statutorily recognized. The Sub-Divisional Officer was therefore within his rights to allow the application and direct the correction of the records. The Board of Revenue and the High Court should not have set aside that order. The fact that the Land Management Committee of the Gaon Sabha had created leasehold rights in favour of the respondents herein is of no consequence. Such lease, in the face of the statutory right of the appellant, is non est in the eye of the law and is liable to be ignored.

11. It is surprising that the State of U.P. had chosen to file an appeal against the order of the SDO, in tandem with the Gaon Sabha. It seems to be a clear case of non-application of mind on the part of the authorities concerned of the State who are supposed to effectuate the socio-economic objective of the legislation.

12. The appeal is allowed. The orders of the Board of Revenue and the High Court are set aside. The SDO's order is restored. No costs."

b) Sushila and others (Supra):

"4. Sub-section (4F) of section 122-B has been construed and interpreted in a judgment of the Hon'ble Supreme Court in Manorey alias Manohar v. Board of Revenue (U.P.)1. The Supreme Court held that sub-section (4-F) carves out an exception from the provisions, of sub-sections (1), (2) & (3) under which a procedure for eviction of unauthorized occupants of land vested in the Gram Sabha is provided. The exception which is carved out by sub-section (4-F) is in favour of agricultural labourers belonging to Scheduled Castes and Schedule Tribes having land below the stipulated ceiling of 3.125 acres. Where the conditions of sub-section (4-F) are fulfilled, the legislature has provided that no action to evict such person shall be taken and he shall be deemed to have been admitted as Bhumidhar with non transferable rights over the land.

5. The Supreme Court has held thus:

“8. First, the endeavour should be to analyze and identify the nature of the right or protection conferred by sub-section (4-F) of section 122-B. Sub-sections (1) to (3) and the ancillary provisions upto sub-section (4-E) deal inter alia, with the procedure for eviction of unauthorized occupants of

land vested in Gaon Sabha. Sub-section (4-F) carves out an exception in favour of an agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe having land below the ceiling of 3.125 acres. Irrespective of the circumstances in which such eligible person occupied the land vested in Gaon Sabha (other than the land mentioned in section 132), no action to evict him shall be taken and moreover, he shall be deemed to have been admitted as a Bhumidhar with non transferable rights over the land, provided he satisfies the conditions specified in the sub-section. According to the findings of the Sub-Divisional Officer as well as the appellate authority, the appellant does satisfy the conditions. If so, two legal consequences follow. Such occupant of the land shall not be evicted by taking recourse to subsection (1) to (3) of section 122-B. It means that the occupant of the land who satisfies the conditions under sub-section (4-F) is entitled to safeguard his possession as against the Gaon Sabha. The second and more important right which sub-section (4- F) confers on him is that he is endowed with the rights of a Bhumidhar with non-transferable rights. The deeming provision has been specifically enacted as a measure of agrarian reform, with a thrust on socioeconomic justice. The statutorily conferred right of Bhumidhar with non-transferable rights finds its echo in clause (b) of section 131. Any person who acquires the rights of Bhumidhar under or in accordance with the provisions of the Act, is recognized under section 131 as falling within the class of Bhumidhar. The right acquired or accrued under sub-section (4-F) is one such right that falls within the purview of section 131(b).”

6. The Supreme Court also held that sub-section (4-F) is not merely, a shield to protect the possession of a person who fulfils the conditions in subsection (4-F) but it also confers a positive right of being recognized as Bhumidhar on the occupant satisfying the conditions and criteria laid down in the subsection.

7. The Supreme Court has held thus:

“Thus, sub-section (4-F) of section 122-B not merely provides a shield to protect the possession as opined by the High Court, but it also confers a positive right of Bhumidhar on the occupant of the land satisfying the criteria laid down in that sub-section. When once the deeming provision unequivocally provides for the admission of the person satisfying the requisite criteria laid down in the provision as Bhumidhar with non-transferable rights under section 195, full effect must be given to it. Section 195 lays down that the Land Management Committee, with the previous approval of the Assistant Collector in-charge of the Sub-Division, shall have the right to admit any person as Bhumidhar with non-transferable rights to any vacant land (other than the land falling under section 132) vested in the Gaon Sabha. Section 198 prescribes “the order of preference in admitting persons to land under sections 195 and 197”. The last part of sub-section (4-F) of section 122-B confers by a statutory fiction the status of Bhumidhar with

non-transferable rights on the eligible occupant of the land as if he has been admitted as such under section 195. In substance and in effect, the deeming provision declares that the statutorily recognized Bhumidhar should be as good as a person admitted to Bhumidhari rights under section 195 read with other provisions. In a way, sub-section (4-F) supplements section 195 by specifically granting the same benefit to a person coming within the protective umbrella of that sub-section. The need to approach the Gaon Sabha under section 195 read with section 198 is obviated by the deeming provision contained in sub-section (4-F). We find no warrant to constrict the scope of deeming provision."

8. Sub-section (4-A) of section 122-B provides a remedy of revision where an order has been passed by the Assistant Collector under sub-sections (3) or (4) of section 122-B. Sub-section (3) envisages an order of eviction by the Assistant Collector where the person to whom a notice has been issued under sub-section (2) has failed to show cause or if the cause shown is found to be insufficient. Sub-section (3) also provides for a direction that compensation be awarded in respect of any damage, misappropriation or wrongful occupation; the amount being recoverable as arrears of land revenue. Sub-section (4) provides for the discharge of a notice issued under sub-section (2) where the Assistant Collector is of the opinion that the person showing cause is not guilty of causing damage, misappropriation or wrongful occupation. The remedy of a revision under sub-section (4-A) of section 122-B is available only in respect of an order which is passed under subsections (3) or (4). Sub-section (4-F) of section 122-B is an independent provision by which an exception has been carved out in favour of agricultural labourers belonging to Scheduled Castes or Scheduled Tribes subject to the satisfaction of the conditions which have been imposed by the statute. No remedy of a revision is provided in respect of an order under section 122-B (4-F).

9. The learned Single Judge was, with respect, in error in coming to the conclusion that the remedy of a. re vision is available in respect of an order which has been passed by the Assistant Collector under section 122-B (4-F). By the plain terms of the statutory provision made in sub-section (4-A), such a remedy has been made available only in respect of an order under sub-sections (3) or (4). The remedy of a revision is a creature of the statute. The revisional authority cannot expand its own jurisdiction where a statutory provision has not provided such a recourse.

14. The second schedule provides inter alia sections, a description of proceedings, Courts of original jurisdiction and Courts of first and second appeal. No appeal is provided in respect of an order passed under section 122-B, including against an order under section 122-B (4-F). Consequently, it is clear beyond the shadow of a doubt that a remedy of a revision would not be available under section

333 against an order which has been passed under subsection (4-F) of section 122-B.

15. For these reasons, we are of the view that the learned Single Judge was in error in dismissing the writ petition on the ground of alternate remedy.

16. We, accordingly, allow the special appeal and set aside the impugned judgment of the learned Single Judge dated 25 August, 2015. Writ Petition No. 4794 (M/S) of 2015 shall, accordingly, stand restored to the file of the learned Single Judge for disposal afresh on merits."

c) Ganga Raman Sharma (Supra):

Ganga Raman Sharma vs State Of U.P. And Others
A Division bench of this court in the case of Shushila and another vs. State of U.P. and others being Special Appeal No. 479 of 2015 decided on 29.9.2015 has held that an order passed under section 122B (4F) of the Act is not revisable. In view of the fact that the order passed under section 122B(4F) itself is not revisable therefore any order passed on the restoration application seeking recall of the order passed under section 122B (4F) is also not revisable therefore in my opinion the order passed by the Revisional court, against the order allowing restoration application, is without jurisdiction. it is also well settled that an order without jurisdiction is a nullity and
no legal consequences can flow such orders. Reference may be made to the decisions of the Apex Court in Dr. (Smt.) Kuntush Gupta vs. Management of Hindu Kanya Mahavidyalaya, Sitapur and others, AIR 198 SC2186, Hasham Abbas Sayyad vs.Usman Abbas Sayyad and others, AIR 2007 SC 1077, Dwarka Prasad Agarwal (D) LRs. and anr. vs. B.D. Agarwal and others, AIR 2003 SC 2686, Thankamma vs. State of Kerala and others, 1982 KLJ 309, Shakuntla Devi vs. Kamla and others, 2005 (3) ALD 118 (SC), Managing Director, Army Welfare Housing Organization Vs. Sumangal Services Pvt. Ltd. (2004) 9 SCC 619, Sarup Singh and another vs. Union of India and another (2011) 11 SCC 198.
Therefore pending restoration application, filing of fresh writ petition will not be fatal as question of jurisdiction goes to the root of matter and it can be raised and examined at any stage of proceedings before any court."

d) Brahmanand and others (Supra):

"9. From the bare reading of the aforesaid provisions it is quite explicit that the intendment of the legislature in incorporating said provision was to automatically conferred the rights in respect of the category of lessees who had the possession as on 30th June, 1985 and, therefore, if the tenure holder was living on said date, he would have automatically become entitled to the said benefit. Merely because necessary application has come to be made at a later point of time and tenure holder died leaving behind heirs, the said claim cannot be denied on the ground that on the date application had been moved the original tenure holder had died and that land later on came within territorial of the municipality or Nagar Nigam. The

provision clearly indicates that one who was in possession of the land on the relevant date, the land stood settled with the said person conferring upon him with the status of bhumidhar with non-transferable and mere application would have only resulted in necessary correction in the revenue records. So, even if the application is subsequently moved, it cannot be said that the rights would accrue only on the date of the application and in case if the tenure holder died subsequently his heirs shall be denied benefits. The right to the tenure holder accrued in the year 1985 itself as per the provision and subsequent death of the tenure holder would automatically result in the succession of his heirs and right would automatically get transferred to the successors and it cannot be said that the bhumidhari rights even in the category of non transferable rights are not subject to succession and, therefore, in my considered opinion the SubDivisional Magistrate manifestly erred in rejecting the application on the ground that the heirs would not have been permitted to step into the shoes to claim rights under the relevant provision of law.

10. Besides above, once the Additional Commissioner had remitted the matter with clear obsrvation in the order of remand that the claim would not be denied on the ground that subsequently the land had got notified under the Nagar Nigam under the U.P. Nagar Nigam Adhiniyam Act, 1959, it was not open for the Sub-Divisional Magistrate to sit in appeal over the order of the Additional Commssioner and thus, the Court is of definite opinion that the authority has clearly exceeded its jurisdiction and authoritiy in making such observation and, therefore, the order passed by the Sub-Divisional Magistrate on that count also cannot be sustained.

11. So far the findings recorded by the Additional Commissioner in the subsequent revision is concerned, as I have already held hereinabove that rights would not get changed merely because the land has subseqently been notified as within the territorial limits of Nagar Nigam Meerut, if the tenure holder was in possession on the cut of date i.e. 30th June, 1985. In my above observation and the view taken by me, I am supported by the judgment of the Apex Court in the case of Manorey v. Board of Revenue 2003 (5) SCC 521, wherein the Supreme Court while dealing with the said provision and its application, vide paragraph 9 of the judgment has held thus:-

"9. Thus, sub-Section (4F) of Section 122B not merely provides a shield to protect the possession as opined by the High Court, but it also confers a positive right of Bhumidhar on the occupant of the land satisfying the criteria laid down in that sub-Section. Notwithstanding the clear language in which the deeming provision is couched and the ameliorative purpose of the legislation, the learned single Judge of the High Court had taken the view in Ramdin Vs. Board of Revenue (supra) (followed by the same learned Judge in the instant case) that the Bhumidhari rights of the occupant contemplated by subSection (4F) can only blossom out when there is a specific allotment order by the Land Management Committee under Section 198. According to the High

Court, the deeming provision contained in sub-Section (4F) cannot be overstretched to supersede the other provisions in the Act dealing specifically with the creation of the right of Bhumidhar. In other words, the view of the High Court was that a person covered by the beneficial provision contained in sub-Section (4F) will have to still go through the process of allotment under Section 198 even though he is not liable for eviction. As a corollary to this view, it was held that the occupant was not entitled to seek correction of revenue records, even if his case falls under sub-Section (4F) of Section 122B. We hold that the view of the High Court is clearly unsustainable. It amounts to ignoring the effect of a deeming provision enacted with a definite social purpose. When once the deeming provision unequivocally provides for the admission of the person satisfying the requisite criteria laid down in the provision as Bhumidhar with non-transferable rights under Section 195, full effect must be given to it. Section 195 lays down that the Land Management Committee, with the previous approval of the Assistant Collector in-charge of the Sub Division, shall have the right to admit any person as Bhumidhar with nontransferable rights to any vacant land (other than the land falling under Section 132) vested in the Gaon Sabha. Section 198 prescribes "the order of preference in admitting persons to land under Sections 195 and 197". The last part of sub-Section (4F) of Section 122B confers by a statutory fiction the status of Bhumidhar with non transferable rights on the eligible occupant of the land as if he has been admitted as such under Section 195. In substance and in effect, the deeming provision declares that the statutorily recognized Bhumidhar should be as good as a person admitted to Bhumidhari rights under Section 195 read with other provisions. In a way, sub-Section (4F) supplements Section 195 by specifically granting the same benefit to a person coming within the protective umbrella of that sub-Section. The need to approach the Gaon Sabha under Section 195 read with Section 198 is obviated by the deeming provision contained in sub-Section (4F). We find no warrant to constrict the scope of deeming provision. That being the legal position, there is no bar against an application being made by the eligible person coming within the four corners of subSection (4F) to effect necessary changes in the revenue record. When once the claim of the applicant is accepted, it is the bounden duty of the concerned revenue authorities to make necessary entries in revenue records to give effect to the statutory mandate. The obligation to do so arises by necessary implication by reason of the statutory right vested in the person coming within the ambit of sub-Section (4F). The lack of specific provision for making an application under the Act is no ground to dismiss the application as not maintainable. The revenue records should naturally fall in line with the rights statutorily recognized. The Sub-Divisional Officer was therefore within his rights to allow the application and direct the correction of the records. The Board of Revenue and the High Court should not have set aside that order. The fact that the Land Management Committee of Gaon Sabha had created lease hold rights in

favour of the respondents herein is of no consequence. Such lease, in the face of the statutory right of the appellant, is nonest in the eye of law and is liable to be ignored."

e) Bhola Vs. State of U.P.; 2022: AHC:235747

"29. In the last line of Sub Section 4-F, it has also been mentioned that "it shall not be necessary for him to institute a suit for declaration of his right as Bhumidhar with non-transferable right in that land" Obviously, the order of the Revisional Court is not in consonance of Sub Section 4-F.

30. In the facts and circumstances when the right from Lekhpal to S.D.O, were of the opinion that property in suit is under occupation of the petition, who is a member of Scheduled Caste and at the time of settlement, he was entitled to taken the benefit of Sub Section 4-F and accordingly the benefits of Sub Section 4-F were awarded to him, therefore there was no occasion to interfere with it.

31. This aspect has also been considered by the Supreme Court in the case of Manorey @ Manohar v. Board of Revenue (U.P.) & 2003 Supreme Court 396 (S.C.), in which in Para Nos. 3, 9, 10, 11 & 12 are important, in which the Apex Court has held that:—

"Going by the orders of the Board of Revenue and the High Court, the maintainability of an application seeking recognition of right under Section 122B(4F) of U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as 'the Act') is the issue that loomed large before the Board and the High Court. We are of the view that it would be travesty of justice to deny relief to the appellant who is a Scheduled caste agricultural labourer and relegate him to an unfortunate situation of being left without remedy though he has a statutory right to continue in possession and enjoyment of the land. The High Court seems to have taken a narrow view of the rights and remedies of the appellant, leaving him to pursue a tortuous course of litigation to safeguard his rights.

Thus, sub-Section (4F) of Section 122B not merely provides a shield to protect the possession as opined by the High Court, but it also confers a positive right of Bhumidhar on the occupant of the land satisfying the criteria laid down in that sub-Section. Notwithstanding the clear language in which the deeming provision is couched and the ameliorative purpose of the legislation, the learned single Judge of the High Court had taken the view in Ramdin v. Board of Revenue (supra) (followed by the same learned Judge in the instant case) that the Bhumidhari rights of the occupant contemplated by sub-Section (4F) can only blossom out when there is a specific allotment order by the Land Management Committee under Section 198. According to the High Court, the deeming provision contained in sub-Section (4F) cannot be overstretched to supersede the other provisions in the

Act dealing specifically with the creation of the right of Bhumidhar. In other words, the view of the High Court was that a person covered by the beneficial provision contained in sub-Section (4F) will have to still go through the process of allotment under Section 198 even though he is not liable for eviction. As a corollary to this view, it was held that the occupant was not entitled to seek correction of revenue records, even if his case falls under sub-Section (4F) of Section 122B. We hold that the view of the High Court is clearly unsustainable. It amounts to ignoring the effect of a deeming provision enacted with a definite social purpose. When once the deeming provision unequivocally provides for the admission of the person satisfying the requisite criteria laid down in the provision as Bhumidhar with non-transferable rights under Section 195, full effect must be given to it. Section 195 lays down that the Land Management Committee, with the previous approval of the Assistant Collector in-charge of the Sub Division, shall have the right to admit any person as Bhumidhar with non-transferable rights to any vacant land (other than the land falling under Section 132) vested in the Gaon Sabha. Section 198 prescribes "the order of preference in admitting persons to land under Sections 195 and 197". The last part of sub-Section (4F) of Section 122B confers by a statutory fiction the status of Bhumidhar with non transferable rights on the eligible occupant of the land as if he has been admitted as such under Section 195. In substance and in effect, the deeming provision declares that the statutorily recognized Bhumidhar should be as good as a person admitted to Bhumidhari rights under Section 195 read with other provisions. In a way, sub-Section (4F) supplements Section 195 by specifically granting the same benefit to a person coming within the protective umbrella of that sub-Section. The need to approach the Gaon Sabha under Section 195 read with Section 198 is obviated by the deeming provision contained in sub-Section (4F). We find no warrant to constrict the scope of deeming provision.

That being the legal position, there is no bar against an application being made by the eligible person coming within the four corners of sub-Section (4F) to effect necessary changes in the revenue record. When once the claim of the applicant is accepted, it is the bounden duty of the concerned revenue authorities to make necessary entries in revenue records to give effect to the statutory mandate. The obligation to do so arises by necessary implication by reason of the statutory right vested in the person coming within the ambit of sub-Section (4F). The lack of specific provision for making an application under the Act is no ground to dismiss the application as not maintainable. The revenue records should naturally fall in line with the rights statutorily recognized. The Sub-Divisional Officer was therefore within his rights to allow the application and direct the correction of the records. The Board of Revenue and the High Court should not have set aside that order. The fact that the Land Management Committee of Gaon Sabha had created lease hold rights in

> *favour of the respondents herein is of no consequence. Such lease, in the face of the statutory right of the appellant, is nonest in the eye of law and is liable to be ignored.*
>
> *It is surprising that the State of U.P. had chosen to file an appeal against the order of the S.D.O., in tandem with the Gaon Sabha. It seems to be a clear case of non-application of mind on the part of the concerned authorities of the State who are supposed to effectuate the socio-economic objective of the legislation.*
>
> *The appeal is allowed. The orders of the Board of Revenue and the High Court are set aside. The S.D.O's order is restored. No costs."*

34. Having heard learned counsel for the parties and upon perusal of the record, this Court finds that the principal issue involved in the present writ petition is whether the revisional authority was justified in interfering with the order dated 25.09.2003 passed by the Pargana Adhikari, Hasanganj, District Unnao or not.

35. From the record it is evident that the order dated 25.09.2003 merely recalled the earlier order dated 18.07.1998 which had been passed ex-parte against the petitioner without issuing notice to him and without affording him any opportunity of hearing. The said order dated 25.09.2003 did not decide the rights of the parties on merits but only restored the proceedings so that the application filed by opposite party No.2 for recall of the order dated 09.01.1998 could be adjudicated after hearing the petitioner. Thus, the order dated 25.09.2003 was passed only to uphold the principles of natural justice.

36. The revisional authority, while allowing the revision and setting aside the order dated 25.09.2003, failed to appreciate that the order dated 18.07.1998 was passed behind the back of the petitioner and was clearly an ex-parte order. It is a settled principle of law that any order passed without providing opportunity of hearing to an affected party is violative of the principles of natural justice and cannot be sustained. By restoring such an ex-parte order, the revisional authority has virtually deprived the

petitioner of his valuable right to contest the proceedings and defend the order dated 09.01.1998.

37. Apart from the above, the legal position relating to Section 122-B (4-F) of the U.P. Zamindari Abolition and Land Reforms Act is no longer *res integra*. The Hon'ble Supreme Court in **Manorey @ Manohar Vs. Board of Revenue, U.P. and others** has clearly held that sub-section (4-F) not only protects the possession of an eligible agricultural labourer belonging to Scheduled Caste or Scheduled Tribe but also confers upon such person the status of Bhumidhar with non-transferable rights by virtue of a statutory deeming provision. The said provision has been enacted as a measure of agrarian reform to achieve socio-economic justice and the benefit conferred under the provision cannot be curtailed by adopting a narrow or technical approach.

38. The aforesaid principle has been reiterated by this Court in **Sushila and others Vs. State of U.P. and others**, wherein it has been held that once a person satisfies the conditions of Section 122-B (4-F), he is deemed to have been admitted as Bhumidhar with non-transferable rights and such statutory right must be given full effect. It has also been categorically held that the remedy of revision is not available against an order passed under Section 122-B (4-F), as the revisional jurisdiction is a creature of statute and cannot be assumed where the statute does not provide for it.

39. Similar view has been taken by this Court in **Ganga Raman Sharma Vs. State of U.P.,** wherein it has been held that since an order under Section 122-B (4-F) itself is not revisable, any order passed in proceedings arising out of such order, including an order allowing restoration application, is also not revisable and any interference by the revisional court in such matters would be wholly without jurisdiction.

40. Further, in **Brahmanand and others Vs. State of U.P**. **and others** and **Bhola Vs. State of U.P.,** it has been emphasized that the rights accruing under Section 122-B (4-F) flow from a statutory deeming provision and once the conditions of the provision are satisfied, the eligible person acquires the status of Bhumidhar with non-transferable rights and the revenue authorities are under an obligation to recognize such rights.

41. In the present case, the record indicates that the petitioner, who belongs to the Scheduled Caste community and claims to be a landless agricultural labourer, was granted benefit under Section 122-B (4-F) by the Pargana Adhikari vide order dated 09.01.1998 after due enquiry. The subsequent order dated 18.07.1998 setting aside the said order was admittedly passed ex-parte. The Pargana Adhikari, therefore, rightly recalled the ex-parte order on 25.09.2003 so that the matter could be heard afresh after giving opportunity to the petitioner.

42. The revisional authority, however, ignored the above legal position as well as the principles of natural justice and proceeded to set aside the order dated 25.09.2003 on an erroneous assumption that the earlier order dated 18.07.1998 had been passed on merits. The impugned order, thus, suffers from manifest illegality and jurisdictional error.

43. In view of the aforesaid discussion and the law laid down in the judgments relied upon by learned counsel for the petitioner, this Court is of the considered opinion that the impugned order dated 10.08.2004 passed by the revisional authority cannot be sustained in the eyes of law.

44. Accordingly, the writ petition deserves to be allowed and is hereby **allowed**. The impugned order dated 10.08.2004 passed by respondent No.1 is quashed.

45. The order dated 25.09.2003 passed by the Pargana Adhikari, Hasanganj, District Unnao is restored and the concerned authority shall proceed to decide the matter afresh in accordance with law after providing due opportunity of hearing to the parties concerned.

46. No order as to costs.

(Irshad Ali,J.)

March 12, 2026
Adarsh K Singh