

by the petitioners that their father Har Krishan had acquired the property alongwith Hardwar and therefore, again there cannot be any plea of family settlement specially between Chhitna and the petitioners in exclusion to the others that would necessarily include Smt. Yashodra to say the least.

43. For the said reasons, the plea of family settlement also does not inspire confidence and the reasonings given by the Deputy Director of Consolidation as well as Settlement Officer of Consolidation to discard the plea of family settlement does not suffer from any palpable error.

44. Upon examining the plea of a compromise said to have occurred before the court of Tehsildar, the same did not find acceptance before the Settlement Officer of Consolidation and the Deputy Director of Consolidation and this Court also agrees with the reasonings that the said compromise in mutation proceedings was in any case not binding in the sense that it could deprive a lawful owner of his right. It could not be disputed by learned counsel for the petitioners that the alleged compromise said to have been filed in the court of Tehsildar was only signed by Parag. It did not have the signatures of Smt. Chhitna, Smt. Yashodra or even Agya Ram himself. Even if at all for the sake of arguments, the said compromise is taken into consideration, even then it cannot have any binding impact as it was held in a mutation proceedings whereas the same came to be disputed in proceedings under Section 9-A (2) of the Act of 1953 which are substantive proceedings where the rights of the parties including their title is decided and the same has a binding impact including it operates as res-judicata in terms of Section 49 of the Act of 1953 before any other revenue or civil court. In the proceedings before the

Consolidation Officer, the said compromise was neither proved despite the fact that Smt. Chhitna had denied the said compromise. It was always open for the petitioners to have proved the compromise but it was not proved and thus by merely taking the plea without proving the said compromise in accordance with law, it cannot be treated to have been proved. There was no justification for the said compromise to be accepted when it was not signed by Yashodra, Parag and Chhitna. Hence, the plea of compromise is also turned down.

45. Lastly, the plea that the property was ancestral also in the light of the aforesaid discussion, learned counsel for the petitioner could not prove that the property was ancestral and even otherwise it was contrary to his pleadings, thus the said plea also does not have any merit.

46. For all the aforesaid reasons, the petition bearing Writ -B No.4405 of 1985 has no merit and is accordingly *dismissed*. So also the Writ -B No.3396 of 1987 meets the same fate. It is accordingly *dismissed*.

Costs are made easy.

(2025) 3 ILRA 240

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 04.03.2025

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ B No. 15451 of 1996

Rama Shanker & Ors.	...Petitioners
Versus	
The Board of Revenue, U.P., Allahabad & Ors.	...Respondents

Counsel for the Petitioners:

Sri Prakash Chandra, Sri Vishal Khandelwal

Counsel for the Respondents:

Sri Ashish Kumar Srivastava, Sri Avinash Chandra Srivastava, C.S.C., Sri Jai Raj Singh Tomar

A. Civil Law -U.P. Zamindari Abolition and Land Reforms Act,1950-Section 122B(4-F)-The petitioners belonging to the Scheduled caste community, were granted the benefit of Section 122B(4-F) of the Act,1950 in respect of Gaon Sabha land vide orders dated 31.01.1994 and 20.01.1994-Their names were accordingly recorded in the revenue records as bhumidhar with non-transferable rights-Subsequently, the District Government counsel filed a recall application, which was allowed by the Sub-Divisional Officer on 17.09.1994, setting aside the original allotment order-The Board of Revenue, upon reference from the Additional Commissioner recommending restoration of the petitioner's rights, rejected the same vide order dated 25.01.1996-The court held that once the benefit of Section 122B(4-F) is granted, the proper procedure to challenge the same is through proceedings u/s 198(4) of the Act,1950 and not by way of recall/restoration applications-The recall application filed by the DGC was therefore not maintainable-Reliance was placed on Navami Lal Vs. State, Smt. Reshma Devi Vs. Commissioner and the Supreme court judgment in Manorey @ Manohar Vs. Board of Revenue which affirmed the substantive and procedural rights of Scheduled caste agricultural labourers u/s 122B(4-F)-The orders dated 17.09.1994(SDO) and 25.01.1996(Board of Revenue) are set aside.(Para 1 to 15)

The writ petition is allowed. (E-6)

List of Cases cited:

1. Navmi Lal Vs St. of U.P. thru Secy & ors.(2018) 141 R.D. 750

2. Smt Reshma Devi & ors.Vs Commr. & ors.(2014)122 RD 667

3. Basdev Vs St. of U.P. & Ors(2023) 9 ADJ 208

4. Manorey @ Manohar Vs Board of Revenue & ors.(2003) AIR SC 4102

(Delivered by Hon'ble Chandra Kumar Rai, J.)

1. Heard Sri Vishal Khandelwal, learned counsel for the petitioners, Sri Abhishek Kumar Srivastava, learned Additional Chief Standing Counsel for the State and Sri Avinash Chandra Srivastava, learned counsel for the Gram Sabha.

2. Brief facts of the case are that petitioners were granted benefit of Section 122 B (4-F) of the U.P. Zamindari Abolition Land Reforms Act, 1950 (herein after referred to as the U.P.Z.A. & L.R. Act) in respect to plot no. 430 situated in village -Sikandarpur Kotwar, Tehsil-Firozabad, District-Firozabad vide order dated 31.01.1994 and 20.01.1994. Against the order dated 31.01.1994/20.01.1994 granting the benefit of Section 122B (4-F) of the U.P.Z.A. & L.R. Act in favour of the petitioners, the recall application has been filed on 14.09.1994 by District Government Counsel. Sub-Divisional Officer vide order dated 17.09.1994 allowed the aforementioned application setting aside the order dated 31.01.1994 and restored the proceeding to its original number. Against the order dated 17.09.1994 passed by Sub-Divisional Officer, petitioner filed three revisions before the Commissioner, which were registered as revision no. 1 of 1994, 2 of 1994 & 3 of 1994 under Section 333A of the U.P.Z.A. & L.R. Act. Additional Commissioner (Judicial), Agra Division, Agra vide order dated 19.09.1995 sent the reference before the Board of Revenue for

allowing the revisions, setting aside the orders dated 17.09.1994 passed by the Sub-Divisional Officer in three cases and for fresh disposal of restoration applications. The references were registered as Reference Nos. 15, 16, 17 of 1995-96. Board of Revenue vide order dated 25.01.1996 rejected the references. Hence this writ petition on behalf of the petitioners for the following reliefs:-

□□□□□□

(i) *to issue a writ, order or direction in the nature of certiorari, quashing the order dated 25.01.1996, passed by Board of Revenue in all the references 15 to 17 of 1995-96 as well as order passed by the Sub Divisional Officer, Firozabad dated 17.09.1994.*

(ii) *to pass any further orders, which this Hon'ble Court may deem proper & appropriate under the facts and circumstances of the case."*

3. This Court entertained the matter and granted the interim protection on 08.05.1996 staying the operation of the impugned orders.

4. In pursuance of the order dated 08.5.1996, affidavits have been exchanged between the parties.

5. Learned counsel for the petitioners submitted that petitioners belong to Scheduled Caste Community and petitioners were found in possession over the plot□ in question before the relevant date accordingly, benefit of Section 122B (4-F) of the U.P.Z.A. & L.R. Act was granted to the petitioners in proper manner. He further submitted that on the basis of the order dated 31.01.1994/20.01.1994 granting the benefit of Section 122B (4-F) of the U.P.Z.A. & L.R. Act, the name of

the petitioners were accordingly recorded in the revenue record. He placed the copy of the 'Khatauni' annexed as annexure no. 1 to the instant petition in order to demonstrate that in the remark column particular of the order granting the benefit of Section 122B (4-F) of the U.P.Z.A. & L.R. Act has been mentioned to record the name of the petitioners as 'Bhoomidhar' with non transferable rights. He next submitted that the recall application has been filed against the order dated 31.01.1994 in place of initiating proper proceeding as held by this Court in the **Case reported in 2018(141) R.D. 750 Navmi Lal Vs. State of U.P. through Secretary and Others as well as Case reported in 2014 (122) RD 677 Smt. Reshma Devi and others** Versus Commissioner and others. He submitted that in view of the ratio of law laid down by this Court in **Smt. Reshma Devi (Supra) & Navmi Lal (Supra)**, the Recall/Restoration Application cannot be entertained against the order granting the benefit of Section 122B (4-F) of the U.P.Z.A. & L.R. Act. He further submitted that Additional Commissioner has rightly sent the reference for allowing the revision, but Board of Revenue has rejected the references in arbitrary manner. He next submitted that petitioners are still in possession over the plot in question on the basis of the order dated 31.01.1994/20.01.1994 granting the benefit of Section 122B (4-F) of the U.P.Z.A. & L.R. Act, as such the impugned order should be set aside and the order dated 31.01.1994/20.01.1994 granting the benefit of Section 122B (4-F) of the U.P.Z.A. & L.R. Act should be maintained.

6. On the other hand, Sri Abhishek Kumar Srivastava, learned Additional Chief Standing Counsel for the State and

Sri Avinash Chandra Srivastava, learned Counsel for the Gaon Sabha submitted that the recall application has been rightly filed on behalf of the Gaon Sabha by District Government Counsel against the order dated 31.01.1994/20.01.1994 on the ground that the order was passed in ex parte manner without affording any opportunity of hearing to the Gaon Sabha. They further submitted that Sub-Divisional Officer has set aside the order dated 31.01.1994/20.01.1994 and restored the proceedings for afresh decision in accordance with law, as such no interference is required against the impugned order dated 25.01.1996 as petitioners have full opportunity to participate in the proceedings before the Court in pursuance of the order of Sub-Divisional Officer dated 17.09.1994. They next submitted that Board of Revenue has rightly rejected the reference sent by the Additional Commissioner, as such no interference is required. They further placed the reliance upon the judgment of this Court **reported in 2023 (9) □ ADJ 208 Basdev Versus State of U.P. and Others** in order to demonstrate that recall or restoration application can be filed at any time, if the order has been passed in ex parte manner in respect to the Gaon Sabha/State Land. They submitted that no interference is required and writ petition is liable to be dismissed.

7. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

8. There is no dispute about the facts that petitioners belong to the scheduled Community and petitioners were granted benefits of Section 122B (4-F) of the U.P.Z.A. & L.R. Act on 31.01.1994/20.01.1994. There is also no

dispute about the facts that on the basis of restoration application, the order dated 31.01.1994/20.01.1994 have been recalled and proceeding has been restored to its original number. There is no dispute about the fact that in revision filed by the petitioners references were sent before the Board of Revenue for allowing the revision, but Board of Revenue has dismissed the reference sent by Additional Commissioner.

9. In order to appreciate the controversy involved in the matter perusal of Section 122B (4-F) of the U.P.Z.A. & L.R. Act will be relevant, which is as under:-

"[(4F) Notwithstanding anything in the foregoing sub-section, 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 [May 13,2007], 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 [he shall be admitted as bhumidhar with non-transferable rights of that land under Section 195 and it shall not be necessary for him to institute a suit for declaration of his rights as bhumidhar with non-transferable rights in that land.

Explanation.- The expression 'agricultural labourer' shall have the meaning assigned to it in section 198.]"

10. Hon'ble Apex Court in the Case reported in *AIR 2003 Supreme Court 4102 Manorey alias Manohar Vs. Board of Revenue & others* has considered the scope of the proceeding under Section 122-B (4-F) of U.P.Z.A. & L.R. Act. Relevant paragraphs of judgment rendered by the Hon'ble Apex Court in *Moneray* (Supra) will be relevant for perusal which are as under:-

“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 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."

11. In the instant matter petitioners belong to Scheduled Caste Community and the authorities have granted benefit of

Section 122B (4-F) of the U.P.Z.A. & L.R. Act in favour of the petitioners on 31.01.1994/20.01.1994, as such the recall application filed by the District Government Counsel cannot be entertained in view of the ratio of law laid down by this Court in the Case of *Navmi Lal (Supra) & Smt. Reshma Devi (Supra)*.

12. This Court in the *Case of Navmi Lal (Supra) & Reshma Devi (Supra)* has held that after granting the benefits of Section 122B (4-F) of the U.P.Z.A. & L.R. Act the proper procedure is to apply under Section 198(4) of the U.P.Z.A. & L.R. Act rather to file the recall/ restoration against the order granting the benefits of Section 122B (4-F) of the U.P.Z.A. & L.R. Act. The petitioners have been granted interim order by this Court in the year 1996 and petitioners are continuing in possession over the plot in question. Paragraph No. 11 of the Judgement rendered by this Court in the case of *Navmi Lal (Supra)* will be relevant for perusal which is as under:-

"11. However, for the purposes of proceedings either under Section 198(4) of the U.P. Z.A. & L.R. Act or under Section 128 of the U.P. Revenue Code, 2006, admission of a person to land vested in Gaon Sabha has been made under Section 195 read with Section 198 or under Section 122-B (4-F) of the U.P. Z.A & L.R. Act, does not make any difference. In both the proceedings, the eligible persons are admitted to Gaon Sabha land and Section 128 of the U.P. Revenue Code, as observed above, is a pari-materia to the provisions contained in Section 198(4) of the U.P. Z.A. & L.R. Act and vests an authority in the Collector to cancel such an allotment or admission after enquiry. 'Allotment of land' as

occurring under Section 128 of the U.P. Revenue Code, 2006 and Section 198 (4) of the U.P. Z.A. & L.R. Act cannot be permitted to be confined to allotment of land under Section 195 read with Section 198 of the U.P. Z.A. & L.R. Act alone; rather it covers in its fold the admission of a person to Gaon Sabha land giving him the benefit of Section 122-B(4-F) of the said Act.”

13. Paragraph No. 11 of the judgment rendered by this Court in the case of Smt. Reshma Devi (Supra) will be also relevant for perusal which is as under:-
□□□

“11.The submission of learned counsel for the petitioner that proceeding of cancellation of the allotment of land under Section 122B(4F) could not be initiated, under Sub-Section 4 of Section 198 is misconceived for the reason that under Section 122B(4F), the person is admitted as bhumidhar with non-transferable right of the land under Section 195 and Section 198 takes care of Section 195 and 197 both, therefore sub-section (4) of Section 198 would be applicable with respect to both i.e. allotment of land under Section 195 or 197 of the Act.”

14. Considering the entire facts and circumstances of the case as well as ratio of law laid down by Hon'ble Apex Court as well as this Court, the impugned order dated 25.01.1996 passed by respondent no. 1/Board of Revenue in reference case nos. 15 to 17 of 1995-96 as well as the order dated 17.09.1994 passed by respondent no. 2/ Sub-Divisional Officer, Firozabad are liable to be set aside and the same are hereby set aside.

15. The writ petition stands allowed and order dated 31.01.1994/20.01.1994 granting the benefits of Section 122B (4-F) of the U.P.Z.A. & L.R. Act in favour of the petitioners is affirmed. The authorities are directed to record the name of the petitioners on the basis of the order granting the benefits of Section 122B (4-F) of the U.P.Z.A. & L.R. Act in the revenue records accordingly.

16. No order as to costs.

(2025) 3 ILRA 246

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 04.03.2025

BEFORE

THE HON'BLE OM PRAKASH SHUKLA, J.

Writ Tax No. 147 of 2023

Ashok Gandhi	...	Petitioner
	Versus	
State of U.P. & Ors.	...	Respondents

Counsel for the Petitioner:

Rajeev Kumar Srivastava

Counsel for the Respondents:

C.S.C.

A. Tax Law – Entertainment Tax – Multiplex Cinema – Incentive Scheme – 10% of the amount of grant-in-aid and interest was directed to be deposited for re-examining the case – Validity challenged – Held, the demand to deposit 10% of the total grant-in-aid concession provided to the petitioner, for hearing of the representation is neither founded in the statute nor the same is at an appellate stage. (Para 9 & 15)

B. Tax Law – Principle of natural justice – Applicability – No opportunity of hearing