

28. In the result, both the writ petitions succeed and are hereby allowed. The transfer orders dated 28.06.2024 (Annexure 1 to Writ-A No.12611 of 2024) and 28.06.2024 (Annexure 1 to Writ A No.11436 of 2024) are not sustainable in the eyes of law and the same are hereby set aside.

**Counsel for the Petitioners:**

4. Accordingly, the application is allowed.

5. Learned counsel for the impleader is permitted to implead Ms. Roopa as respondent no. 8 in the array of parties during course of the day.

6. It is further submitted by learned counsel for the impleader that he does not propose to file counter affidavit as already an affidavit along with impleadment application has been filed which may be construed as his objection to the writ petition.

7. Learned counsel for the petitioner and learned Standing Counsel have no objection.

#### **In Re: Writ Petition**

1. Heard Sri R. P. Singh Chauhan, learned counsel for the petitioner, Sri Brijesh Kumar, learned counsel for the newly impleaded respondent no.8 and learned Standing Counsel for respondent nos.1 to 5.

2. It is submitted by learned counsel for petitioner that one Maktool Singh was the original tenure holder and was subjected to ceiling proceedings. Learned counsel for petitioner submits that petitioner has purchased arazi no. 297 situated at Village Nagla Shahpur, Pargana and Tehsil Jewar, District Gautam Budh Nagar on 13th May 1974. Thereafter the land of the original tenure holder-Maktool Singh was declared surplus on 1st May 1976.

3. Petitioner, initially had filed an application for amendment in the order declaring the land surplus, however, the same was rejected without giving any

reasons on 3rd December 1977 against which the petitioner had filed an appeal before the IIIrd Additional District Judge, Bulandshahar, which was allowed by order dated 1st June 1978 and the matter was remanded back to prescribed authority for rehearing the application of petitioner. The authority concerned, in compliance of the order of appellate authority, thereafter has passed an order dated 27th April, 1979 whereby surplus land being arazi no.297 was withdrawn and new numbers being arazi nos.187 and 246 were exchanged as the aforesaid arazi nos.187 and 246 belonged to original tenure holder.

4. Thereafter, an amended parwana was issued on 31st May 1979, (which has been recorded in the order dated 5th November 1981 which is at page 51 of the paper book). Additional District Magistrate, Bulandshahar on 5th November 1981 had directed that the name of State from arazi no.297 be removed and the name of petitioner be included as per the amended parwana issued. The respondent-authorities did not comply with the amended parwana and name of petitioner was not recorded in revenue records. Thereafter, petitioner again filed an application before the Additional District Magistrate/Prescribed Authority for recording of name of petitioner in revenue records in respect of Arazi No.297. The aforesaid application of petitioner was decided by order dated 12th February 1996, whereby it has been specifically recorded that since the land in question was already leased to private respondents, therefore, the matter was referred under Section 27(2) of U.P. Imposition of Ceiling on Land Holdings Act, 1960 (for short "Act, 1960"), to the Commissioner. The commissioner, in turn, by order dated 27th August, 1996 has rejected the application of petitioner on

ground of non-prosecution. The recall application was filed by petitioner to recall order dated 27th August 1996 and the same was also rejected by order dated 4th April 2003.

5. Learned counsel for petitioner submits that recall application which was rejected by order dated 4th April 2003 on ground that reference of application of petitioner under section 27 of Act, 1960 was time barred. It is submitted by counsel for petitioner that reference to Commissioner was itself illegal as under section 27 of Act, 1960, only a land, which has been declared as surplus, can be settled and the validity of settlement of the land can be considered and examined.

6. Learned counsel for the petitioner submits that once the land itself has been removed as being surplus land then the foundation itself has gone and it was therefore not permissible for the Additional District Magistrate to have referred the matter to higher authorities. It is further submitted that even otherwise, order passed by Commissioner under section 27 of the Act, 1960 is a nonest order as he has no jurisdiction in the matter. It is further submitted by learned counsel for petitioner that once amended parwana has been issued to authority for including the name of petitioner in Arazi no.297 then it was not open for authorities to have refused the name of petitioner being recorded after deleting name of the lease holders, as the lease was granted on the foundation of Arazi no.297 being a surplus land.

7. The question with regard to lease of land in question, being surplus land, is finally decided by order dated 27th April 1979 and 5th November 1981. Once

the respondent-authorities have taken stand that the land in question being. Arazi no.297 was not a surplus land and in lieu thereof land of original tenure holder was declared as surplus land then foundation stands removed. The land not being surplus land petitioner is entitled to get her name mutated in revenue records. Learned counsel for petitioner further submits that even otherwise mutation of name of private respondents in revenue records would not confer title and the same is only for purpose of revenue.

8. Learning standing counsel has opposed the writ petition and submitted that the land in question was sold by original tenure holder in the year 1974 that is after coming into force, the provisions of section 5(6) of the Act, 1960. He further submits that reference to Commissioner under section 27 of the Act, would be maintainable as the validity of settlement can only be examined under section 27 of the Act, 1960.

9. Learned counsel for newly added respondent no.8 submits that petitioner had purchased the property/Arazi, in question, from private respondent nos. 6 and 7. He does not dispute the fact that the respondent nos.6 and 7 were the lease holders of property/Arazi during currency of the surplus land. He further submits that the right of newly impleaded respondent no.8 shall be affected if the petitioner's name is permitted to be included in revenue record as the owner of property.

10. In the present case, it is to be seen that original tenure holder being one Maktool Singh had sold Arazi no.297 to petitioner on 13th May 1974, thereafter land of original tenure holder was declared

surplus on 1st May 1976. Application was filed by petitioner before the authorities that original tenure holder had given the option of land in the year 1977 that the land being Arazi no.297 be taken as surplus land. Although original tenure holder was not the owner of the aforesaid property on the date his land was declared as surplus land. The application of petitioner for correction of record was rejected at the first instance by order dated 3rd December 1977, however, that order was neither a speaking order nor there was any application of mind. Against the aforesaid order an appeal was preferred by petitioner before Additional District Judge, Bulandshahr which was allowed by order dated 1st June 1978 and matter was remanded back to the prescribed authority for decision afresh. After remand, prescribed authority by order dated 27th April 1979 has accepted the other two arazies being Arazi no. 187 and 246 of the original tenure holder Maktool Singh in lieu of surplus land being Arazi no.297, which was left out and amended parwana was issued on 31st May 1979 for recording the name of petitioner in Arazi no.297. The aforesaid details are provided in the order dated 5th November 1981 of the Additional District Magistrate, Bulandshahr, which is at page-51 of the paper-book.

11. By order dated 5th November 1981 the ceiling declaration in respect of Arazi no.297 was withdrawn by Additional District Magistrate and thereafter new Arazi nos. 187 and 246 were declared as surplus land. A direction was also issued for mutation of name of petitioner and for deletion of name of State in earlier surplus land being Arazi no.297 of petitioner.

12. The aforesaid mutation were not carried out, thereafter, an order was

passed on 5th November 1981 by Sub Divisional Officer, Bulandshahr directing removal of name of lease holders from Arazi no. 297. When the aforesaid mutation proceeding were not carried on, the petitioner again approached the Additional District Magistrate/Prescribed Authority, Bulandshahr, who by order the dead 12th February 1996 referred the matter to Commissioner under section 27(2) of the Act, 1960, as the Additional District Magistrate was of the view that in respect of the settlement of land it is Commissioner, who empowered under law to examine the validity. The Commissioner, at the first instance, had rejected the reference on the ground of non-prosecution by order dated 27th August 1996, however, when the recall application was filed by the petitioner, the same was also rejected by order dated 4th February 2003.

13. According to order dated 4th February 2003, the reference was time barred as the same was hit by provisions of Section 27(6)A and 27(4) of the Imposition of Ceiling Act. It is to be seen that Section 27 of the Act empowers the authorities to settle the surplus land. Section 27 can only be invoked when the land in question is a surplus land. The examination of the settlement of land can be made by Commissioner under Section 27(4) of Act. It is to be seen that in the present case, arazi no. 297 was earlier declared as surplus land and was recorded in the name of the State, however, subsequently, by order dated 27th April 1979 and 5th November 1981 the land was withdrawn from being surplus land and alternate land of original tenure holder was taken as surplus land and in this respect amended parwana was issued on 31st May 1979. Once the land in question being arazi no. 297 itself was not having status of a surplus land then under Section

27 of the Act, proceedings would not be maintainable as proceedings under Section 27 of the Act, 1960 arises only in a case where the land is a surplus land and settlement of the land is subject matter of challenge or examination.

14. In the present case, the land i.e. arazi no. 297 itself has been released from being surplus land as such the foundation of land in question being surplus has been removed, therefore, all subsequent proceedings would be nonest in the eyes of law. The submission of learned Standing Counsel that transfer in favour of the petitioner is hit by the provisions of Section 5(6) of the Imposition of Ceiling Act also does not hold the field as the State itself has taken alternate land in lieu of land being Arazi no.297 and this fact has not been disputed by learned counsel for the respondents. Once the State itself has taken an alternate land of original tenure holder as surplus land then it would be highly unfair on the part of the State to argue that the transfer in question was against law. The State has already received alternate land which has been duly accepted. As per learned counsels for the parties, the alternate land has already been leased out to the third party, so the aforesaid argument at this stage cannot be permitted to be raised. The respondent-authorities itself by order dated 27th April 1979 and 5th November 1981 has accepted the stand of petitioner that land of petitioner cannot be a surplus land and alternate land has already been accepted, therefore, the respondent authorities are estopped under law in raising argument with regard to validity of sale of land at this stage. This issued should have be raised prior to passing of order dated 27th April 1979 & 5th November 1981 and prior to issuing of amended parwana. The State has not challenged the

aforesaid orders of authorities before this Court and as such these orders have attained finality and therefore, law of acquiesce would apply and State cannot be permitted to agitate the aforesaid issues any further.

15. Insofar as, objection of respondent no. 8 is concerned, who has purchased Arazi no.297 from respondent nos. 6 and 7 on 16th March 2009, the aforesaid date of purchase is very significant as prior to aforesaid date on 27th April 1979 and 5th November 1981, status of Arazi no.297 was removed from surplus land and amended parwana was already issued on 31st May 1979, therefore, once the land itself was not surplus, the lease granted in pursuance to the aforesaid declaration of surplus, which has been subsequently modified would also fall and consequently no right would accrue in favour of respondent no. 8. The remedy lies for respondent no. 8 to claim the relief before the appropriate court against private respondent nos. 6 and 7 as their title to the property itself stood demolished by previous orders i.e. on 27th April 1979 and 5th November 1981 which the respondent nos. 6 and 7 till date has not been shown to have challenged.

16. In view of aforesaid facts and circumstances of case, the writ petition stands allowed. The impugned order dated 27th August 1996 passed by Additional Commissioner (Judicial) Meerut Region, Meerut, as well as, order dated 4th April 2003 passed by Commissioner, Meerut Region, Meerut in Case No. 02 of 1996-96) are hereby set aside. The respondent nos. 1 to 5 are hereby directed to forthwith mutate the name of the petitioner in Arazi no.297, Village Nagla Shahpur, Pargana and Tehsil Jewar, District Gautam Budh Nagar and

petitioner would be deemed to be the owner of the property in question. The aforesaid mutation proceedings would be carried out within 30 days from the date of production of certified copy of this order.

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**(2024) 10 ILRA 345**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: LUCKNOW 03.10.2024**

**BEFORE**

**THE HON'BLE SUBHASH VIDYARTHI, J.**

Matter Under Article 227 No. 4747 of 2024

**Santram** ...Petitioner  
**Versus**  
**State of U.P. & Ors.** ...Respondents

**Counsel for the Petitioner:**

Rohit Kumar Singh, Akhilendra Kumar Goswami,  
 Harshit Singh, Shweta Mishra

**Counsel for the Respondents:**

C.S.C., Pankaj Gupta, Pradeep Kumar Shukla

**Civil Law - Code of Civil Procedure, 1908 - Order VII, Rule 11 C.P.C. - Rejection of plaint - A plaint can be rejected under Order VII, Rule 11 (a) C.P.C. where it does not disclose any cause of action. Under Order VII, Rule 11 (d) C.P.C., a plaint can be rejected where the suit appears "from the statement in the plaint" to be barred by any law. For rejecting a plaint under the aforesaid provisions, only the statements made in the plaint have to be examined. Statement in defence cannot be considered for deciding an application under Order VII, Rule 11 C.P.C. Plea regarding concealment of fact, discrepancy in the description of boundaries of the property, or necessary or proper party is not to be decided while deciding an application under Order VII, Rule 11 C.P.C. If any fact has been concealed, it can be brought to the court's notice by the defendants by filing a written statement and presenting**

**evidence in support thereof, and the same can be adjudicated at the appropriate stage. It will not give rise to rejection of the plaint under Order VII, Rule 11 C.P.C. A mere discrepancy in the description of boundaries of the property in dispute, as given in the plaint and in the site plan, does not attract any of the clauses of Order VII, Rule 11 C.P.C. for rejection of the plaint. Plea that the Gaon Sabha is a necessary or proper party can be raised before the learned Trial court at the appropriate stage and need not be examined while deciding an application under Order VII, Rule 11 C.P.C. In the instant case, plaintiffs stated that they have purchased the suit property through a registered sale deed and that the defendant is creating hindrance in the enjoyment of the property. Court held that the plaint discloses a cause of action and cannot be rejected under Order VII, Rule 11 C.P.C. (Para 13, 14, 15)**

**Dismissed.** (E-5)

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Ahilendra Kumar Goswami, the learned counsel for the petitioner, Sri Atul Kumar Mishra, the learned counsel for the State, Sri Pankaj Gupta, the learned counsel for the opposite party no.2/Gaon Sabha, Sri Indrajeet Shukla, the learned counsel for the opposite parties no.3 to 7 and perused the records.

2. By means of the instant petition under Article 227 of the Constitution of India the petitioner has challenged the validity of an order dated 09.12.2022, passed in Regular Suit No.1481 of 2003 by the learned Civil Judge, Junior Division/FTC-II, Gonda, whereby the petitioner's application under Order VII, Rule 11 C.P.C. for rejection of plaint has been rejected. The petitioner has also challenged the validity of a judgment and