available. For example, where a rule specifically provides that the delinquent officer shall be given an opportunity to produce evidence in support of his case after the close of the evidence of the other side and if no such opportunity is given, it would not be possible to say that the enquiry was not vitiated. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touchstone of prejudice. The test would be, whether the delinquent officer had or did not have a fair hearing. ...”

(Emphasis supplied)”

12. In the above background, the Court takes note that in writ petition, the petitioner has not denied his absence of 1220 days even vaguely. No document such as sanction of leave or application for leave or medical certificate was placed on record, therefore, the Court is of view that since there was substantial compliance of principle of natural justice that she was given opportunity to submit her reply, however, no reply was submitted despite publication in newspaper, she has not appeared, therefore, the Court takes note that even this matter is remitted back to conduct the inquiry from the stage where procedure was not strictly followed would have no effect since petitioner has no explanation to her long absence of 1220 days, therefore, there is no prejudice caused to her. Petitioner’s case has failed in ‘test of prejudice’. It will also not be in the interest of justice since in present case, in the writ petition, petitioner has not made even a statement of denial of charge. No document was placed on record which could support her defence or contradict the allegations.

13. In the aforesaid circumstances, since the Court is of view that absence of 1220 days, between 2004 to 2009 remained absolutely unexplained, therefore, there is no need to interfere with punishment which is not disproportionate, considering the nature of allegation, this writ petition is accordingly, **dismissed.**

(2025) 5 ILRA 537
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 30.05.2025

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ B No. 371 of 2025

Alakh Prasad @ Alakh Dev & Ors. ...Petitioners

Versus

State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
Narayan Dutt Shukla, Rituvendra Singh Nagvanshi

Counsel for the Respondents:
Murli Dhar Mishra, Sachinda Nand Tiwari, Anuj Srivastava, C.S.C.

Civil Law - U.P. Consolidation of Holdings Act, 1953 — Sections 5, 12, 11(1) & 48 — U.P. Zamindari Abolition and Land Reforms Act, 1950 — Section 157-A — Jurisdiction of consolidation authorities —

Title over Abadi land — Scope of revisional power - Plot No. 17 recorded in name of Raghuni, was permitted to be transferred under S.5, U.P.C.H. Act. Raghuni executed sale deed in favour of petitioners. Petitioners application under S.12 for recording their names was rejected by Consolidation Officer directing plot be recorded as Abadi Class 6(2). On appeal, Settlement Officer of Consolidation allowed petitioners' claim, but in revision under S.48, Deputy Director of Consolidation set aside the appellate order holding sale deed void being hit by S.157-A of U.P.Z.A. & L.R. Act and restored order of Consolidation Officer. *Held : Consolidation authorities have no jurisdiction to decide title of Abadi land*. Their jurisdiction is limited to recording the nature of land as "Abadi" in revenue records; questions of title must be left to competent Civil Court Deputy Director of Consolidation exceeded revisional jurisdiction in adjudicating validity of sale deed and title of petitioners, *as consolidation court cannot decide title about the abadi land*. Court quashed the revisional order recording finding on sale deed and title. Order of Consolidation Officer declaring plot as Abadi Class 6(2) affirmed. Parties given liberty to approach Civil Court for adjudication of title. Writ petition partly allowed.

Allowed. (E-5)

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

1. Heard Mr. R.C. Singh, learned Senior Counsel assisted by Mr. Narayan Dutt Shukla, learned counsel for the petitioners, Mr. Murli Dhar Mishra, learned counsel assisted by Mr. Sachida Nand Tiwari, learned counsel for the private respondents and Mr. Tarun Gaur, learned Standing Counsel for the State respondents.

2. Brief facts of the case are that plot No. 17 area 10 dismil situated in Village Jabhi Malki Mustakil, Tappa- Bak Jogni Tehsil- Tamkuhiraj District Kushinagar was recorded in the name of Shri Raghuni son of Palakh. Shri Raghuni made an application before the Settlement Officer of Consolidation under Section 5 of U.P. Consolidation of Holdings Act, 1953 hereinafter referred to as U.P.C.H. Act seeking permission to transfer the plot No. 17 area 10 dismil. Settlement Officer of Consolidation vide order dated 12.3.1981 granted permission to Shri Raghuni to transfer the property. On the basis of permission granted by Settlement Officer of Consolidation dated 12.3.1981, Shri Raghuni executed a registered sale deed dated 29.7.1981 in favour of Alakh Prasad, Janak Prasad and Nagina Prasad who are petitioners of the instant petition. Petitioners- Alakh Prasad, Janak Prasad and Nagina Prasad applied for recording of their name under Section 12 of the U.P.C.H. Act on the basis of registered sale deed dated 29.7.1981. In the aforementioned proceeding, an objection was filed on behalf of respondent no.4/ Narsingh claiming right on the basis of adverse possession. Consolidation Officer vide order dated 26.6.1982 rejected the application filed by petitioners under Section 12 of the U.P.C.H. Act as well as the objection filed by respondent no.4/ Narsingh and directed that plot in question should be recorded as abadi Class 6 (2). Petitioners challenged the order of Consolidation Officer dated 26.6.1982 by way of appeal under Section 11(1) of the U.P.C.H. Act which was registered as appeal No. 2305, Alakh Prasad and Others Vs. Raghuni and Others. Respondent no.4/ Narsingh has also filed appeal before the Settlement Officer of Consolidation which was registered as appeal No. 2550 Narsingh Vs. Gaon Sabha. Both the appeals were consolidated and heard together. Settlement

Officer of Consolidation vide order dated 25.10.1982 allowed the appeal filed by petitioners and dismissed the appeal filed by respondent no.4/ Narsingh. Against the appellate order dated 21.10.1982, respondent no.4 filed revision under Section 48 of the U.P.C.H. Act against the appellate order dated 21.10.1982 passed in appeal No. 2035 and appeal No. 2550. The aforementioned revision was registered as case No. 0883 of 2018. Deputy Director of Consolidation vide order dated 7.1.2025 allowed the revision filed by respondent no.4 setting aside the appellate order dated 21.10.1982 and maintained the order of Consolidation Officer dated 26.6.1982 by which the plot in question was ordered to be recorded as abadi Class 6 (2). Hence this writ petition for the following relief:-

"Issue a writ, order or direction in the nature of certiorari call for record and quash the impugned order dated 7.1.2025 passed by Deputy Director of Consolidation Kushinagar in case No. 0883 of 2018, computerized No. 20185405440000000883 and order dated 26.6.1982 passed by Consolidation Officer, Tarya Sujan, District Kushinagar."

3. This Court entertained the matter on 13.2.2025 and granted interim protection for maintaining status quo regarding possession, nature and character of the suit property.

4. In compliance of the order dated 13.2.2025, parties have exchanged their affidavit.

5. Learned Senior Counsel for the petitioners submitted that petitioners have rightly applied under Section 12 of the U.P.C.H. Act for recording of their name on the basis of registered sale deed dated 29.7.1981 but Consolidation Officer has illegally rejected the claim of petitioners and directed that plot in question be recorded as abadi Class 6 (2). He submitted that appeal filed by petitioners was rightly allowed by Settlement Officer of Consolidation for recording of the name of petitioners on the basis of registered sale deed executed by recorded tenure holder of the plot in question. He further submitted that in the revisional exercise of jurisdiction, the appellate order has illegally been set aside and the order of Consolidation Officer has been maintained. He submitted that after execution of sale deed dated 29.7.1981 by Raghuni in favour of petitioners, Raghuni lost his right in respect to the plot in question therefore Raghuni cannot enter into compromise with regard to the plot in question in any proceeding. He further submitted that in obtaining expert opinion, consolidation authorities have violated the mandatory provisions, as such, no reliance can be placed over the expert opinion. He submitted that civil suit filed on behalf of respondent no.4 was not maintainable as respondent no.4 was not recorded over the plot in question. He further submitted that petitioners were not party in the civil suit, as such, decree if any will not be binding upon the petitioners. He submitted that compromise was alleged to take place in civil suit filed by respondent no.4 but entire proceeding of the suit filed by respondent no.4 is vitiated as civil suit was not maintainable before Civil Court. He submitted that Consolidation Officer has no power to record the bhoomidhari land as abadi. He submitted that respondent no.4 was claiming right on the basis of adverse possession which has not been proved in accordance with law, as such, no right will accrue in favour of private respondents. He

submitted that finding recorded by the revisional Court regarding the provisions contained under Section 157-A of the U.P. Zamindari Abolition and Land Reforms Act, 1950 hereinafter referred to as U.P.Z.A. and L.R. Act is wholly illegal. He submitted that impugned revisional order passed by Deputy Director of Consolidation is liable to be set aside and order of Settlement Officer of Consolidation should be maintained. He further placed reliance upon the following judgements in support of his argument:-

"(i) 2017 (1) JCLR 743 (ALL) Satya Prakash Goel Vs. Smt. Kavita Jain

(ii) Civil Appeal No. 2639 of 1982 Asharfi Lal Vs. Smt. Koili (dead) by L.R.s

(iii) Civil Appeal No. 2771 of 1981 Smt. Isabella Johnson Vs. M.A. Susai (dead) by Lrs.

(iv) 1993 (2) SCC 458 Hiralal Moolchand Doshi Vs. Barot Raman Lal Ranchhoddas (dead) by L.Rs

(v) 2022 AIR Supreme Court 3967 S. Kuldeep Singh and Another Vs. S. Prithpal Singh

(vi) 2018 SCC Online SC 2170 Jharkhand State Housing Board Vs. Didar Singh and Another (vii) 2017 (3) SCC 740 Mohammad Ansari Vs. Union of India and Others"

6. On the other hand, Mr. Murli Dhar Mishra, learned counsel for private respondents submitted that sale deed set up by the petitioners is hit by Section 157-A of the U.P.Z.A. and L.R. Act. He submitted that Civil Court has got jurisdiction to grant injunction under Section 38 of Specific Relief Act, as such, civil suit filed by respondent no.4 was maintainable before the Civil Court. He submitted that in the civil suit, the compromise has taken place in respect to the plot in question, as such, the petitioners have no right and title in respect to the plot in question. He submitted that consolidation authorities have power to declare the plot as abadi and there is no illegality in the order of Consolidation Officer to record the plot in question as abadi. He submitted that execution of the sale deed has been denied by the Raghuni himself, as such, no right will accrue in favour of petitioners. He further submitted that original copy of the sale deed was not produced before any Court, as such, the petitioners cannot be recorded over the plot in question on the basis of alleged sale deed. He submitted that land in question is abadi and the possession of respondent no.4 has not been denied by recorded owner Raghuni, as such, there is no illegality in the order passed by Consolidation Officer as maintained by Deputy Director of Consolidation. He further submitted that private respondents are in possession of the plot in question since long and construction has also been raised by private respondents, as such, interference against the impugned order will cause irreparable injury to the private respondents. He further submitted that civil suit No. 1186 of 1981 filed by petitioners impleading respondent no.4 as well as Raghuni for setting aside the judgement and decree dated 27.8.1981 passed in civil suit No. 923 of 1981 was dismissed for non-prosecution vide order dated 15.1.1982, as such, decree of civil suit passed on the basis of compromise has attained finality. He submitted that petitioners have concealed the fact regarding dismissal of suit filed by petitioners for declaring the judgement and decree passed in civil suit No. 923 of 1981 as null and void, as such, writ petition filed by petitioners cannot be entertained. He further placed reliance upon the following

judgement of this Court in support of his argument:-

"(i) AIR 1973 Supreme Court 2451 Gorakh Nath Dube Vs. Hari Narain Singh and Others

(ii) SCC (2018) 330 Jharkhand State Housing Board Vs. Dildar Singh"

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

8. There is no dispute about the fact that plot No. 17 area 10 dismil was recorded in the name of Shri Raghuni son of Palak. There is also no dispute about the fact that against the basic year entry, objection were filed on behalf of the petitioners for recording of their names on the basis of sale deed dated 29.7.1981 alleged to be executed by Shri Raghuni in favour of petitioners and respondent no.4 claimed right on the basis of adverse possession. There is also no dispute about the fact that Consolidation Officer has rejected the claim of petitioners and directed that plot in question should be recorded as abadi Class 6 (2) category plot but in appeal, the order of Consolidation Officer was set aside and petitioners were ordered to be recorded over the plot in question on the basis of registered sale deed. There is also no dispute about the fact that in revision, the appellate order has been set aside resulting into maintaining the order of Consolidation Officer for recording the plot in question as abadi Class 6 (2) category plot. There is also no dispute about the fact that civil suit No. 923 of 1981 filed by respondent no.4 for injunction impleading Shri Raghuni as sole defendant in respect to the plot in question was decreed on the basis of compromise vide judgement and decree dated 27.8.1981/ 10.9.1981.

9. In order to appreciate the controversy involved in the matter, the perusal of the issues framed before the Consolidation Officer will be relevant which are as under:-

"वाद प्रतिवादी के आधार पर निम्न वाद बिन्दु बनाए गएः-

1. क्या अलख प्रसाद आदि विवादग्रस्त भूमि के बैनामा के आधार पर भूमिधर एवं अधिपत्यभोगी हैं?

2. क्या नरसिंह पुत्र ठग विवादग्रस्त भूमि की भूमिधर एवं अधिपत्यभोगी हैं?

3. क्या विवादग्रस्त भूमि मौके पर आबादी है?

4. क्या कथित बैनामा अलख प्रसाद आदि गलत व फर्जी है?

5. भूतपूर्व कब्जे का प्रभाव?"

10. The perusal of the issues framed before the Consolidation Officer demonstrate that all the relevant issues were framed before the Consolidation Officer regarding the claim of petitioners on the basis of sale deed and claim of respondent no.4 on the basis of adverse possession as well as regarding the nature of the plot in question.

11. The perusal of the operative portion of the order passed by Consolidation Officer will also be relevant which is as under:-

"प्रतिलिपि आदेश च०अ०दि० 26.6.82 की छायाप्रति

राम प्रगट त्रिपाठी चकबन्दी अधिकारी 10 तरया सुज़ान वाद सं० 1913 से 1915 अंतर्गत धारा 9 क (2) उ०प्र० जो० चकबन्दी अधिनियम बावत ग्राम जबकि मलही मुस्तकिल तप्पा बांक जोगिनी परगना सिधुआ जोबना तहसील पडरौना जिला देवरिया।

1- नर सिंह पुत्र ठग निवासी ग्राम- वादी प्रथम पक्ष

1/1...

2- अलख प्रसाद व नगीक प्रसाद पुत्रगण-वादी द्वितीय पक्ष दल्ली नि० ग्राम जवही दयाल

बनाम

रघुनी पुत्र फलक निवासी ग्राम वर्तमान कर्त.० ग० - प्रतिपक्षी स्टेशन निकट

<u>आदेश</u>

उपरोक्त विवेचक एवं निष्कर्षों के आधार पर ग्राम जवही मलही मुस्तकिल के खाता सं० 78 की भूमि सं० ***17/0.10*** से रघुनी पुत्र पलक का नाम काटकर आबादी वर्ग 6(2) अंकित किया जाता है। नरसिंह पुत्र ठग का नाम अंकित करने की एवं अलख प्रसाद, जनक प्रसाद, नगीना प्रसाद पुत्रगण दल्ली का बैनामा के आधार पर नाम अंकित करने की कार्यवाही खारिज की जाती है।

यह आदेश वाद सं० ***1913*** से ***1915*** पर लागू रहेगा। आदेश सुनाया गया। पत्रावली बाद अमदरामद व पू० दाखिल दफ्तर हो।

हस्ता०अ०

26/6/82

चकबन्दी अधिकारी

तरया सुजान"

12. Consolidation Officer has decided the objection of the petitioners as well as respondent no.4 directing that plot in question be recorded as abadi Class 6-2 category plot and claim of petitioners- Alakh Prasad and others as well as respondent no.4 for recording of their names cannot be allowed.

13. Settlement Officer of Consolidation while deciding the appeal has held that claim of petitioners on the basis of registered sale deed cannot be ignored and petitioners are entitled to be recorded over the plot in question however the plot in question be recorded as Shamil jot abadi of the petitioners- Alakh Prasad and Others on the basis of registered sale deed dated 29.7.1981.

14. Deputy Director of Consolidation has maintained the order of Consolidation Officer for recording the plot as abadi Class 6-(2) category plot as held by Consolidation Officer after setting aside the order of Settlement Officer of Consolidation. Deputy Director of Consolidation in the revision under Section 48 of the U.P.C.H. Act filed by respondent no.4 has also held that sale deed set up by the petitioners is hit by Section 157-A of the U.P.Z.A. and L.R. Act which is not proper exercise of revisional jurisdiction.

15. So far as jurisdiction of consolidation Court in respect to abadil land is concern, following judgements of this Court will be relevant for perusal which are as under:-

"(i) 2004 (97) RD 705 Jai Narain and Others Vs. Deputy Director of Consolidation and Others

(iii) 2004 (96) RD 303 Ram Prasad Vs. Deputy Director of Consolidation and Others

(iii) 2003 (95) RD 611 Prabhu Nath Vs. Deputy Director of Consolidation

(iv) 1987 RD 85 Chakat and Others Vs. Babu Ram and Another

(v)1979 RD 78 Kamla Shanker and Others Vs. Deputy Director of Consolidation and Others

(vi) 1974 RD 5 (DB) Triloki Nath Vs. Ram Gopal and Others"

16. This Court in the case of ***Kamla Shankar (Supra)*** has held that consolidation authorities have no jurisdiction to decide the title in respect to the abadi land. The perusal of the relevant paragraph of the judgement rendered in ***Kamla Shanker (Supra)*** will be necessary which is as under:-

"Having heard learned counsel for the parties I am of opinion that the submission made by learned counsel for the petitioners is well founded. In Triloki Nath v. Ram Gopal(1) a Division Bench of this Court held that if the consolidation authorities find that a particular holding is being used for purposes unconnected with agriculture, horticulture, or animal husbandry, etc., as envisaged by the definition of ?land? under the U.P. Zamindari Abolition and Land Reforms Act, they have no jurisdiction to decide the question of title in regard to such land.

The argument that the consolidation authorities have at least the jurisdiction to correct the revenue records was also repelled and it was held that this could appropriately be done only after the title to the land has been decided by the appropriate court having jurisdiction in the matter. In view of what has been held in Triloki Nath's case I am of opinion that the only jurisdiction which the consolidation authorities had was to make an entry in the relevant column of C.H. Form No. 2-A that the land was Abadi on the spot. They did not have any jurisdiction to direct the names of the petitioners to be expunged from the capers showing them to be Bhumidhars.

It was urged by learned counsel for respondent No. 4 that it the entry as Bhumidars in favour of the petitioners is allowed to continue it may be that in subsequent proceedings Section 49 of the U.P. Consolidation of Holdings Act may bar the claim of respondent No. 4. I am, however, unable to agree with this submission. Apparently when the consolidation authorities allow the entry to continue on the ground that they have no jurisdiction to decide the question of title it cannot be said by any stretch of imagination that any decision has been reached by the consolidation authorities in regard to the title. No question of the claim of any party being barred by Section 49 of the U.P. Consolidation of Holdings Act in subsequent proceedings, therefore, arises. I am informed that a civil suit is already pending for the demolition of the constructions standing on the plot in dispute. The suit has been filed by the petitioners against respondent No. 4. The entries in village papers can, therefore be corrected after the rights of the parties have finally been adjudicated upon by the civil Court.

ORDER

6. In the result, the petition succeeds and is allowed. The orders of the consolidation authorities directing the names of the petitioners to be expunged are quashed. The petitioners will continue to be recorded as Bhumidhars as in the basic year till the rights of the parties have been determined by a competent Court. The consolidation authorities will, however, make an entry in the appropriate

column to the effect that the plot in dispute is Abadi on the spot. In the circumstances of the case, there will be no order as to costs."

17. So far as the maintainability of civil suit in respect to the agricultural land is concerned, the law is well settled that civil suit in respect to the agricultural land which is not recorded in the name of plaintiff cannot be maintained.

18. In the instant matter, civil suit No. 923 of 1981 filed by respondent no.4, Narsingh for permanent injunction impleading the Raghuni as sole defendant was decreed on the basis of compromise vide judgement and decree dated 18.8.1981/ 10.9.1981 but petitioners were not parties in the aforementioned civil suit, as such, the compromise decree passed in the civil suit which was infact not maintainable as plaintiff/Narsingh was not recorded over the plot in question at the relevant point of time. The adjudication regarding the plot in dispute for the first time was made by consolidation Court vide order dated 26.6.1982 declaring the plot in question as abadi.

19. The exercise of revisional jurisdiction by Deputy Director of Consolidation under Section 48 of the U.P.C.H. Act recording finding regarding the sale deed of the petitioners as null and void is illegal as consolidation court cannot decide title about the abadi land. The Consolidation Officer has rightly held that plot in question should be recorded as abadi Class 6 (2) category plot and claim of petitioners on the basis of sale deed as well as the claim of respondent no.4/ Narsingh on the basis of adverse possession were rejected. The Appellate Court has set aside the order of Consolidation Officer and has held that plot in question should be recorded as "Shamil Jot abadi" of the petitioners. Revisional Court has exceeded in his revisional jurisdiction in adjudicating the title of the plot which is abadi on the basis of the order passed by Consolidation Officer dated 26.6.1982.

20. Considering the entire facts and circumstances of the case, the part of impugned revisional order dated 7.1.2025 passed by respondent no.2 under which the finding has been recorded regarding the title of the plot in question cannot be sustained in the eye of law and the same is hereby set aside. So far as the part of the revisional order by which the appellate order dated 21.10.1982 has been set aside is hereby maintained. The order passed by Consolidation Officer dated 26.6.1982 declaring the plot in question as abadi Class 6 (2) category plot is hereby affirmed. The parties will have liberty to approach the Civil Court for adjudication of the dispute regarding the title of the land in dispute in accordance with law.

21. The writ petition is **allowed** in part.

22. No order as to costs.

(2025) 5 ILRA 544
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 22.05.2025

BEFORE

THE HON'BLE SAURABH LAVANIA, J.

Writ B No. 453 of 2025

Sambhu Prasad Pandey & Anr.
...Petitioners
Versus
Deputy Director of Consolidation, Ayodhya & Ors.
...Respondents