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

Counsel for the Petitioners:
Ganga Prasad Mishra, Abhinav Mishra, Hemant Tr, Hemant Tripathi

Counsel for the Respondents:
C.S.C., Ambikesh Singh, Mohan Singh, Swati Singh

Civil Law - U.P. Consolidation of Holdings Act, 1953 - U.P. Consolidation of Holdings Rules, 1954, Rule 25-A) - U.P. Zamindari Abolition and Land Reforms Act, 1950 - Transfer of Property Act, 1882 - Section 54 - Registration Act, 1908 - Section 17 - *Issues Involved :* A. Whether ACO was/is empowered to transfer the rights in immovable property amounting of 'sale' in exercise of power under Rule 25-A of the Rules of 1954? B. Whether new rights could be created through compromise or conciliation by ACO in exercise of power under Rule 25-A of Rule of 1954 in favour of a person who was not having any right/interest in the land in dispute? C. Whether a transfer which was not valid transfer in terms of Rule 25-A of Rule of 1954, Section 54 of Transfer of Property Act 1882 (in short "Act of 1882) and Registration Act, 1908 (in short "Act of 1908) could be validated by depositing revenue in the Government Treasury? D. Whether the respondent no.2/Chandra Prakash Singh is entitled to benefit of Section 164 of the Act of 1950 ? *Held* - It is apparent from Section 54 of the Act of 1882 that an immovable property of a value exceeding one hundred rupees can only be transferred by way of registered deed/instrument in terms of the Act of 1908. If a person had no right under the statute any such right could not be recognised or admitted by a compromise or a new right could not be created through compromise or conciliation. Rule 25-A of Rule of 1954 indicates that dispute(s) related to tenure holder(s) pertaining to rights already in existence i.e. the rights available under the Act of 1950 or any other provision of law, could be recognised by lawful agreement or compromise by ACO in exercise of power under Rule 25-A of Rule of 1954 and the ACO under this rule was/is not empowered to provide new rights by way of agreement or compromise or conciliation. (Para 17, 19, 22)

B. Dispute relates to Gata No. 748, originally recorded in the name of Ram Nayan Pandey; on 09.12.1983, the Assistant Consolidation Officer (ACO), exercising powers under Rule 25-A of the U.P. Consolidation of Holdings Rules, 1954, recognised an alleged oral transfer made by Ram Nayan Pandey in favour of respondent no. 2, Chandra Prakash Singh, and recorded him as having full rights over the land, though he was neither a co-tenure holder, nor a family member, nor possessed any statutory right under the U.P. Zamindari Abolition and Land Reforms Act, 1950; the heirs of Ram Nayan Pandey, namely the petitioners, challenged the said order. The Consolidation Officer, by order dated 26.02.2024, again validated the oral transfer by directing Chandra Prakash Singh to deposit revenue on market value, which was set aside by the Settlement Officer of Consolidation (SOC) on 03.03.2025, but in revision, the Deputy Director of Consolidation (DDC), by impugned order dated 30.04.2025, restored the CO's order, giving rise to the present writ petition seeking quashing of the DDC's order and protection from dispossession Held : ACO was not empowered to recognize the alleged oral transfer of land in dispute i.e. Gata No. 748 made by Ram Nayan Pandey in favour of respondent no.2/Chandra Prakash Singh. In creating new rights related to land in dispute i.e. Gata No. 748 vide order dated 09.12.1983 the ACO exceeded its jurisdiction and erred in law. ACO under this rule was/is not empowered to provide new rights by way of agreement or compromise or conciliation. Court held that the respondent no.2/Chandra Prakash Singh is not entitled to the benefit available under Section 164 of the Act of 1950 for the reason that no evidence was placed on record by the respndent no.2/Chandra Prakash Singh to establish positively the essential ingredients so as to attract Section 164 of the Act of 1950. Direction for validating a transfer of immovable property by ACO by depositing certain amount/revenue on the market value of the property in the Government Treasury is without any authority. Transfer which was not valid initially, cannot be validated by means of depositing certain amount in the Government Treasury. Order dated 30.04.2025 (Annexure No.1) is hereby set aside/quashed and the order dated 03.03.2025 passed by SOC is restored. (Para 23, 24, 26)

Allowed. (E-5)

(Delivered by Hon'ble Saurabh Lavania, J.)

1. Vakalatnama filed by Mr. Hemant Tripathi, Advocate and Mr. Hari Om Pandey, Advocate on behalf of the petitioners is taken on record

2. Heard Mr. R.S. Pandey, learned Senior Advocate assisted by Mr. Hemant Tripathi, and Mr. Hari Om Pandey, learned counsel for the petitioners, Mr. Hemant Kumar Pandey, learned Standing Counsel for the State/respondent nos. 1 and 3, Mr. Mohan Singh, learned counsel for respondent no. 4/Gaon Sabha and Mr. Rakesh D. Kumar, Advocate, who appeared for Mr. Ambikesh Singh, Advocate and Ms. Swati Singh, Advocate, who filed the caveat for respondent no.2/Chandra Prakash Singh.

3. With the consent of the parties, the petition is being decided at the admission stage itself.

4. By means of the present petition the petitioner has sought the following main relief :-

"(i) Issue a writ in the nature of Certiorari to quash the impugned order dated 30.04.2025 passed by Opposite Party No. 1 (Deputy Director of Consolidation, Ayodhya) under Section 48 of the U.P. Consolidation of Holdings Act in Revision No. 3024/202554042300000106, Chandra Prakash Singh vs. Sambhu Prasad & Others, Village Sarethi, Pargana Haveli Awadh, Tehsil Sadar, District Ayodhya, as contained in Annexure No. 1 to this petition.

(ii) Issue a writ, order, or direction in the nature of Mandamus directing the opposite parties not to dispossess the petitioners from the land in question, in the interest of justice.

5. The petitioners have assailed the order dated 30.04.2025 passed by respondent no. 1/Deputy Director of Consolidation, Ayodhya (in short "DDC"), in exercise of power under Section 48(1) of of U.P. Consolidation of Holdings Act, 1953 (in short "Act of 1953") in Revision No. 3024/202554042300000106, (Chandra Prakash Singh vs. Sambhu Prasad & Others).

6. The facts, which are relevant for the purposes of deciding the petition, are as under :-

i) The dispute relates to Gata No. 748, area 3 bigha 17 dur, indicated in Khata No. 56, situated at Village - Sarethi, Pargana - Haveli Oudh, Tehsil - Sadar, District - Faizabad (now Ayodhya) (in short 'land in dispute').

ii) The Assistant Consolidation Officer (in short ACO), vide order dated 09.12.1983 passed in exercise of Rule 25-A of U.P. Consolidation of Holdings Rules, 1954 (in short "Rules of 1954") provided the land in dispute to respondent no. 2 namely Chandra Prakash Singh S/o Chataurbhuj Singh on the basis of statement of recorded tenure holder namely Ram Nayan Pandey, which was to the effect that land in dispute has been sold/transferred to Chandra Prakash Singh, and in terms of order of ACO dated 09.12.2023, the private-respondent no. 2 namely Chandra Prakash Singh was having full rights over the land in dispute i.e. Gata No. 748, detailed above.

iii) It would be apt to indicate at this stage that respondent no. 2 namely Chandra Prakash Singh when the order

dated 09.12.1983 was passed by ACO in exercise of power under Rule 25-A of Rules of 1954, was not having any rights recognized by the statute namely Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (in short "Act of 1950") over the land in dispute i.e. Gata No. 748 for the reason that he was not the co-tenure holder of the land in dispute i.e. Gata No. 748 nor he was part of the family of Ram Nayan Pandey nor he was part of the pedigree related to Ram Nayan Pandey nor there was any dispute between Ram Nayan Pandey and the respondent no. 2/Chandra Prakash Singh related to land in dispute.

iv) On coming to know about the order dated 09.12.1983, legal heirs/sons of Ram Nayan Pandey, who are the petitioners before this Court namely Sambhu Prasad Pandey and Rakesh Kumar Pandey, filed an appeal, under Section 11(1) of the Act of 1953 (Shambhu Prasad and Ors. Vs. Chandra Prakash and Ors.). This Appeal No. 1434/1511/1465/1337 was dismissed vide order dated 24.12.2016 by Settlement Officer of Consolidation, Faizabad (now Ayodhya)(in short "SOC").

v) The order dated 24.12.2016 passed by SOC was set aside vide order dated 18.02.2019 passed by DDC in Revision No. 968/2017530423000053 (Shambhu Prasad and Ors. Vs. Chandra Prakash and Ors.), under Section 48 of Act of 1953. The relevant portion of the order dated 18.02.2019 reads as under :-

"प्रस्तुत किये गये तर्कों के आलोक में अपीलीय न्यायालय की पत्रावली के सम्यक परिशीलन से स्पष्ट है कि निगरानीकर्ता की ओर से अपीलीय न्यायालय के समक्ष स०च०अ० के आदेश दिनांक 09.12.83 वाद संख्या 2552 अन्तर्गत धारा-9क (2) जोत चकबन्दी अधिनियम के विरुद्ध कालबाधित अपील दिनांक 09.07.2014 को प्रस्तुत किया था। वाद भूमि उसके पिता रामनयन पुत्र रामगोपाल द्वारा बैनामा से क्रय की गयी भूमि है। बैनामें के आधार पर परगनाधिकारी के आदेश दिनांक 27.11.73 द्वारा उनके पिता का माम याद भूमि पर अंकित हुआ था। सहायक चकबन्दी अधिकारी के आदेश दिनांक 09.12.83 से रामनयन पुत्र रामगोपाल के स्थान पर चन्द्रप्रकाश सिंह पुत्र चतुर्भुज सिंह का नाम फर्जी रूप से अंकित कर दिया गया है। अपील पत्रावली पर उपलब्ध साक्ष्यों के अवलोकन से स्पष्ट है कि निगरानीकर्तागण के पिता रामनयन द्वारा वाद भूमि को वासुदेव पुत्र रामसमुझ से दिनांक 14.09.73 को जरिये पंजीकृत बैनामा क्रय किया गया है और इसी बैनामें के आधार पर गाटा संख्या 748/3-0-17 के 1/2 भाग पर रामनयन पुत्र रामगोपाल का का नाम परगनाधिकारी के आदेश दिनांक 27.11 1973 द्वारा अंकित हुआ है। खतौनी 1384 ता० 89 फसली के खाता संख्या 76 गाटा संख्या 748/3-0-17 पर स०च०अ० वाद संख्या 2552 आदेश दिनांक 09.12.83 के द्वारा खाता संख्या 76 में माता प्रसाद के पिता का नाम नगेसर दर्ज हो तथा रामनयन पुत्र रामगोपाल के स्थान पर चन्द्रप्रकाश सिंह पुत्र चतुर्भुज सिंह सही दर्ज किया जाय। खाते का विभाजन प्रत्येक का 1/2 भाग किया जाय, की अमलदरामद अंकित है। इस प्रकार स्पष्ट है कि निगरानीकर्ता के पिता रामनयन पुत्र रामगोपाल के बैनामें की भूमि पर सहीं नाम के आधार पर चन्द्रप्रकाश सिंह पुत्र चतुर्भुज सिंह का नाम स०च०अ० के आदेश से अंकित किया गया है किन्तु जब बैनामें में रामनयन पुत्र रामगोपाल दर्ज है तो सही नाम चन्द्रप्रकाश सिंह पुत्र चतुर्भुज सिंह कैसे हो सकता है और बैनामें की भूमि पर किस आधार पर चन्द्रप्रकाश का नाम किस आधार पर अंकित किया गया है इसपर कोई विचार नहीं किया गया है। मात्र शपथपत्र में कहे गये कथनो के आधार पर अपीलकर्तागण को बालिग कहते हुए अपील को मियाद के बिन्दु पर निरस्त कर दिया गया है।

उत्तर प्रदेश जोत चकबन्दी अधिनियम किसी भी दृष्टि से सहायक चकबन्दी अधिकारी को यह अधिकार नहीं प्रदान करता कि बिना विक्रय विलेख निष्पादित किये एक जीवित व्यक्ति का नाम निरस्त करके एक अजनबी जीवित व्यक्ति का नाम अंकित कर दिया जाय। रजिस्ट्रेशन अधिनियम के अन्तर्गत ऐसी सम्पति के अन्तरण के लिए विक्रय विलेख निष्पादित किया जाना आवश्यक है क्योंकि इसमें राज्य सरकार के राजस्व की हानि होती है। यदि किसी प्राधिकारी में कोई अधिकार निहित नहीं है और बिना अधिकार के वह कोई कार्य करता है तो ऐसा कार्य अथवा आदेश प्रारम्भ से ही शून्य होता है और इसमें अवधि की सीमा प्रभावी नहीं होती है। यदि कोई आदेश प्रारम्भ से ही शून्य है तो समय सीमा इसमें किसी प्रकार बाधक नहीं बन सकती। इस दृष्टि से सहायक चकबन्दी अधिकारी ने कदाचित अवैध अन्तरण करते हुए राज्य सरकार की राजस्व की हानिकारित करके एक अधिकार रहित आदेश पारित किया है जिसकी उपेक्षा अवधि के बिन्दु पर नहीं की जा सकती। विचारोपरान्त मैं इस मत का हूँ कि निगरानी स्वीकार करके अपीलीय न्यायालय का आदेश निरस्त करके प्रकरण पुनः अपीलीय न्यायालय को गुणदोष पर निस्तारण हेतु प्रेषित कर दिया जाय जहाँ पर इस बिन्दु पर विचार किया जाय कि सहायक चकबन्दी अधिकारी द्वारा

पारित आदेश से कहीं अवैध अन्तरण तो नहीं किया गया है और राज्य सरकार के राजस्व की हानि हुयी है। तदुनसार निम्न आदेश पारित किया जाता है।

आदेश

उपरोक्त विवेचन के आधार पर यह निगरानी स्वीकार की जाती है। बन्दोबस्त अधिकारी चकबन्दी द्वारा पारित आदेश दिनांक 24.12.2016 निरस्त किया जाता है तथा ऊपर दिये गये निर्देश के परिप्रेक्ष्य में अपील गुणदोष पर पुनः निस्तारण हेतु बन्दोबस्त अधिकारी चकबन्दी अयोध्या के न्यायालय पर प्रतिप्रेषित की जाती है। पक्ष बन्दोबस्त अधिकारी चकबन्दी अयोध्या के न्यायालय पर अग्रेतर कार्यवाही हेतु दिनांक 06.03.2019 को उपस्थित हो। इस न्यायालय की पत्रावली अग्रेतर कार्यवाही के उपरान्त राजस्व अभिलेखालय में संचित हो।"

vi) In terms of order dated 18.02.2019 of DDC, referred above, the SOC decided the appeal registered as Appeal No. 1400, vide order dated 29.02.2020. The operative portion of order dated 29.02.2020 reads as under :-

"अतः आदेश हुआ कि प्रश्नगत अपील स्वीकार की जाती है। सहायक चकबन्दी अधिकारी का आदेश दिनांक- 09.12.1983 निरस्त किया जाता है। पत्रावली अवर न्यायालय को इस निर्देश के साथ प्रतिप्राषत की है कि अवैध हस्तान्तरण के संबंध में विवेचन करते हुए पक्षों से साक्ष्य लेने के उपरान्त गुण-दोष के आधार पर आदेश पारित चकबन्दी अधिकारी नंदर के न्यायालय पर दिनांक- 13.03.2020 को उपस्थित की पत्रावली बाद आवश्यक पूर्ति दाखिल-दफ्तर हो।"

vii) The DDC, vide its order dated 03.04.2024, passed in Revision No. 1995/2021530423000001 (Chandra Prakash Singh Vs. Shambhu Prasad Pandey & Ors.) affirmed the order of SOC dated 29.02.2020.

viii) The Consolidation Officer, Sadar Ayodhya (in short "CO"), during the pendency of aforesaid revision, decided lis between the parties related to land in dispute i.e. Gata no. 748 vide order dated 26.02.2024 passed in Case No. 477/2024/2021550423010015 (Shambhu Prasad Padeny and Ors. Vs. Chandra Prakash Singh and Ors), in exercise of power Section 9A(2) of the Act of 1953. The relevant portion of the order reads as under :-

"वादी शम्भू प्रसाद पाण्डेय आदि द्वारा सहायक चकबन्दी अधिकारी के उपरोक्त आदेश के विरूद्ध अपील प्रस्तुत की गयी। जिसे स्वीकार करते हुए यह वाद पत्रावली प्रत्यावर्तित की गयी, अपीलीय न्यायालय द्वारा पारित आदेश के क्रम में प्रकरण में एक मात्र विधिक बिन्दु कि क्या सहायक चकबन्दी अधिकारी द्वारा वाद सं0 2552/09.12.1983 में रामनयन के स्थान पर चन्द्रप्रकाश का नाम समझौते के आधार पर दर्ज किया जाना अवैध हस्तान्तरण की श्रेणी में आता है। यदि हां तो प्रभाव? निर्मित करते हुए निस्तारण किया जाना है।

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प्रकरण माननीय उच्च न्यायालय द्वारा रिट याचिका सं० 1384/ए-227/2023 शम्भू प्रसाद पाण्डेय एवं अन्य बनाम चकबन्दी अधिकारी सदर एवं अन्य में पारित आदेश दिनांक 23.03.2023 एवं अवमानना याचिका सं० 4398/2023 शम्भू प्रसाद पाण्डेय एवं अन्य बनाम राकेश खन्ना चकबन्दी अधिकारी सदर अयोध्या एवं अन्य में पारित आदेश दिनांक 13.12.2023 एंव 18.01.2024 से आच्छादित है। मैने पत्रावली पर उपलब्ध समस्त अभिलेखीय साक्ष्यों का गहन अवलोंकन किया एवं उभयपक्ष के विद्वान अधिवक्ता द्वारा प्रस्तुत तर्कों का सम्यक अनुशीलन किया। सहायक चकबन्दी अधिकारी द्वारा आदेश पारित किये जाने के उपरान्त चकबन्दी प्रक्रिया के दौरान निर्मित होने वाली खतौनियों तथा पुनरीक्षित खतौनी आकार पत्र 11, प्रारम्भिक खतौनी आकार पत्र 23 भाग 1 एवं चकबन्दी खतौनी आकार पत्र 45 में चन्द्रप्रकाश का खाता निर्मित हुआ है। रामनयन से नामान्तरण के माध्यम से प्राप्त होने वाली आराजी के स्थान पर चकबन्दी प्रक्रिया के दौरान चन्द्रप्रकाश को अन्य गाटों पर दो चक प्रस्तावित किये गये है। जिन पर उसे नाप कर कब्जा व दखल भी दिया गया है। यह प्रक्रिया जोत चकबन्दी अधिनियम 1953 की धारा 30 का प्रभाव रखती है। रामनयन द्वारा चकबन्दी के दौरान या उसके उपरान्त स्वयं की मृत्यु तक किसी प्रकार की आपत्ति न करना उनका समझौते से सहमत होना सिद्ध करता है। परन्तु चन्द्रप्रकाश आदि द्वारा इस सम्बन्ध में किसी प्रकार के बैनामा आदि को प्रस्तुत न करना यह सिद्ध करता है कि रामनयन व चन्द्रप्रकाश की संलिप्तता एवं इन दोनों की तत्कालीन सहायक चकबन्दी अधिकारी से दूरभिसन्धि के माध्यम से प्रश्नगत आदेश दिनांक 09.12.1983 पारित किया गया है। जिससे निश्चित रूप से राज्य सरकार के राजस्व की हानी हुई। लालच मानव स्वभाव की मूल प्रकृति है। महाभारत काल से ही सारी लड़ाई की जड़, जर एवं जमीन को माना गया है। सम्भवतः सहायक चकबन्दी अधिकारी द्वारा दिये गये लालच में ही रामनयन व चन्द्रप्रकाश आबद्ध हो गये। मैं वादी के विद्धान अधिवक्ता के इस तर्क से सहमत हूँ कि प्रकरण 40

वर्षों में जमीदारी विनाश अधिनियम की धारा 164 के अन्तर्गत परिपक्व हो गया है। सहायक चकबन्दी अधिकारी के अवैध कृत्य का दण्ड किसी कृषक को दिये जाने का कोई औचित्य नहीं बनता है। अतः ग्राम सरेठी की प्रश्नगत आराजी गाटा सं० 167/0.254 हे० एवं 461 /0.108 हे० कुल 2 किता क्षेत्रफल 0.362 हे० पर चन्द्रप्रकाश सिंह पुत्र चर्तुभुज सिंह निवासी सरेठी का नाम इस प्रतिबन्ध के साथ यथावत अंकित रखा जाता है, कि वह (चन्द्रप्रकाश) इस आदेश की प्रति प्राप्त कर वर्तमान बाजार मूल्य पर प्रश्नगत आराजी के बैनामा में होने वाले समस्त राजस्व का निर्धारण करवाते हुए उसे नियमानुसार राज्य सरकार के खाते में जमा कराकर रसीद की प्रति दिनांक 12.3.2024 के पूर्व इस न्यायालय में संचित करना सुनिश्चित करेंगें अन्यथा की स्थिति में यह आदेश स्वतः निष्प्रभावी होगा।

बाद अग्रेतर कार्यवाही पत्रावली संचित अभिलेखागार हो।"

ix) Challenging the order dated 26.02.2024, the petitioners herein, approached the appellate authority/SOC in terms of Section 11(1) of the Act of 1953. The SOC finally decided this appeal registered as Appeal no. 0786/2024, Computerized Case no. 20245042300000786 (Sambhu Prasad Pandey And Another Vs. Chandra Prakash Singh and others) vide order dated 03.03.2025. The SOC set aside in the order dated 26.02.2024 passed by CO. The SOC in order dated 03.03.2025 observed as under :-

"उभयपक्षों के विद्वान अधिवक्ता के तर्कों को सुना तथा पत्रावली पर उपलब्ध साक्ष्यों, अवर न्यायालय की पत्रावली तथा उभयपक्षों द्वारा प्रस्तुत की गई विधि व्यवस्थाओं का भलीभांति अवलोकन किया। अवलोकन से स्पष्ट है कि प्रकरण का संक्षिप्त तथ्य इस प्रकार है-

आधारवर्ष खतौनी खाता सं0-76 में दर्ज गाटा सं0-784/3-0-17 माता प्रसाद पुत्र जगेसर व राम नयन पुत्र राम गोपाल ग्रामवासी के नाम दर्ज रहा। दौरान चकबन्दी जोत चकबन्दी आकारपत्र-4 में खाते का विभाजन माता प्रसाद 1/2 व राम नयन 1/2 बताया गया। तदुपरान्त सहायक चकबन्दी अधिकारी द्वारा दिनांक-09.12.1983 को आदेश पारित किया गया। शम्भू प्रसाद पाण्डेय आदि द्वारा अधोहस्ताक्षरी के न्यायालय पर सहायक चकबन्दी अधिकारी के वाद सं0-2552 आदेश दिनंाक-09.12.1983 के विरूद्ध कालबाधित रूप से अपील प्रस्तुत की गयी थी, जो अधोहस्ताक्षरी के पूर्वाधिकारी द्वारा दिनांक-24.12.2016 को मियाद के बिन्दु पर निरस्त कर दी गयी। अपीलीय न्यायालय के आदेश दिनांक-24.12.2016 के विरूद्ध उप संचालक चकबन्दी, अयोध्या के न्यायालय पर धारा-48 उत्तर प्रदेश जोत चकबन्दी अधिनियम के अन्तर्गत निगरानी प्रस्तुत की गयी, जो उप संचालक चकबन्दी, अयोध्या द्वारा आदेश दिनांक-18.02.2016 के द्वारा स्वीकार करते हुए अपीलीय न्यायालय का आदेश दिनांक-24.12.2016 निरस्त करके गुण-दोष पर पुनः निस्तारण हेतु अपीलीय न्यायालय पर प्रतिप्रेषित की गयी थी। उप संचालक चकबन्दी के आदेश दिनांक-18.02.20016 के अनुपालन में अधोहस्ताक्षरी के पूर्वाधिकारी द्वारा उभयपक्षों को सुनकर दिनांक-29.02.2020 को आदेश किया कि सहायक चकबन्दी अधिकारी का आदेश दिनांक-09.12.1986 निरस्त करके वाद पत्रावली अवर न्यायालय को पक्षों से साक्ष्य लेने के उपरान्त गुण-दोष पर निस्तारण हेतु प्रत्यावर्तित कर दी गयी। जिसके क्रम में चकबन्दी अधिकारी द्वारा दिनांक-26.02.2024 को आदेश पारित किया गया है। चकबन्दी अधिकारी के आदेश दिनांक-26.02.2024 के विरूद्ध शम्भू प्रसाद पाण्डेय आदि द्वारा यह अपील प्रस्तुत की गयी है।

पत्रावली का अवलोकन किया गया, पत्रावली में बैनामा दिनांक-14.09.1973 की छायाप्रति संलग्न है, जिसके अवलोकन से स्पष्ट है कि बासदेव सिंह सुत श्री राम समुझ सिंह द्वारा गाटा सं0-784/3-0-17 में अपने अंश 1/2 का विक्रय राम नैन सुत श्री राम गोपाल साकिन सरेठी, पोस्ट-दर्शन नगर, परगना-हवेली अवध, तहसील व जिला-फैजाबाद को कर दिया।

नकल खतौनी सन् 1381 ता 1383, नकल छायाप्रति खतौनी सन् 1384 ता 1389, जोत चकबन्दी आकारपत्र-2क, नकल छायाप्रति जोत चकबन्दी आकारपत्र-4 भाग-1, नकल गोशवारा चकबन्दी मौजा सरेठी, परगना-हवेली अवध, तहसील व जिला- फैजाबाद जोत चकबन्दी आकारपत्र-23 भाग-1, जोत चकबन्दी आकारपत्र-41, जोत चकबन्दी आकारपत्र-45 की छायाप्रति संलग्न की गयी है। नकल खतौनी सन् 1381 ता 1383 फसली के अवलोकन से स्पष्ट है कि खाता सं0-56 की गाटा सं0-784/3-0-17 वासदेव सिंह पुत्र राम समुझ सिंह, विजय बहादुर सिंह पुत्र रामदत्त सिंह के नाम दर्ज रहा। इसी खाते पर एस0डी0ओ0 के वाद सं0-164, 75, 378 में पारित आदेश दिनांक-09.11.1973 की अमलदरामद अंकित है, जिसके द्वारा विवादित भूमि के 1/2 अंश से विजय बहादुर सिंह का नाम खारिज

होकर जरिये बैनामा माता प्रसाद पुत्र नगेसर के नाम अंकित किया गया है। इसी खाते पर एस0डी0ओ0 सदर के वाद सं0-189, 93, 390 में पारित आदेश दिनांक-27.11.1973 की अमलदरामद अंकित है, जिसके द्वारा विवादित भूमि के 1/2 अंश से वासदेव सिंह का नाम खारिज करके राम नयन पुत्र राम गोपाल साकिनदेह का नाम बैनामे के आधार पर दर्ज किया गया है। खतौनी सन् 1384 ता 1389 फसली के खाता सं0-76 में गाटा सं0-748/3-0-17 पर उपरोक्त नामान्तरण आदेशों के क्रम में क्रेतागण माता प्रसाद पुत्र जगेसर व राम नयन पुत्र राम गोपाल ग्रामवासी के नाम संयुक्त रूप से दर्ज हुआ। इसी खाते पर सहायक चकबन्दी अधिकारी के वाद सं0-2552 निर्णय दिनांक-09.12.1983 द्वारा खाता सं0-76 में माता प्रसाद के पिता का नाम नगेसर दर्ज होने तथा राम नयन पुत्र राम गोपाल के स्थान पर चन्द्र प्रकाश सिंह पुत्र चतुर्भुज सिंह सही दर्ज होने तथा खाते का विभाजन 1/2 प्रत्येक किए जाने की अमलदरामद अंकित है।

पत्रावली में संलग्न जोत चकबन्दी आकारपत्र-4-भाग-1 से स्पष्ट है कि दौरान चकबन्दी खाता सं0-76 में माता प्रसाद पुत्र जगेसर ग्रामवासी व राम नयन पुत्र राम गोपाल ग्रामवासी का नाम दर्ज है। सत्यापन खतौनी के समय खाते का विभाजन माता प्रसाद 1/2 व राम नयन 1/2 बताया गया। इस प्रकार सहायक चकबन्दी अधिकारी के वाद सं0-252 सरकार बनाम माता प्रसाद आदि से संबंधित बंटवारे का तनाजा जोत चकबन्दी आकारपत्र में खाता सं0-76 में अंकित गाटा सं0-748/3-0-17 में खातेदार माता प्रसाद का 1/2 अंश व राम नयन का 1/2 अंश निर्धारित किए जाने के संबंध में था, जिसका निर्णय सहायक चकबन्दी अधिकारी ने दिनांक-09.12.1983 को किया गया है। सहायक चकबन्दी अधिकारी के वाद सं0-2552 आदेश दिनांक-09.12.1983 के द्वारा माता प्रसाद के पिता का नाम नगेसर दर्ज किया गया है तथा राम नयन पुत्र राम गोपाल के स्थान पर चन्द्र प्रकाश सिंह पुत्र चतुर्भुज सिंह सही दर्ज किया गया तथा खाते का विभाजन प्रत्येक 1/2 भाग किया गया।

इस प्रकार यह स्पष्ट है कि आधारवर्ष खतौनी के खाता सं0-76 में अपीलकर्ता के पिता का नाम दर्ज था एवं यह भी स्पष्ट है कि अपीलकर्ता के पिता का उक्त गाटा में अंश 1/2 भाग रहा। सहायक चकबन्दी अधिकारी की मूल पत्रावली विनिष्ट की जा चुकी है। सहायक चकबन्दी अधिकारी के आदेश को अपीलीय न्यायालय के आदेश दिनांक-29.02.2020 द्वारा निरस्त किया जा चुका है। आदेश दिनांक-29.02.2020 द्वारा पत्रावली चकबन्दी अधिकारी को इस निर्देश के साथ प्रत्यावर्तित किया गया कि अवैध हस्तानान्तरण के संबंध में विवेचन करते हुए पक्षों से साक्ष्य लेने के उपरान्त गुण-दोष पर निस्तारण करें। अवर न्यायालय को यह देखना था कि राम नयन पुत्र राम गोपाल के स्थन पर चन्द्र प्रकाश सिंह पुत्र चतुर्भुज सिंह का नाम दर्ज किस आधार पर किया गया या किया जाएगा।

चकबन्दी अधिकारी के आदेश दिनांक-26.02.2024 में उल्लिखित है कि "राम नयन से नामान्तरण के माध्यम से प्राप्त होने वाली आराजी के स्थान पर चकबन्दी प्रक्रिया के दौरान चन्द्रप्रकाश को अन्य गाटों पर दो चक प्रस्तावित किये गये है। जिन पर उसे नाप कर कब्जा व दखल भी दिया गया है। यह प्रक्रिया जोत चकबन्दी अधिनियम 1953 की धारा-30 का प्रभाव रखती है। रामनयन द्वारा चकबन्दी के दौरान या उसके उपरान्त स्वयं की मृत्यु तक किसी प्रकार की आपत्ति न करना समझौते से सहमत होना सिद्ध करता है। परन्तु चन्द्र प्रकाश आदि द्वारा इस सम्बन्ध में किसी प्रकार के बैनामा आदि को प्रस्तुत न करना यह सिद्ध करता है कि राम नयन व चन्द्र प्रकाश की संलिप्तता एवं इन दोनों की तत्कालीन सहायक चकबन्दी अधिकारी से दुरभिसन्ध के माध्यम से प्रश्नगत आदेश दिनांक-09.12.1983 पारित किया गया है। जिससे निश्चित रूप से राज्य सरकार के राजस्व की हानि हुई। लालच मानव स्वभाव की मूल प्रकृति है। महाभारत काल से ही सारी लड़ाई की जड़, जर एवं जमीन को माना गया है। संभवतः सहायक चकबन्दी अधिकारी द्वारा दिए गए लालच में ही राम नयन व चन्द्र प्रकाश आबद्ध हो गये। मैं वादी के विद्वान अधिवक्ता के तर्क से सहमत हूं कि प्रकरण प्रकरण 40 वर्षों में जमीदारी विनाश अधिनियम की धारा-164 के अन्तर्गत परिपक्व हो गया है। सहायक चकबन्दी अधिकारी के अवैध कृत्य का दण्ड किसी कृषक को दिए जाने का कोई औचित्य नहीं बनता है। अतः ग्राम सरेठी की प्रश्नगत आराजी गाटा सं0-167/0.254हे0, 461/0.108हे0 कुल दो किता क्षेत्रफल 0.362हे0 चन्द्र प्रकाश सिंह पुत्र चतुर्भुज सिंह निवासी सरेठी का नाम इस प्रतिबन्ध के साथ यथावत अंकित रखा जाता है, कि वह (चन्द्र प्रकाश सिंह) आदेश की प्रति प्राप्त कर वर्तमान बाजार मूल्य पर प्रश्नगत आराजी के बैनामा में होने वाले समस्त राजस्व का निर्धारण करवाते हुए उसे नियमानुसार राज्य सरकार के खाते मंे जमा कराकर रसीद की प्रति दिनांक-12.03.2024 के पूर्व उनके न्यायालय में संचित करना सुनिश्चित करेंगे अन्यथा की स्थिति में यह आदेश स्वतः निष्प्रभावी होगा।"

चकबन्दी अधिकारी के आदेश दिनांक-26.02.2024 के अनुपालन में चन्द्र प्रकाश सिंह द्वारा 2,24,880 रू0 दिनांक-06 मार्च, 2024 को भारतीय स्टेट बैंक के माध्यम से स्टाम्प एवं रजिस्ट्रेशन विभाग के पक्ष में जमा किए गए, जिसकी रसीद अवर न्यायालय की पत्रावली में संलग्न है।

इस प्रकार अवर न्यायालय ने विवादित आराजी पर चन्द्र प्रकाश सिंह पुत्र चतुर्भुज सिंह का नाम इस प्रतिबन्ध के साथ यथावत रखा कि वर्तमान बाजार मूल्य पर प्रश्नगत आराजी के बैनामा

में होने वाले समस्त राजस्व का निर्धारण करवाते हुए उसे नियमानुसार राज्य सरकार के खाते में जमा कराकर रसीद उनके न्यायालय पर संचित करें।

किसी भी भूमि का स्थानान्तरण बिना पंजीकृत बैनामा के नहीं किया जा सकता। अवर न्यायालय द्वारा बिना बैनामा स्थानान्तरण स्वीकार किया गया, किन्तु इसे मात्र राजस्व क्षति के रूप में ही देखा गया। जबकि बिना बैनामा किसी की भूमि अपने नाम दर्ज करा लेना सवर्था गलत है। रजिस्ट्री का शुल्क सरकारी कोष में जमा करने संबंधी अवर न्यायालय का आदेश बिना क्षेत्राधिकार का है। किसी भूमि के स्थानान्तरण में राजस्व क्षति का आकलन एवं इसकी पूर्ति के संबंध में आदेश देने का क्षेत्राधिकार चकबन्दी न्यायालयों को प्राप्त नहीं है। अब देखना यह है कि राम नयन द्वारा चन्द्र प्रकाश सिंह के पक्ष में किए गए भूमि स्थानान्तरण के संबंध मं◌ क्या राम नयन की सहमति थी। पत्रावली पर सहमति के बावत् कोई साक्ष्य नहीं है। सहमति होने पर भी किसी भी भूमि का स्थानान्तरण किसी के पक्ष में नहीं किया जा सकता। इस प्रकार सहायक चकबन्दी अधिकारी द्वारा दिनांक-09.12.1983 को चन्द्र प्रकाश सिंह के पक्ष में अवैध हस्तान्तरण किया गया था। चकबन्दी अधिकारी ने अपने आदेश दिनांक-26.02.2024 के द्वारा उक्त हस्तानान्तरण को सही साबित किया गया है। जबकि सहमति के आधार पर चकबन्दी न्यायालयों को किसी के पक्ष में भूमि स्थानान्तरित करने का क्षेत्राधिकार प्राप्त नहीं है।

उपरोक्त से स्पष्ट है कि सहायक चकबन्दी अधिकारी का आदेश दिनांक-09.12.1983 विपक्षी ने छल-छद्म से प्राप्त किया था एवं अवर न्यायालय का आदेश दिनांक-26.02.2024 क्षेत्राधिकार से बाहर एवं गलत तथ्य व विवेचन के आधार पर पारित है, जिसे निरस्त कर आधारवर्ष के इन्द्राज को राम नयन पुत्र राम गोपाल मृतक बादहू वारिसान के नाम दर्ज करना उचित है। उपरिवर्णित तथ्यों के आधार पर प्रस्तुत अपील स्वीकार किए जाने योग्य है।

आदेश

अतः आदेश हुआ कि प्रस्तुत अपील स्वीकार की जाती है। चकबन्दी अधिकारी द्वारा पारित आदेश दिनांक-26.02.2024 नि रस्त किया जाता है। आधारवर्ष खतौनी खाता सं0-76 में दर्ज गाटा सं0-748/3-0-17 का इन्द्राज राम नयन पुत्र राम गोपाल ग्रामवासी का नाम पूर्ववत 1/2 अंश पर दर्ज किया जाता है। पत्रावली बाद आवश्यक कार्यवाही दाखिल-दफ्तर हो।"

x) The CO, in order dated 26.02.2024, observed as *"रामनयन द्वारा चकबन्दी के दौरान या उसके उपरान्त स्वयं की मृत्यु तक किसी प्रकार की आपत्ति न करना उनका समझौते◌ से सहमत होना सिद्ध करता है। परन्तु चन्द्रप्रकाश आदि द्वारा इस सम्बन्ध में किसी प्रकार के बैनामा आदि को प्रस्तुत न करना यह सिद्ध करता है कि रामनयन व चन्द्रप्रकाश की संलिप्तता एवं इन दोनों की तत्कालीन सहायक चकबन्दी अधिकारी से दूरभिसन्धि के माध्यम से प्रश्नगत आदेश दिनांक 09.12.1983 पारित किया गया है।".* This portion of the order reflects that CO was of view that ACO passed the order dated 09.12.1983 in collusion with Ram Nayan Pandey and Chandra Prakash Singh. Despite this, the CO for the purposes of validating the admitted oral transfer of immovable property i.e. land in dispute by Ram Nayan Pandey in favour of respondent no.2/Chandra Prakash Singh directed the respondent no. 2/Chandra Prakash Singh to deposit revenue on the market value of the land in dispute i.e. Gata No. 748.

xi) Being aggrieved, the respondent no.2 filed the revision before the revisional authority/DDC. This revision registered as Revision No. 3024/202554042300000106, detailed in para 5 of this judgment, was allowed by DDC vide order dated 30.04.2025. The relevant portion of the same reads as under :-

"इस प्रकार स्पष्ट है कि रामनयन द्वारा अपने जीवनकाल में चन्द्रप्रकाश सिंह का नाम गाटा संख्या 748 पर अंकित होने के सम्बन्ध में कोई आपत्ति, अपील व निगरानी प्रस्तुत न करना यह साबित करता है कि रामनयन पुत्र रामगोपाल द्वारा गाटा संख्या 748 में अपने अंश की भूमि की धनराशि लेकर स0च0अ0 के समक्ष समझौते चन्द्रप्रकाश पुत्र चतुर्भज सिंह का नाम स्वयं अंकित कराया गया है। उक्त अवैध अन्तरण से राज्य सरकार के राजस्व की हानि कारित हुई थी। चकबन्दी अधिकारी द्वारा दिनांक 26.02.2024 को आदेश पारित करते हुये चन्द्रप्रकाश सिंह को वर्तमान बाजार मूल्य पर प्रश्नगत आराजी के बैनामा में होने वाले समस्त राजस्व का निर्धारण करवाते उसे नियमानुसार राज्य सरकार के खाते में जमा कराकर रशीद की प्रति दिनांक 12.03.2024 के पूर्व न्यायालय में दाखिल करने का निर्देश दिया गया। चन्द्रपकाश पुत्र चतुर्भज सिंह द्वारा वर्तमान बाजार मूल्य पर प्रश्नगत आराजी के बैनामा में होने वाले समस्त राजस्व का निर्धारण करवाते हुये सम्पूर्ण धनराशि दो लाख चैबीस हजार आठ सौ अस्सी रुपया (2,24,880/-रुपये) दिनांक06.03.2024 को भारतीय स्टेट बैक अयोध्या की मुख्य शाखा मे चालान संख्या सी-602960 द्वारा जमा करा दिया गया है।

अपीलीय न्यायालय द्वारा दिनांक03.03.2025 को आदेश पारित करते हुये अपील स्वीकार करके चकबन्दी अधिकारी के आदेश दिनांक26.02.2024 को मात्र इस आधार पर निरस्त कर दिया गया है कि सहायक चकबन्दी अधिकारी का आदेश दिनांक09.12.83 छल छदम से प्राप्त किया गया था एवं अवर न्यायालय का आदेश दिनांक26.02.2024 क्षेत्राधिकार से बाहर एवं गलत तथ्य व विवेचन के आधार पर पारित है। मै अपीलीय न्यायालय के इस मत से सहमत नही हूॅ। सहायक चकबन्दी अधिकारी के समक्ष समझौता के द्वारा अपना नाम खारिज कराकर अन्य व्यक्ति का नाम अंकित कराना, अपने नाम ग्राम में अन्य भूमि के सम्बन्ध में चकबन्दी क्रियाओ की पूर्ण जानकारी होने के उपरान्त भी गाटा संख्या 748 के मूल्यांकन हेतु अथवा गाटा संख्या 748 पर अंकित चन्द्रप्रकाश का नाम निरस्त कराने हेतु अपने जीवनकाल में रामनयन द्वारा कोई आपत्ति अपील व निगरानी प्रस्तुत न करना ही इस तथ्य को साबित करता है कि रामनयन द्वारा चन्द्रप्रकाश सिंह से गाटा संख्या -748 में अपने अंश की सम्पूर्ण धनराशि लेकर स0च0अ0 के समक्ष समझौते से अपने के स्थान पर चन्द्रप्रकाश सिंह पुत्र चतुर्भुज सिंह का नाम अंकित कराया गया और ग्राम में वर्ष 1991 में चकबन्दी समाप्ति तक एवं उसके उपरान्त अपने जीवनकाल में उक्त आदेश को राजस्व न्यायालय में भी कोई चुनौती नही दी गयी है। अवैध अन्तरण से राजस्व की जो हानि हुई थी, उक्त धनराशि को वर्तमान बाजार मूल्य के आधार पर राज्य सरकार के खाते में जमा करा दिया गया है।

विपक्षीगण की ओर से प्रस्तुत विधि व्यवस्थाओ का अवलोकन किया गया, उक्त विधि व्यवस्थाये पूर्ण रुप से समादरणीय है, किन्तु प्रश्नगत प्रकरण की प्रकृति भिन्न होने के कारण इस वाद में लागू नही होती है।

विचारोपरान्त मै इस मत का हूॅ कि चकबन्दी अधिकारी द्वारा पारित आदेश दिनांक26.02.2024 यथावत रखे जाने एवं बन्दोबस्त अधिकारी चकबन्दी द्वारा पारित आदेश दिनांक03.03.2025 निरस्त किये जाने एवं तदनुसार निगरानी स्वीकार किये जाने योग्य है।

आदेश

उपरोक्त विवेचन के आधार पर निगरानी स्वीकार की जाती है। बन्दोबस्त अधिकारी चकबन्दी द्वारा पारित आदेश दिनांक03.03.2025 निरस्त किया जाता है। चकबन्दी अधिकारी द्वारा पारित आदेश दिनांक26.02.2024यथावत किया जाता है। बाद पूर्ति कार्यवाही पत्रावली राजस्व अभिलेखागार में संचित हो।"

xii) From the perusal of the impugned order dated 30.04.2025, it is apparent that DDC upheld the order dated 26.02.2024 passed by CO.

6. Impeaching the order dated 30.04.2025, Mr. R.S. Pandey, leaned Senior Advocate submitted that the ACO in exercise of power under Rule 25-A of Rules of 1954 vide order dated 09.12.1983 provided the rights of Ram Nayan Pandey (predecessor-in-interest of the petitioners) in immovable property i.e. Gata No. 748 (land in dispute) to the respondent no.2/Chandra Prakash Singh, which was not having any statutory rights over the said gata, and the rights were provided only on the statement of Ram Nayan Pandey and in doing so the ACO committed illegality as the same was/is not permissible under Rule 25-A of Rules of 1954 and this illegality cannot be permitted to continue.

7. He further submitted that by way of conciliation ACO is empowers to settled the dispute between the parties. In the instant case, there was no dispute between Ram Nayan Pandey (transferor) and Chandra Prakash Singh (transferee) and as such, the order dated 09.12.1983, whereby the rights/interest in immovable property were transferred, is contrary to the principles settled in this regard after considering the scope of Rule 25-A of Rules of 1954.

8. He also stated that rights in land/immovable property already in existence under the Act of 1950 or any other provision of law can be provided/transferred by way of lawful compromise in exercise of power under Rule 25-A of Rules of 1954 and new rights in exercise of power under Rule 25-A of Rules of 1954 cannot be provided by ACO.

9. He further submitted that order of CO dated 26.02.2024, which was set aside by SOC vide order dated 03.03.2025, and the order of DDC dated 30.04.2025 are

contrary to law and being so are liable to be interfered with by this Court.

10. Opposing the present petition, Mr. Rakesh D. Kumar, learned counsel for the respondent no. 2/Chandra Prakash Singh submitted as under :-

i) The order dated 09.08.1983 passed by ACO was justified as it was based upon the statement of recorded tenure holder Ram Nayan Pandey and the transfer so made was permissible under law. However, the same was set aside vide order dated 18.02.2016 passed by SOC. Thereafter, the CO took note of entire aspects of the case including entries in the revenue records viz. initial *khatauni, revised khatauni, akar patra*, Form CH-11, Form CH-23 Part I, Form CH-45, etc. as also the period of these entries i.e. about 40 years and Section 164 of the Act of 1950 and thereafter for validating the transfer of rights/interest in the immovable property i.e. land in dispute (gata no. 748) the CO directed the respondent no.2/Chandra Prakash Singh to deposit the revenue in the Government Treasury as per the market value of the land in dispute. In the peculiar facts of the case this view taken by CO in order dated 26.02.2024 was/is just and proper and this order of CO has been upheld by the impugned order dated 30.04.2025, which is not liable to be interfered by this Court.

ii) The present petition is not maintainable for the prayer of writ of certiorari in view of judgment passed by Hon'ble Supreme Court in the case of **Radhey Shayam and Anr Vs. Chabbi Nath and Anr** reported in (2015) 5 SCC 583.

iii) Prayer no. 2 cannot be acceded in the writ jurisdiction.

iv) The case of the petitioners was not based on the procedure to be followed for passing an order in exercise of Rule 25-A of the Rules of 1954.

v) The fraud and collusion has not been proved by the petitioners.

vi) The rights of the respondent no.2/Chandra Prakash Singh under Section(s) 104, 209, 210, 341 of the Act of 1950.

vii) In terms of Section 140 of the Indian Evidence Act, 1872 (in short "Act of 1872"), presumption is that the procedure as prescribed under Rule 25-A of the Rules of 1954 was followed.

11. Considered the aforesaid and perused the records.

12. The contention that the present petition seeking writ of certiorari is not maintainable is completely misconceived. It is hereby rejected for the reason that this Court vide order dated 03.05.2023 passed in **WRIT - B No. - 229 of 2023 (Dinesh Chandra @ Dinesh Chandra Tiwari And Others Vs. Director Of Consolidation, Sultanpur And Others)** and other connected petitions, after considering various pronouncements including the judgment(s) passed in the case of **Radhey Shayam (Supra) and Kiran Devi Vs. The Bihar State Sunni Wakf Board and Others, (2021) AIR (SC) 1775**, as also the Act of 1953 held that the petition would be maintainable under Article 226 of the Constitution of India.

13. The contention of Mr. Rakesh D Kumar, Advocate with regard to prayer no. 2 is also hereby rejected. It is for the reason that in exercise of power under Article 226 of the Constitution of India, this Court can protect the interest of the litigant(s).

14. Undisputed fact is that records related to order dated 09.12.1983 passed by ACO were weeded out on 10.05.1995.

15. With regard to contention related to fraud and collusion, it is to be indicated that after considering the entire aspect of the case the CO himself in order dated 26.02.2024 has observed that the order dated 09.12.1983 was passed by the ACO in collusion with Ram Nayan Pandey and Chandra Prakash Singh (respondent no.2).

16. The submission of learned counsel for the respondent no.2/Chandra Prakash Singh, based upon Rule 25-A of Rule of 1954 and Section 140 of Act of 1872, to support the initial order dated 09.12.1983, which in nutshell is to the effect that proper procedure was followed in terms of Rule 25-A of Rules of 1954, would not help the respondent no.2/Chandra Prakash Singh . It is for the reason that the issue involved in this case is not related to procedure to be followed by the ACO and this Court is to consider the following issues :-

A. Whether ACO was/is empowered to transfer the rights in immovable property amounting of 'sale' in exercise of power under Rule 25-A of the Rules of 1954?

B. Whether new rights could be created through compromise or conciliation by ACO in exercise of power under Rule 25-A of Rule of 1954 in favour of a person who was not having any right/interest in the land in dispute?

C. Whether a transfer which was not valid transfer in terms of Rule 25-A of Rule of 1954, Section 54 of Transfer of Property Act 1882 (in short "Act of 1882) and Registration Act, 1908 (in short "Act of 1908) could be validated by depositing revenue in the Government Treasury?

D. Whether the respondent no.2/Chandra Prakash Singh is entitled to benefit of Section 164 of the Act of 1950?

17. In order to conclude in the matter on the issue aforesaid this Court feels it appropriate to refer the judgment passed in the case of **Shiv Prasad Vs. Deputy Director of Consolidation, Ghazipur and Others,** reported in **2006 SCC OnLine All 1485 : ILR (2006) 3 All 986,** wherein this Court took note of relevant statutory provisions including Rule 25-A of Rules of 1954 and thereafter observed as under :-

"7. On the basis of pleadings and arguments of the parties, the first question that arises for consideration is whether under the U.P. Consolidation of Holdings Act a compromise could be entered into between the parties as contemplated under the C.P.C. at any stage in proceedings arising out of Section 9-A(2)/Section 11/Section 12/Section 21/Section 48 of the U.P. Consolidation of Holdings Act, secondly, whether title of the parties in the land which is creation of a statute could be determined on the basis of a compromise for exclusive title or for determination of share in a joint holding and, thirdly, whether a person could be declared as Bhumidhar, Sirdar or Asami on the basis of a compromise in the proceeding under the U.P. Consolidation of Holdings Act or any other proceeding under the U.P. Zamindari Abolition and Land Reforms Act without any title in law.

8. Before delving into this question, I feel called to advert to certain provisions of U.P. Consolidation of Holdings Act. Section 3(4-C) of the U.P.

Consolidation of Holdings Act defines land, same is being reproduced as under:—

"3(4-C) 'Holding' means a parcel or parcels of land held under one tenure by a tenure-holder singly or jointly with other tenure-holders."

Section 3(11) defines tenure-holder which runs as under:—

"3(11) 'Tenure-holder' means a (bhumidhar with transferable rights or bhumidhar with non-transferable rights), and includes—

(a) an asami,

(b) a Government lessee or Government grantee, or

(c) a co-operative farming society satisfying such conditions as may be prescribed."

9. Definition in Section 3(12) also makes it clear that "Words and expressions not defined in this Act but (used or) defined in the U.P. Land Revenue Act, 1901, but (used or) in the U.P. Zamindari Abolition and Land Reforms Act, 1950 shall have the meaning assigned to them in the Act in which they are so (used or) defined."

10. Under the U.P. Consolidation of Holdings Act, the procedure prescribed is that after spot verification, as required under the Act and the Rules, Consolidation Officer shall prepare a statement of principles under Section 8-A as well as statement under Section 8 of the U.P. Consolidation of Holdings Act on verification of map and land record, thereafter, record shall be published and the statement showing the mistakes (undisputed cases of succession) and disputes discovered during the test and verification of the record of right during the course of the field to field portal shall be published in the village. Any objection to that shall be filed on publication of record under S. 9 of the U.P. Consolidation of Holdings Act before Assistant Consolidation Officer disputing the correctness and nature of the entries in the record or in the extract furnished there from or in the statement of principles, or the need for partition. At the stage of Assistant Consolidation Officer, the only provision under which a compromise, by way of conciliation, could be entered into is Rule 25-A of the U.P. Consolidation of Holdings Rules which is being reproduced below:—

"25-A. Sections 9-A, 9-B and 9-C.—(1) The Assistant Consolidation Officer shall, as far as possible, deal with all the objections filed by a tenure-holder with regard to matters referred to in clause (i) of sub-section (1) of Section 9-A and sub-section (1) of Section 9-B in village itself. In decided dispute on the basis of conciliation in terms of sub-section (1) of Section 9-A, he shall record the terms of conciliation in the presence of at least two members of the Consolidation Committee of the village. These terms shall then be read over to the parties concerned and their signatures or thumb impressions obtained. The members of the Consolidation Committee present shall also sign the terms of conciliation specifying the precise entries to be made in the records. Details of the operative part of the orders passed by the Assistant Consolidation Officer shall be noted in the Misiband register. No ex parte order or orders in default shall be passed by the Assistant Consolidation Officer.

(2) In all cases in which the Assistant Consolidation Officer sends a report, under the provisions of sub-section (2) of Section 9-A, or sub-section (1) of Section 9-B to the Consolidation Officer for disposal, he may fix a date and place for the disposal of the cases by the Consolidation Officer and communicate the same to the parties present before him and

issue notices in C.H. Form 6-A to the parties not so present. The report of the Assistant Consolidation Officer in such cases clearly brings out the points in dispute between the parties and the efforts made by him to reconcile them."

11. The quintessence of the above rule i.e. Rule 25-A of the U.P. Consolidation of Holdings Rules at the risk of repetition is that at the stage of Assistant Consolidation Officer conciliation may take place in terms of sub-section (1) of Section 9-A and sub-section (1) of Section 9-B and Assistant Consolidation Officer shall record terms of conciliation in the presence of two members of Consolidation Committee. The terms shall then be read over to the parties concerned and their signature and thumb impression shall be obtained. The members of Consolidation Committee shall also sign the terms of conciliation and then Assistant Consolidation Officer shall pass orders deciding dispute in terms of conciliation. The details of the operative part of the order passed by the Assistant Consolidation Officer, it is further envisaged in the Rule, shall be noted in the Misiband Register. No ex parte order or order in default shall be passed by the Assistant Consolidation Officer. All disputed cases received from the Assistant Consolidation Officer shall be entered in the Misiband Register in the office of the Consolidation Officer and the Consolidation Officer shall hear the parties, frame issues on the points in issue and take evidence and then decide the dispute. In the case of partition in case any objection is filed, the Consolidation Officer shall proceed with the partition, only after recording reasons in writing if he considers it in the interest of better consolidation.

12. There is no provision under the U.P. Consolidation of Holdings Act or Rules framed thereunder by which provisions of O. XXIII, R. 3 of C.P.C. have been made applicable to consolidation proceedings. The intention of the Legislature while enacting U.P. Consolidation of Holdings Act was development of agriculture land as is eloquent from the preamble of the Act.

13. As stated supra, the only provision under the U.P. Consolidation of Holdings Act and the Rules framed thereunder for conciliation is Rule 25-A. Rule 25-A of the U.P. Consolidation of Holdings Rules, as discussed above, provides that a person could get his rights settled through conciliation in case his rights are recognised by a statute. A person cannot get any right settled or declared in conciliation proceedings under Rule 25-A of the U.P. Consolidations of Holdings Rules if his rights are not recognised by statute. The intention of Legislature while framing Rule 25-A of the U.P. Consolidation of Holdings Rules clearly is that the parties may not be drawn into avoidable and unnecessary litigation relating to their legitimate rights created under U.P. Zamindari Abolition and Land Reforms Act and for correction of the entries in the revenue records. Intention of Legislature while enacting Rule 25-A of the U.P. Consolidation of Holdings Rules is clear and a person cannot get any right under Rule 25-A of the U.P. Consolidation of Holdings Rules which was never created and recognised by the statute under the U.P. Zamindari Abolition and Land Reforms Act on abolition of Zamindari or under any other subsequent amendment of U.P. Zamindari Abolition & Land Reforms Act. A tenure-holder could get his legitimate right of co-tenancy in case land was acquired by common ancestors or jointly by way of reconciliation. Similarly, if an entry in the joint name of a number of

tenure-holders is incorrectly recorded, parties may get the entry corrected by conciliation under Rule 25-A of the U.P. Consolidation of Holdings Rules setting the matter/rights by mutual partition or by recognising family settlement already taken place and already acted upon by the parties to get the entry corrected accordingly. But a tenure-holder cannot get any exclusive right in a proceeding under Section 25-A of the U.P. Consolidation of Holdings Rules unless such Rules are recognised by statute.

14. In 1976 (2) R.D. 69, Kale v. Deputy Director of Consolidation, it has been held by the Supreme Court that family arrangements acted upon by parties could be recognised by the consolidation authorities as family arrangement operates as estoppels against parties having taken benefit thereunder.

15. There is no provision under the U.P. Consolidation of Holdings Act for compromise at any of the stage of consolidation proceedings either under Sections 9-A, 9-B, 11, 20, 21 or Section 48 of the U.P. Consolidation of Holdings Act. Though under the U.P. Zamindari Abolition and Land Reforms Act, the provisions of C.P.C. are made applicable by virtue of Section 341 of the U.P. Zamindari Abolition and Land Reforms Act and in appropriate cases in the suits arising out of U.P. Zamindari Abolition and Land Reforms Act, a compromise could be entered into.

16. Under the U.P. Consolidation of Holdings Act, provisions of C.P.C. are not made applicable like Section 341 of the U.P. Zamindari Abolition and Land Reforms Act and as such there is no provision of compromise under the U.P. Consolidation of Holdings Act, but in order to secure interest of justice and cut short litigation, rights recognised by statute may be settled by mutual agreement before any Consolidation authority other than Assistant Consolidation Officer. Procedure prescribed under the C.P.C. are not appli cable to consolidation proceedings, but if an agreement was entered into which was not contrary to the rights conferred by the U.P. Zamindari Abolition and Land Reforms Act, such agreement in which all the parties including State joined may be legitimately relied upon by the Consolidation authorities. Thus, a tenure-holder who did not have any right under the statute could not get any right by way of compromise or settlement.

17. Order XXIII, Rule 3 of the C.P.C. is being reproduced below:—

"3. Compromise of suit.— Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise (in writing and signed by the parties), or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith (so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit).

(Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reason to be recorded, thinks fit to grant such adjournment.)

Explanation— An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of

1872), shall not be deemed to be lawful within the meaning of this rule.)"

18. Since right of a tenure-holder in land is a creation of statute under the U.P. Zamindari Abolition and Land Reforms Act and these rights are declared or adjudicated by the Consolidation authorities for the area where the notification under S. 4 of the U.P. Consolidation of Holdings Act is made, only such statutory rights already in existence in favour of a person could be recognised through a lawful agreement or compromise in consolidation proceedings. A right which does not accrue to a person under the provisions of the U.P. Zamindari Abolition and Land Reforms Act or any other provision of law could not be recognised by any agreement or compromise in the consolidation proceedings. Thus, it is held that if a person had no right under the statute any such right could not be recognised or admitted by a compromise or a new right could not be created through compromise or conciliation.

19. It is clear from the law laid down by the Supreme Court in AIR 1961 SC 1790, Rana Sheo Ambar Singh v. The Allahabad Bank Ltd., Allahabad that Bhumidhari rights in all the estates vested in the State is a new statutory right under the U.P. Zamindari Abolition and Land Reforms Act. Relevant portion of the judgment is being reproduced below:—

"(7)…… We are of opinion that the proprietary rights in sir and khudkashat land and in grove land have vested in the State and what is conferred on the intermediary by S. 18 is a new right altogether which he never had and which could not therefore have been mortgaged in 1914."

20. In view of the discussions made above, as in the present case there is no such family arrangement acted upon between the parties in which parties have taken benefit as claimed by the petitioners, the Deputy Director of Consolidation rightly set aside the compromise and orders passed by the Consolidation Officer and the Assistant Settlement Officer, Consolidation. Finding recorded by the Deputy Director of Consolidation does not suffer from any error of law apparent on the face of record in holding that the compromise relied upon by petitioner was not lawful. Impugned order was rightly passed in accordance with law. The questions framed above are decided accordingly."

18. At the cost of repetition, para 18 of the judgment passed in the case of Shiv Prasad (Supra) is extracted herein-under :-

18. Since right of a tenure-holder in land is a creation of statute under the U.P. Zamindari Abolition and Land Reforms Act and these rights are declared or adjudicated by the Consolidation authorities for the area where the notification under S. 4 of the U.P. Consolidation of Holdings Act is made, only such statutory rights already in existence in favour of a person could be recognised through a lawful agreement or compromise in consolidation proceedings. A right which does not accrue to a person under the provisions of the U.P. Zamindari Abolition and Land Reforms Act or any other provision of law could not be recognised by any agreement or compromise in the consolidation proceedings. Thus, it is held that if a person had no right under the statute any such right could not be recognised or admitted by a compromise or a new right could not be created through compromise or conciliation.

19. The above referred judgment as also Rule 25-A of Rule of 1954 indicates that dispute(s) related to tenure holder(s) pertaining to rights already in existence i.e. the rights available under the Act of 1950 or any other provision of law, could be recognised by lawful agreement or compromise by ACO in exercise of power under Rule 25-A of Rule of 1954 and the ACO under this rule was/is not empowered to provide new rights by way of agreement or compromise or conciliation.

20. Therefore, the ACO was not empowered to recognize the alleged oral transfer of land in dispute i.e. Gata No. 748 made by Ram Nayan Pandey in favour of respondent no.2/Chandra Prakash Singh. In creating new rights related to land in dispute i.e. Gata No. 748 vide order dated 09.12.1983 the ACO exceeded its jurisdiction and erred in law.

21. Additionally, this Court also feels appropriate to refer Section 54 of the Act of 1882, which reads as under : -

"54. "Sale" defined

"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

***Sale how made** : Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.*

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

***Contract for sale**: A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.*

It does not, of itself, create any interest in or charge on such property.

Uttar Pradesh State Amendment

***Amendment of Section 54 of Act 4 of 1882-** In its application to the State of Uttar Pradesh, in Section 54, -*

(a) in the second paragraph the words "of the value of one hundred rupees and upwards" shall be ommitted;

(b) the third and fourth paragraphs shall be omitted;

(c) after the last paragraph, the following paragraph, shall be inserted, namely:

"Such contract can be made only by a registered instrument. (vide U.P. Act 57 of 1976, S.30 w.e.f. 1-1-1977)."

22. It is apparent from Section 54 of the Act of 1882 that an immovable property of a value exceeding one hundred rupees can only be transferred by way of registered deed/instrument in terms of the Act of 1908. On this aspect of the case, it would be apt to refer following para of the judgment passed by this Court in the case of **Irshad Ahmad Vs. Deputy Director of Consolidation, Siddharth Nagar,** reported in**, 2016 SCC OnLine All 3702; (2016) 133 RD 661.**

"11. Now question arises as to whether compromise dated 07.07.1989, by which Polavadi had relinquished his 1/10 share in favour of Rafiulla, was required to be registered compulsory and in the absence of its registration, it cannot be enforced. The counsel for the respondents

submitted that as the compromise was in respect of subject matter of dispute as such in view of Section 17 (2) (vi) of Registration Act, 1908, compromise dated 07.07.1989 did not require registration as held by Supreme Court in Som Dev Vs. Rati Ram, (2006) 10 SCC 788 and K. Raghunandan Vs. Ali Hussain Sabir, (2008) 13 SCC 102.

12. In order to appreciate the controversy, Section 17 of the Registration Act, 1908 is quoted below:-

17. Documents of which registration is compulsory.--(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866 (20 of 1866), or the Indian Registration Act, 1871 (8 of 1871), or the Indian Registration Act, 1877 (3 of 1877), or this Act came or comes into force, namely—

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53-A of the Transfer of Property Act, 1882 (4 of 1882), shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and, if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said Section 53-A.

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

(i) any composition-deed; or

(ii) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the

Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) any document other than the documents specified in sub-section (1-A) not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or

(vii) any grant of immovable property by the Government; or

(viii) any instrument of partition made by a Revenue Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871 (26 of 1871), or the Land Improvement Loans Act, 1883 (19 of 1883); or

(x) any order granting a loan under the Agriculturists Loans Act, 1884 (12 of 1884), or instrument for securing the repayment of a loan made under that Act; or

(x-a) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue officer.

Explanation.--A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.

13. Section 17 (2) (vi) came for consideration before Supreme Court in Bhoop Singh v. Ram Singh Major, AIR 1996 SC 196, in which it has been held that it needs to be stated that sub-section (1) of Section 17 mandates that the instrument enumerated in clauses (a) to (e) shall be registered compulsorily if the property to which they relate is immovable property, the value of which is Rs 100 or upwards. When the document purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest therein, whether vested or contingent, it has to be registered compulsorily. The Act does not define "instrument'. Section 2(14) of the Indian Stamp Act, 1899, defines "instrument' to include every document by which any right or liability is, or purports to be, created,

transferred, limited, extended, extinguished or recorded. Sub-section (2) of Section 17 of the Act engrafts exceptions to the instruments covered only by clauses (b) and (c) of sub-section (1). We are concerned with clause (vi) of sub-section (2). Clause (vi) relates to any decree or order of a court, except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding. Clause (v) is relevant which in contrast reads thus:

"Any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another instrument which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest;".

The Explanation amplifies that a contract for the sale of immovable property containing a recital of payment of any earnest money or of the whole or any part of the purchase price shall not be deemed to be required or ever to have required registration.

In other words, the court must enquire whether a document has recorded unqualified and unconditional words of present demise of right, title and interest in the property and included the essential terms of the same; if the document, including a compromise memo, extinguishes the rights of one and seeks to confer right, title or interest in praesenti in favour of the other, relating to immovable property of the value of Rs 100 and upwards, the document or record or compromise memo shall be compulsorily registered.

14. In Som Dev v. Rati Ram, (2006) 10 SCC 788, it has been held that it was really a decree on admission and the admission was of the pre-existing right set up by the plaintiffs as created by Sheo Ram. The decree by itself did not create any right in immovable property. It only recognised the right set up by the plaintiffs in that suit in respect of the property involved in that suit.

Suffice it to say that on a plain reading of clause (vi) of Section 17(2) all decrees and orders of the court including a compromise decree subject to the exception as regards properties that are outside the subject-matter of the suit, do not require registration on the ground that they are hit by Sections 17(1)(b) and (c) of the Act. But at the same time, there is no exemption or exclusion, in respect of clauses (a), (d) and (e) of Section 17(1) so that if a decree brings about a gift of immovable property, or lease of immovable property from year to year or for a term exceeding one year or reserving an early rent or a transfer of a decree or order of a court or any award creating, declaring, assigning, limiting or extinguishing rights to and in immovable property, that requires to be registered.

15. Supreme Court in K. Raghunandan v. Ali Hussain Sabir, (2008) 13 SCC 102, held that a statute must be construed having regard to the purpose and object thereof. Sub-section (1) of Section 17 of the Act makes registration of the documents compulsory. Sub-section (2) of Section 17 of the Act excludes only the applications of clauses (b) and (c) and not clause (e) of sub-section (1) of Section 17. If a right is created by a compromise decree or is extinguished, it must compulsorily be registered if the compromise decree comprises immovable property which was not the subject-matter of the suit or proceeding. Clause (vi) is an exception to the exception. If the latter part of clause (vi) of sub-section (2) of Section

17 of the Act applies, the first part thereof shall not apply.

16. Supreme Court in Phool Patti v. Ram Singh, (2009) 13 SCC 22, found that there is inconsistency in the decisions of this Court in Bhoop Singh's case and K. Raghunandan's case, (supra) and referred the matter for consideration by a larger Bench. However Larger Bench in Phool Patti v. Ram Singh, (2015) 3 SCC 465, did not find any inconsistency between the judgments in Bhoop Singh's case and K. Raghunandan's case and again remitted the matter to Division Bench. Division Bench in Phool Patti v. Ram Singh, (2015) 3 SCC 164, held that the family settlement could relate to the ancestral as well as self-acquired property. It appears that it related only to the ancestral property and not the self-acquired property (hence the reference to a hibba). The decree relating to 32 kanals of land did not require compulsory registration, as mentioned above. However, the self-acquired property of Bhagwana that is 20 kanals, therefore, in view of the law laid down in Bhoop Singh's case the gift of 20 kanals of land by Bhagwana in favour of Ram Singh, notwithstanding the decree in the first suit, requires compulsory registration since it created, for the first time, right, title or interest in immovable property of a value greater than Rs 100 in favour of Ram Singh.

17. In view of the aforesaid discussions, it is held that compromise dated 07.07.1989, created right in favour of Rafiulla in immovable property of value exceeding Rs. 100/-, for the first time as he had no antecedent right over it as such it required to be registered compulsorily. In the absence of registration, order of Consolidation Officer dated 07.07.1989 was illegal and liable to be set aside.

18. In view of the aforesaid discussions, the writ petition succeeds and is allowed. The orders of Consolidation Officer dated 07.07.1989, Settlement Officer Consolidation dated 23.06.2004 and Deputy Director of Consolidation dated 05.07.2016 are set aside. The matter is remanded to Consolidation Officer, who shall consolidate this case along with cases relating to inheritance of Polavadi and decide on merit in accordance with law."

23. In regard to benefit available in terms of Section 164 of the Act of 1950, which says that *"any transfer of any holding or part thereof made by a bhumidhar by which possession is transferred to the transferee for the purpose of securing any payment of money advanced or to be advanced by way of loan and existing or future debt or the performance of an engagement which may give rise to a pecuniary liability, shall, notwithstanding anything contained in the document of transfer or any law for the time being in force, be deemed at all times and for all purposes to be a sale to the transferee and to every such sale the provisions of Sections 154 and 163 shall apply.",* this Court is of the view that the respondent no.2/Chandra Prakash Singh is not entitled to the benefit available under Section 164 of the Act of 1950 for the reason that no evidence was/is placed on record by the respndent no.2/Chandra Prakash Singh to establish positively the essential ingredients so as to attract Section 164 of the Act of 1950. In this regard reference can be made the judgment(s) passed in the case of **Smt. Bhagwatiya Vs. Deputy Director of Consolidation, Deoria & Others, reported in 1981 (2) RD 60; Indra Prasad and others vs. Board of Revenue, U.P. and others,** reported in **1984 RD 37; Thakur Das Vs. Deputy Director of Chakbandi & Others** reported in **1986 RD 35; Sati Prasad &**

Another Vs. Deputy Director of Consolidation, Kanpur & Ors, reported in **1993 RD 13, Ramanand Vs. Deputy Director of Consolidation, Basti** reported in **1993 RD 91 (HC); Smt. Rama Devi Vs. Dilip Singh,** reported in **(2008) 104 RD 538, Faggal Vs. State of U.P.** reported in **2008 (105) RD 496 and Kamta Vs. Board of Revenue, 2018 SCC OnLine All 8881.**

24. The direction for validating a transfer of immovable property by ACO by depositing certain amount/revenue on the market value of the property in the Government Treasury is without any authority. Further, this Court is of the firm view that the transfer which was not valid initially, cannot be validated by means of depositing certain amount in the Government Treasury.

25. For the reasons aforesaid, this Court finds that the interference in the impugned order is required.

26. Accordingly, the order dated 30.04.2025 (Annexure No.1) is hereby set aside/quashed and the order dated 03.03.2025 passed by SOC is restored.

27. With regard to prayer no. 2, it is provided that the issues related to possession which includes the issues based upon Section(s) 209 and 210 of the Act of 1950 would be decided by the competent authority/Court, as per law, and till decision on this aspect of the case the parties are directed to maintain status quo as exists today.

28. Aforesaid is for the reason that to establish the actual physical possession over the land in dispute i.e. Gata no. 748 copies of revenue receipts and copies of khasra have not been placed on record.

29. With the aforesaid, the the petition is ***partly allowed.***

30. At this stage, Mr. Rakesh D. Kumar, Advocate, prayed for stay on the implementation and operation of this judgment for some time for the purpose of filing Leave to Appeal. The prayer sought is rejected for the reason that by this order the parties have been directed to maintain status quo till decision on the issues related to possession by the competent authority/Court.

(2025) 5 ILRA 564
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 29.05.2025

BEFORE

THE HON'BLE PANKAJ BHATIA, J.

Writ C No. 4987 of 2025

Shitla Prasad ...Petitioner
Versus
Amrit Lal & Ors. ...Respondents

Counsel for the Petitioner:
Sharad Pathak, Lalta Prasad Misra, Manoj Kumar Dwivedi

Counsel for the Respondents:
Dinesh Kumar Ojha, Anupam Mehrotra

Civil Law - U.P. Municipalities Act, 1916 - Election Petitions - Sections 12-A to 12-H, 12-E(2), 13-A to 13-K, 19, 20 - Order 6 Rule 17 CPC - Petitioner contested the election of Chairman of Nagar Panchayat. After the counting petitioner was declared elected. Opposite Party No.1 filed an election petition on 29.05.2023. Petitioner filed written statement on 18.01.2024. An amendment application was filed under Order 6 Rule 17 CPC on 14.02.2024 – District Judge, allowed the amendment application. In election petition, the