recorded their findings in the year 1968-69. They were wholly oblivious of the nature of the land 14-15 years back in the year 1954."

38. As mentioned above, in Khatauni of 1351 Fasali, corresponding to 1953, which was filed by the respondents before the Forest Settlement Officer, the nature of the land was mentioned as "Banjar'. Once the notification under Section-4 of the Act, 1927 was issued on 27.04.1960, the land bearing Plot No.75-H had ceased to be the holding inasmuch as it had been given to Gaon-Sabha. Such land could be notified as reserved forest under Section-4 of the Act, 1927 and, thereafter the Bhoodan Committee had no right, title or interest over the land and, the said land could not be held to be holding of the Bhoodan Committee in view of provisions of Section-5 of the Act, 1927.

39. Once the notification was issued under Section-4 of the Act, 1927, no right could have been acquired in or over the land comprised in such notification except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued. No fresh clearing for cultivation or for any other purpose could have been made.

40. In view of the aforesaid discussion, it is held that the respondents, who claimed to have been allotted patta/lease by the Bhoodan Committee in the year 1978 and their names got mutated in the year 1978, had no right, title or interest over the land in question in asmuch as after notification dated 27.04.1960 under Section-4 of the Act, 1927 was issued, the land could not have been transferred by Bhoodan Committee in view of the bar created under Section-5 of the Act, 1927. Further, even otherwise the Bhoodan Committee ceased to have any right to transfer this land in favour of any person after three years from 1957 to 1960. Even otherwise, the land was recorded as "Banjar' in the revenue record and it got vested in the Gaon-Sabha. The two authorities have fallen in gross error of facts and law in directing to exclude the land in question bearing Plot No.75-H situated in Village Khairati Purwa, Pargana Ferozabad, Tehsil Nighasan, District Kheri from the boundaries of the reserved forest from the Notification dated 27.04.1960.

41. Thus, the writ petitions are **allowed**. Consequently, the impugned orders are quashed.

(2022)02ILR A851
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 27.01.2022

BEFORE

THE HON'BLE DINESH KUMAR SINGH, J.

Writ C No. 1003453 of 1980
&
Writ C No. 1003454 of 1980

State Of U.P. & Anr. ...Petitioners
Versus
Chunnu & Ors. ...Respondents

Counsel for the Petitioners:
C.S.C.

Counsel for the Respondents:
Dr. R.K. Srivastava, C.S.C.

A. Indian Forest Act, 1927 – Section 4 – Land, in dispute, was notified under the Act – Adjudication by the Consolidation authority – Permissibility – Jurisdiction of

Consolidation authority, challenged – Held, once the notification is issued u/s 4 of the Act, the Consolidation Authorities would lack jurisdiction with respect to the land – High Court set aside the impugned order passed by the District Judge. (Para 9 and 13)

Writ petition allowed. (E-1)

List of Cases cited:

1. Mahendra Lal Jaini Vs St. of U.P. & ors.; AIR 1963 SC 1019

2. St. of U.P. Vs Dy. Director of Consolidation & ors.; (1996) 5 SCC 194

3. Prabhagiya Van Adhikari Awadh Van Prabhag Vs Arun Kumar Bhardwaj (Dead) Thr. LRs. & ors.; 2021 SCC OnLine SC 868

(Delivered by Hon'ble Dinesh Kumar Singh, J.)

1. In this case, Khasra Plot No.134, admeasuring 9.25 Acres, situated in Village Ramuapur, Pargana Shrinagar, Tehsil Lakhimpur, District Kheri, was recorded as Gaon-Sabha land as "Jangal Jhadi' in the revenue record in the Khatauni of the Fasali Year 1372 to 1375. Non-Holding Certificate dated 04.01.1967 was issued after proper inquiry by the State Government under Section 117 of the U. P. Zamindari and Land Reforms Act, 1950 (for short "Act, 1950") and vested in Gaon-Sabha for protection and management of forest vide Notification dated 14.04.1967.

2. The said land, along with other lands, were notified under Section-4 of The Indian Forest Act, 1927 (for short "Act, 1927") vide Notification dated 14.04.1967 in order to declare the lands mentioned in the notification as "reserved forest'. Thereafter, the proclamation was issued under Section-6 of the Act, 1927 by the Forest Settlement Officer, Lakhimpur Kheri.

3. The respondents filed a time-barred objection after more than 11 years on 07.06.1978 from the date of publication of notification under Section-4 of the Act, 1927. The respondents had taken objection that the land in dispute was allotted to them by the Consolidation Authority and, they were delivered possession over the plots.

4. The Forest Department filed its reply on 14.07.1978, stating that Plot No.174 had been carved out from the old Plot No.134, which had already been notified under Section-4 of the Act, 1927 on 14.12.1967 and, as such, the Consolidation Authorities had no jurisdiction to adjudicate in respect of the land in dispute. It was also stated that the objections, filed by the respondents, were time-barred.

5. The Forest Settlement Officer vide order dated 20.02.1979 dismissed the claim of the objectors preferred under Section-6 of the Act, 1927 on the ground that the decision of the Consolidation Authority in respect of plots in dispute was ineffective and, not binding as the Consolidation Authority had no jurisdiction to adjudicate upon the rights of the parties in respect of the land notified under Section-4 of the Act, 1927. It was vested in the Gaon-Sabha under Section-117 of the Act, 1950 vide Notification dated 12.04.1969, which was issued after Non-Holding Certificate was issued by the Collector for management. The Forest Settlement Officer, however, condoned the delay of 11 years, without recording any satisfaction regarding sufficient cause being shown for condoning the delay of 11 years in filing the objection of the respondents. The respondents, thereafter filed Civil Appeal No.22-23/1979 under Section-17 of the Act, 1927

before the Additional District Judge, Kheri on 16.04.1979.

6. The Additional District Judge vide impugned judgment and order dated 15.05.1980 allowed the appeal on the basis of wrong entries made in the revenue record. It is well settled that once the notification in respect of the land is issued under Section-4 of the Act, 1927, the Consolidation Authorities would not have any jurisdiction with respect to the said land.

7. Against the said judgment and order dated 15.05.1980 passed by the Additional District Judge, Kheri, the Forest Department filed the present petitions, which were also clubbed along with other writ petitions, being Writ Petition Nos. 914 (M/S) of 1981 and 915 (M/S) of 1981. Initially, this Court vide judgment and order dated 04.02.1998 had dismissed the writ petitions, holding that the land in dispute was neither the forest land nor the waste land, however, the Supreme Court vide judgment and order dated 23.09.2010 had allowed Civil Appeal Nos. 4608-4616 of 2004 and, remanded the matter to this Court for a fresh decision, in accordance with law.

8. In this case notification under Section-4 of the Act, 1927 was issued on 14.12.1967 and Sub-Divisional Magistrate, Kheri was notified as Forest Settlement Officer under Section-17 of the Act, 1927. The respondents had no right over the land in question and, after the notification issued under Section-4 of the Act, 1927, the Consolidation Authorities could not have allotted the land to the respondents as the land was not holding of anyone or part of the holding of village Abadi. This land was not an agricultural land inasmuch the land got vested in Gaon-Sabha as a result of notification dated 12.04.1969 issued under Section-117 of the Act, 1950.

9. The findings recorded by the learned District Judge are contrary to the facts and evidence on record. Once the notification is issued under Section-4 of the Act, 1927, the Consolidation Authorities would lack jurisdiction with respect to the land under notification issued under Section-4 of the Act, 1927.

10. The Supreme Court in ***AIR 1963 SC 1019 (Mahendra Lal Jaini Vs. State of U.P. and others)*** in paragraph-29 has held as under:-

"29. It is next urged that even if Sections 38-A to 38-G are ancillary to Chapter II, they would not apply to the petitioner's land, as Chapter II deals inter alia with waste land or forest land, which is the property of the Government and not with that land which is not the property of the Government, which is dealt with under Chapter V. That is so. But unless the petitioner can show that the land in dispute in this case is his property and not the property of the State, Chapter II will apply to it. Now there is no dispute that the land in dispute belonged to the Maharaja Bahadur of Nahen before the Abolition Act and the said Maharaja Bahadur was an intermediary. Therefore, the land in dispute vested in the State under Section 6 of the Abolition Act and became the property of the State. It is however, contended on behalf of the petitioner that if he is held to be a bhumidhar in proper proceeding, the land would be his property and therefore Chapter V-A, as originally enacted, if it is ancillary to Chapter II would not apply to the land in dispute. We are of opinion that there is no force in this contention. We

have already pointed out that under Section 6 of the Abolition Act all property of intermediaries including the land in dispute vested in the State Government and became its property. It is true that under Section 18, certain lands were deemed to be settled as bhumidhari lands, but it is clear that after land vests in the State Government under Section 6 of the Abolition Act, there is no provision therein for divesting of what has vested in the State Government. It is, however, urged on behalf of the petitioner that he claims to be the proprietor of this land as a bhumidhar because of certain provisions in the Act. There was no such proprietary right as bhumidhari right before the Abolition Act. The Abolition Act did away with all proprietary rights in the area to which it applied and created three classes of tenure by Section 129; bhumidhar, sirdar and asami, which were unknown before. Thus bhumidhar, sirdar and asami are all tenure-holders under the Abolition Act and they hold their tenure under the State in which the proprietary right vested under Section 6. It is true that bhumidhars have certain wider rights in their tenure as compared to sirdars; similarly sirdars have wider rights as compared to asamis, but nonetheless all the three are mere tenure-holders-with varying rights under the State which is the proprietor of the entire land in the State to which the Abolition Act applied. It is not disputed that the Abolition Act applies to the land in dispute and therefore the State is the proprietor of the land in dispute and the petitioner even if he were a bhumidhar would still be a tenure-holder. Further, the land in dispute is either waste land or forest land (far it is so for not converted to agriculture) over which the State has proprietary rights and therefore Chapter II will clearly apply to this land and so would Chapter V-A. It is true that a bhumidhar has got a heritable and transferable right and he can use his holding for any purpose including industrial and residential purposes and if he does so that part of the holding will be demarcated under Section 143. It is also true that generally speaking, there is no ejectment of a bhumidhar and no forfeiture of his land. He also pays land revenue (Section 241) but in that respect he is on the same footing as a sirdar, who can hardly be called a proprietor because his interest is not transferable except as expressly permitted by the Act. Therefore, the fact that the payment made by the bhumidhar to the State is called land revenue and not rent would not necessarily make him a proprietor, because sirdar also pays land-revenue, though his rights are very much lower than that of a bhumidhar. It is true that the rights which the bhumidhar has to a certain extent approximate to the rights which a proprietor used to have before the Abolition Act was passed; but it is clear that rights of a bhumidhar are in many respects less and in many other respects restricted as compared to the old proprietor before the Abolition Act. For example, the bhumidhar has no right as such in the minerals under the subsoil. Section 154 makes a restriction on the power of a bhumidhar to make certain transfers. Section 155 forbids the bhumidhar from making usufructuary mortagages. Section 156 forbids a bhumidhar, sirdar or asami from letting the land to others, unless the case comes under Section 157. Section 189(aa) provides that where a bhumidhar lets out his holding or any part thereof in contravention of the provisions of this Act, his right will be extinguished. It is clear therefore that though bhumidhars have higher rights than sirdars and asamis, they are still mere tenure-holders under the State which is the

proprietor of all lands in the area to which the Abolition Act applies. The petitioner therefore even if he is presumed to be a bhumidhar cannot claim to be a proprietor to whom Chapter II of the Forest Act does not apply, and therefore Chapter V-A, as originally enacted, would not apply: (see in this connection, Mst Govindi v. State of Uttar Pradesh [AIR [1952] All 88] . As we have already pointed out Sections 4 and 11 give power for determination of all rights subordinate to those of a proprietor, and as the right of the bhumiidhar is that of a tenure-holder, subordinate to the State, which is the proprietor of the land in dispute, it will be open to the Forest Settlement Officer to consider the claim made to the land in dispute by the petitioner, if he claims to be a bhumidhar. This is in addition to the provision of Section 229-B of the Abolition Act. The petitioner therefore even if he is a bhumidhar cannot claim that the land in dispute is out of the provisions of Chapter II and therefore Chapter V-A, even if it is ancillary to Chapter II, would not apply. We must therefore uphold the constitutionality of Chapter V-A, as originally enacted, in the view we have taken of its being supplementary to Chapter II, and we further hold that Chapter II and Chapter V-A will apply to the land in dispute even if the petitioner is assumed to be the bhumidhar, of that land."

11. Similar view has been reiterated by the Supreme Court in the case ***(1996) 5 SCC 194 (State of U.P. Vs. Dy. Director of Consolidation and others)*** in paragraphs-2, 5 and 6, which are extracted hereunder:-

"2. We may briefly notice the facts of the case. The State Government issued a notification dated 29-3-1954 declaring its intention to constitute the land in dispute a reserved forest. After disposal of the objections filed under Section 6 read with Section 9 of the Act and the finalisation of the appeals under Section 17 of the Act, a notification dated 19-8-1963 declaring the land in dispute to be reserved for forest was issued. In the revenue records the respondents were recorded as Sirdari-holders of the land. The land was also recorded as a part of the forest department khata.

5. We are of the view that the High Court fell into patent error in appreciating the provisions of the Act and the Abolition Act. It is not disputed that the Abolition Act applied to the land in dispute and, therefore, the State was the proprietor of the land and the respondents, even if they were Sirdars, would still be tenure-holders.

6. This Court in Mahendra Lal Jaini v. State of U.P. [AIR 1963 SC 1019] dealt with an identical question. Mahendra Lal Jaini, in a petition under Article 32 of the Constitution of India, contended before this Court that he being a Bhumidhar in possession, the provisions of the Act (the Forest Act, 1927) would not apply to the said land. Repelling the contention this Court held that though Bhumidhars have higher rights than Sirdars and Asamis, they were still tenure-holders under the State which was proprietor of the land in the areas to which the Abolition Act applied. It was further held that, even if it was presumed that the petitioner Mahendra Lal Jaini was a Bhumidhar, he could not claim to be the proprietor of the land. It was held that the provisions of the Act would be applicable to the land in dispute. It would be useful to reproduce the relevant part from the judgment of this Court in Mahendra Lal case [AIR 1963 SC 1019] :

"It is, however, urged on behalf of the petitioner that he claims to be the proprietor of this land as a Bhumidhar because of certain provisions in the Act. There was no such proprietary right as Bhumidhari right before the Abolition Act. The Abolition Act did away with all proprietary rights in the area to which it applied and created three classes of tenure by Section 129; Bhumidhar, Sirdar and asami, which were unknown before. Thus Bhumidhar, Sirdar and asami are all tenure-holders under the Abolition Act and they hold their tenure under the State in which the proprietary right vested under Section 6. It is true that Bhumidhars have certain wider rights in their tenures as compared to Sirdars; similarly Sirdars have wider rights as compared to asamis, but nonetheless all the three are mere tenure-holders -- with varying rights -- under the State which is the proprietor of the entire land in the State to which the Abolition Act applied. It is not disputed that the Abolition Act applies to the land in dispute and therefore the State is the proprietor of the land in dispute and the petitioner even if he were a Bhumidhar would still be a tenure-holder. ... The petitioner therefore even if he is presumed to be a Bhumidhar cannot claim to be a proprietor to whom Chap. II of the Forest Act does not apply, and therefore Chap. V-A, as originally enacted, would not apply: (See in this connection, Mst. Govindi v. State of U.P. [AIR 1952 All 88 : 1952 All LJ 52]) As we have already pointed out Sections 4 and 11 give power for determination of all rights subordinate to those of a proprietor, and as the right of the Bhumidhar is that of a tenure-holder, subordinate to the State, which is the proprietor of the land in dispute, it will be open to the Forest Settlement Officer to consider the claim made to the land in dispute by the petitioner, if he claims to be a Bhumidhar."

12. Recently, the Supreme Court in ***2021 SCC OnLine SC 868 (Prabhagiya Van Adhikari Awadh Van Prabhag Vs. Arun Kumar Bhardwaj (Dead) Thr. LRs. and Others)*** in paragraphs-16 to 28 has held as under:-

"16. Learned counsel for the appellant submitted that the High Court has gravely erred in setting aside the order passed by the Deputy Director as there was no legal or factual basis to do so. The notification dated 11.10.1952 published in terms of Section 4 of the Abolition Act was to the effect that all estates situated in Uttar Pradesh shall vest in the State. The extent to which uncultivated land which not vests in Gaon Samaj was mentioned in Column 5 stating that 162 acres of Village Kasmandi Khurd would not vest in Gaon Samaj. Such notification has the effect that all rights, title and interest, shall be deemed to be vested in the State of Uttar Pradesh. In terms of Section 117 of the Abolition Act, the State can transfer the lands by a general or special order as prescribed therein including forests to Gaon Sabha and to other local authorities. It is not the case of any of the parties that the land, which was the subject matter of notification dated 11.10.1952, was subject to any general or special orders by the State to transfer the same in favor of Gaon Sabha and/or any other local authority. Therefore, the land comprising in notification dated 11.10.1952 unequivocally vests with the State.

17. It is thereafter that a notification dated 23.11.1955 was published in respect of 162 acres of land situated in Kasmandi Khurd. Such

notification describes the land with boundaries mentioned in the notification. Thereafter, another proclamation was published under Section 6 of the Forest Act in respect of 162 acres of land including 20 bighas 13 biswas and 10 biswansi of Khasra No. 1576 of Village Kasmandi Khurd. The notification under Section 4 of the Forest Act to declare any land as reserved forest could be issued if the State has proprietary rights over such land or if it is entitled to the produce thereof.

18. The State Government has the jurisdiction to declare a protected forest if the land is the property of the Government over which proprietary rights are exercised. The land measuring 162 acres was the property of the Government in terms of the notification dated 11.10.1952. In terms of Section 4 of the Forest Act, the State Government can issue a notification to constitute any land as reserved forest. The notification dated 23.11.1955 satisfies the three conditions mentioned in sub-section 4 i.e., (i) decision to constitute such land as reserved forest, (ii) situation and limits of such land, and (iii) appointing an officer to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits. The lessees were not in possession of any part of the land at the time of issuance of such notification under Section 4 on 23.11.1955. Therefore, they have rightly not claimed any right over the property nor the Gaon Sabha has claimed any right in the land measuring 162 acres notified under Section 4 of the Act.

19. Section 5 of the Forest Act bars that no right shall be acquired in or over the land comprised in notification under Section 4 of the Forest Act, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government. Once the notification dated 23.11.1955 was published under Section 4 of the Forest Act, there could not be any transfer of right in the land so notified in favour of the lessee by the Gaon Sabha.

20. It is thereafter, a proclamation was required to be issued under Section 6 of the Forest Act publishing in the local vernacular in every town and village specified, as nearly as possible, the situation and limits of the proposed forest. In the proclamation under Section 6 of the Forest Act, different khasra numbers have been specified including Khasra No. 1576. Such khasra number forms part of the total forest land declared under Section 4 of the Act measuring 162 acres. The proclamation of publication was published in the locality but none including the Gaon Sabha objected to the declaration of land as forest area.

21. Mr. Khan, learned counsel for the lessee and Mr. Hooda, learned counsel for the Gaon Sabha vehemently argued that the details of land in respect of which notification under Section 4 of the Forest Act was issued are not mentioned, except providing the total area measuring 162 acres. It was argued that such notification is vague and does not comply with the conditions specified in Section 4 of the Forest Act. It was only in the proclamation published under Section 6 of the Forest Act that Khasra No. 1576 was mentioned.

22. We do not find any merit in the argument raised by Mr. Khan and Mr. Hooda. In the notification published on 23.11.1955, there was a declaration that land measuring 162 acres shall constitute

forest land. Explanation (1) to Section 4 of the Forest Act clarifies that it would be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries. The notification dated 23.11.1955 has the boundaries on all four sides mentioned therein. There is no other requirement under Section 4 of the Forest Act. It is only Section 6 of the Forest Act which needs to specify the situation and limits of the proposed forest. In terms of such clause (a) of Section 6 of the Forest Act, the details of khasra numbers which were part of 162 acres find mention in the proclamation so published. Therefore, the statutory procedural requirements stand satisfied.

23. Learned counsel for the appellant referred to a judgment reported as State of U.P. v. Dy. Director of Consolidation wherein the land was notified as a reserved forest under Section 20 of the Forest Act but the respondents in appeal before this Court claimed that they were in possession of the land and had acquired Sirdari rights. This Court held that in terms of the Abolition Act, the State was the proprietor of the land and the respondents, even if they were Sirdars, would still be tenure-holders. It was also held that the Consolidation Authorities have no jurisdiction to go behind the notification under Section 20 of the Forest Act. The Court held as under:

"7. It is thus obvious that a person who was holding the land as Sirdar was not vested with proprietary rights under the Abolition Act. He was a tenure-holder and the proprietary rights vested with the State. The High Court, therefore, fell into patent error in assuming that by virtue of their status as Sirdars the respondents were proprietors of the land. The State being the proprietor of the land under the Abolition Act, it was justified in issuing the notification under Section 4 of the Act.

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10. It is thus obvious that the Forest Settlement Officer has the powers of a civil court and his order is subject to appeal and finally revision before the State Government. The Act is a complete code in itself and contains elaborate procedure for declaring and notifying a reserve forest. Once a notification under Section 20 of the Act declaring a land as reserve forest is published, then all the rights in the said land claimed by any person come to an end and are no longer available. The notification is binding on the consolidation authorities in the same way as a decree of a civil court. The respondents could very well file objections and claims including objection regarding the nature of the land before the Forest Settlement Officer. They did not file any objection or claim before the authorities in the proceedings under the Act. After the notification under Section 20 of the Act, the respondents could not have raised any objections qua the said notification before the consolidation authorities. The consolidation authorities were bound by the notification which had achieved finality."

24. Mr. Khan further raised an argument that the final notification under Section 20 of the Forest Act has not been published. A reading of Section 20 of the Forest Act does not show that for a reserved forest, there is a requirement of publication of notification but no time limit is prescribed for publication of such notification under Section 20. Therefore, even if notification under Section 20 of the

Forest Act has not been issued, by virtue of Section 5 of the Forest Act, there is a prohibition against acquisition of any right over the land comprised in such notification except by way of a contract executed in writing by or on behalf of the Government. Since no such written contract was executed by or on behalf of the State or on behalf of the person in whom such right was vested, therefore, the Gaon Sabha was not competent to grant lease in favour of the appellant.

25. In a judgment reported as State of Uttarakhand v. Kumaon Stone Crusher an argument was raised that since notification under Section 20 of the Forest Act has not been published therefore, land covered by notification issued under Section 4 cannot be regarded as forest. This Court negated the argument relying upon Section 5 of the Forest Act as amended in State of Uttar Pradesh by U.P. Act No. 23 of 1965. It was held that regulation by the State comes into operation after the issue of notification under Section 4 of the Forest Act and that absence of notification under Section 20 of the Forest Act cannot be accepted. The Court held as under:

"145. At this juncture, it is also necessary to notice one submission raised by the learned counsel for the petitioners. It is contended that the State of Uttar Pradesh although issued notification under Section 4 of the 1927 Act proposing to constitute a land as forest but no final notification having been issued under Section 20 of the 1927 Act the land covered by a notification issued under Section 4 cannot be regarded as forest so as to levy transit fee on the forest produce transiting through that area. With reference to the above submission, it is sufficient to notice Section 5 as inserted by Uttar Pradesh Act 23 of 1965 with effect from 25-11-1965. By the aforesaid U.P. Act 23 of 1965 Section 5 has been substituted to the following effect:

*"5. **Bar of accrual of forest rights**.--After the issue of the notification under Section 4 no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or a contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land, nor any tree therein felled, girdled, lopped, tapped, or burnt, or its bark or leaves stripped off, or the same otherwise damaged, nor any forest produce removed therefrom, except in accordance with such rules as may be made by the State Government in this behalf."*

146. Section 5 clearly provides that after the issue of the notification under Section 4 no forest produce can be removed therefrom, except in accordance with such rules as may be made by the State Government in this behalf. The regulation by the State thus comes into operation after the issue of notification under Section 4 and thus the submission of the petitioners that since no final notification under Section 20 has been issued they cannot be regulated by the 1978 Rules cannot be accepted."

26. This Court in a judgment reported as Prahlad Pradhan v. Sonu Kumhar negated argument of ownership based upon entries in the revenue records.

It was held that the revenue record does not confer title to the property nor do they have any presumptive value on the title. The Court held as under:

"5. The contention raised by the appellants is that since Mangal Kumhar was the recorded tenant in the suit property as per the Survey Settlement of 1964, the suit property was his self-acquired property. The said contention is legally misconceived since entries in the revenue records do not confer title to a property, nor do they have any presumptive value on the title. They only enable the person in whose favour mutation is recorded, to pay the land revenue in respect of the land in question. As a consequence, merely because Mangal Kumhar's name was recorded in the Survey Settlement of 1964 as a recorded tenant in the suit property, it would not make him the sole and exclusive owner of the suit property."

27. The six yearly khatauni for the fasli year 1395 to 1400 is to the effect that the land stands transferred according to the Forest Act as the reserved forest. Such revenue record is in respect of Khasra No. 1576. It is only in the revenue record for the period 1394 fasli to 1395 fasli, name of the lessees find mention but without any basis. The revenue record is not a document of title. Therefore, even if the name of the lessee finds mention in the revenue record but such entry without any supporting documents of creation of lease contemplated under the Forest Act is inconsequential and does not create any right, title or interest over 12 bighas of land claimed to be in possession of the lessee as a lessee of the Gaon Sabha.

28. The High Court had referred to the objections filed by the lessees under the Consolidation Act and also objections by the Forest Department. It was held by the High Court that since no objections were filed by the Forest Department earlier, therefore, the objections would be barred by Section 49 of the Consolidation Act. We find that such finding recorded by the High Court is clearly erroneous. The land vests in the Forest Department by virtue of notification published under a statute. It was the lessee who had to assert the title on the forest land by virtue of an agreement in writing by a competent authority but no such agreement in writing has been produced. Therefore, the lessee would not be entitled to any right only on the basis of an entry in the revenue record.

13. Considering the fact that the allotment of the forest land in favour of the respondents was de hors the provisions of the Act, 1927 and, further the Consolidation Authorities had no jurisdiction to deal with the land under notification issued under Section-4 of the Act, 1927, the present writ petition is **allowed.** The impugned order dated 15.05.1980 passed by the IV Additional District Judge, Kheri, copy of which is contained in Annexure No. 1 to the petitions, is set-aside. However, it would be open to the respondents to claim the other lands in lieu of the land part of notification under Section-4 of the Act, 1927 if their holdings got reduced during consolidation proceedings because they were wrongly allotted the forest lands. If such proceedings are instituted, the limitation would not come in the way in instituting the proceedings by the respondents.
