3. In the present case, the factual matrix is that the inspection by the respondent authorities was carried out on 04.03.2023 and the samples' test came out on 23.06.2023. The respondent authorities sat over the sample tests for the period of two and half month and then issued a show cause notice on 08.09.2023. The relevant Clause 8.5.6 of Marketing Discipline Guidelines, 2012 reads as follows :-

"8.5.6 in respect of all cases of irregularities, a show cause notice, within 30 days from the date of inspection will be issued to the dealer indicating all the irregularities. However, in case samples of MS/HSD were drawn during inspection then the show cause notice will be issued within 30 days of test results. The show cause notice should be issued along with all reports and other documents, etc. which forms the basis of the notice."

4. From the perusal of the said clause, it is patently clear that show cause notice is required to be issued within 30 days from the date of inspection and if the samples are taken during the inspection, this show cause notice is required to be issued 30 days from the date of test results but in the present case, show cause notice has been issued after more than 2 months from the date of receipt of test results. No proper explanation has been provided by the respondent authorities to indicate the reasons of such delay.

5. Upon further reading of aforesaid clause, we are of the view that this clause is mandatory in nature. Even if some flexibility is provided for the two months delay cannot be accepted. The judgment relied upon by the respondents being ***Indian Oil Corporation Ltd. and Ors. vs. R.M. Service Centre and Ors.*** reported in ***(2019) 19 SCC 662*** is factually different and would not apply in the present case as in the Hon'ble Supreme Court judgment, the clause referred used the word "preferably", but in the present case, the words are different and there does not appear to be any ambiguity with regard to the time provided for issue of show cause notice in the said clause.

6. In light of the same, the present show cause notice cannot be sustained on the ground that the same has been issued with an inordinate delay. Accordingly, the show cause notice is quashed and set aside and the respondent authorities are granted liberty to carry out fresh inspection and draw samples and act in accordance with law.

7. With the above direction, the writ petition is disposed of.

(2025) 2 ILRA 628
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.02.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE VIPIN CHANDRA DIXIT, J.

Writ C No. 33222 of 2023

Span Infra Developers Pvt. Ltd
....Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Ravi Anand Agarwal, Shreya Gupta

Counsel for the Respondents:
Abhimanyu Singh, C.S.C.

A. Civil Law -Constitution of India,1950-Article 226-Urban Land(Ceiling and

Regulation) Act,1976 & 1999(Repeal)-Section 3-The petitioner challenged the interference by the state of up and bareilly development authority with its possession over a piece of land declared surplus under the Act,1976-The petitioner contended that actual physical possession had never been taken by the State and hence, it was entitled to the protection u/s 3 of the Repeal Act,1999-mere symbolic possession does not amount to actual possession and that de jure vesting u/s 10(3) of the Act is not sufficient to extinguish the rights of the holder without actual physical dispossession u/s 10(5) or 10(6)-Finding no evidence of peaceful or forceful dispossession by the state, the court held that the petitioner retained possession of the land and was entitled to the benefit of the Repeal Act-Hence the impugned order was quashed and writ of mandamus was issued to restrain the respondents from interfering with the petitioner possession.(Para 1 to 9)

The writ petition is disposed of. (E-6)

List of Cases cited:

1. Ram Chandra Pandey Vs St. of U.P. (2010)82 ALR 136

2. St. of U.P. Vs Hari Ram (2013) JT 4 SC 275: (2013) 4 SCC 280

3.Gajanan Kamlya Patil Vs Addl. Collr. & Comp. Auth. & ors. JT (2014)3 SC 211.

(Delivered by Hon'ble Shekhar B. Saraf, J.
&
Hon'ble Vipin Chandra Dixit, J.)

1. We have heard Mr. Shashi Nandan, learned Senior Advocate assisted by Ms. Shreya Gupta learned counsel appearing on behalf of the petitioner; learned Standing Counsel for the respondents- state and Mr. Abhimanyu Chauhan, learned counsel appearing on behalf of Bareilly Development Authority.

2. The case of the petitioner is that though the land of the petitioner was declared as surplus under the Urban Land (Ceiling and Regulation) Act, 1976 (in short hereinafter referred to as 'Act') but actual physical possession has not been taken and thus he would be entitled to the benefit of sub-section (3) of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (in short hereinafter referred to as 'Repeal Act').

3. Specific case of the petitioner is that actual physical possession had not been taken and mere symbolic possession would not be sufficient as the petitioner has continued in possession of the plot in question. His name is duly recorded in the revenue records on the basis of sale deed executed in his favour on December 29, 2010.

4. The issue was considered by the Division Bench of this Court in the case of **Ram Chandra Pandey vs. State of U.P. reported in 2010 (82) ALR 136**, wherein it was held that mere symbolic possession does not amount to taking over actual physical possession. It was further held that unless actual physical possession has been taken by the State, the party would be entitled to the benefit of the Repeal Act, 1999.

5. The same view has been taken by the Apex Court in the case of **State of U.P. vs. Hari Ram [JT 2013 (4) SC 275: 2013 (4) SCC 280]**. The question for consideration before the Apex Court in the said case was whether deemed vesting of surplus land under section 10(3) of the Act would amount to taking over de facto possession depriving the landholders of the benefit of the saving clause under sub-section (3) of the Repeal Act. This issue

was answered by the Apex Court in para 36, 39 and 42 of the said judgment, which reads as under:-

"Forceful dispossession

36. The Act provides for forceful dispossession but only when a person refuses or fails to comply with an order under sub-section (5) of Section 10. Sub-section (6) of Section 10 again speaks of "possession" which says, if any person refuses or fails to comply with the order made under sub-section (5), the competent authority may take possession of the vacant land to be given to the State Government and for that purpose, force?as may be necessary?can be used. Sub-section (6), therefore, contemplates a situation of a person refusing or fails to comply with the order under sub-section (5), in the event of which the competent authority may take possession by use of force. Forcible dispossession of the land, therefore, is being resorted to only in a situation which falls under sub-section (6) and not under sub-section (5) of Section 10. Sub-sections (5) and (6), therefore, take care of both the situations i.e. taking possession by giving notice, that is, "peaceful dispossession" and on failure to surrender or give delivery of possession under Section 10(5), then "forceful dispossession" under sub-section (6) of Section 10."

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39. The abovementioned directives make it clear that sub-section (3) takes in only de jure possession and not de facto possession, therefore, if the landowner is not surrendering possession voluntarily under sub-section (3) of Section 10, or surrendering or delivering possession after notice, under Section 10(5) or dispossession by use of force, it cannot be said that the State Government has taken possession of the vacant land.

42. The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the land owner or holder can claim the benefit of Section 3 of the Repeal Act."

6. The same issue has been reaffirmed by the Apex Court in the case of **Gajanan Kamlya Patil vs. Addl. Collector & Comp. Auth. & Ors. reported in JT 2014 (3) SC 211.**

7. There is no material in the counter affidavit to demonstrate that the State or the Bareilly Development Authority, Bareilly has taken peaceful possession, nor is there any material to demonstrate that the possession was handed over by the petitioner voluntarily or was taken over by use of force. There is not even a whisper in respect of any notice having been issued under section 10(6) of the Act. The facts clearly indicates that only de jure possession has been taken by the State, not de facto possession, before coming into force of the Repeal Act.

8. The petitioner is thus entitled to get the benefit of the section 3 of the Repeal Act. In the facts and circumstances, the writ petition deserves to be allowed.

9. Accordingly, the writ petition succeeds and stands allowed. The impugned order dated November 9, 2022 is

quashed. A writ of mandamus is issued commanding the respondents not to interfere in the actual physical possession of the petitioner over the land in dispute. There shall be no order as to costs.

(2025) 2 ILRA 631
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 19.02.2025

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 1000097 of 1995

Shiv Balak Singh & Anr. ...Petitioners
Versus
Board of Revenue & Ors. ...Respondents

Counsel for the Petitioners:
S.C. Misra, I.P. Singh. K.K. Singh, Mohammad Aslam Khan, P.S. Pandey

Counsel for the Respondents:
C.S.C., Ajai Kumar Nigam, G.S. Nigam, Sunil Kumar Mishra, Vivek Singh

(A) Revenue Law –U.P. Zamindari Abolition & Land Reforms Act, 1950 – Sections 331 & 333 – Maintainability of second appeal –appeal cannot be converted into revision – *conversion of second appeal into revision held to be without jurisdiction* – Appeal cannot be converted into revision under Section 333 of the Act – such conversion is illegal and unsustainable. (Para - 24 to 26)

Petitioners, in continuous possession since the zamindari period - declared Seerdars under Section 12 - order attained finality as no appeal was filed – later declared Bhumidars with transferable rights under Section 229-B - affirmed in appeal – belated review was dismissed - second appeal was illegally converted into revision by the Board of Revenue - leading to the present writ petition challenging the impugned order. **(Para - 4 to 18)**

HELD: - Appeal could not be converted into revision. Board of Revenue's order suffered from apparent illegality and was unsustainable in law. Second appeal was filed but was wrongly converted into revision, which was impermissible. Hence, the impugned order suffered from illegality and was liable to be set aside. **(Para - 25,26)**

Petition allowed. (E-7)

(Delivered by Hon'ble Irshad Ali, J.)

1. Supplementary affidavits filed by both the parties are taken on record.

2. Heard Sri Mohd. Arif Khan, learned Senior Advocate assisted by Sri Mohd. Aslam Khan, learned counsel for the petitioners and Sri Shatrughan Chaudhary, learned Additional Chief Standing Counsel for the State-respondent.

3. In spite of notice to the respondents, no one appeared on behalf of respondent Nos.3 to 5.

4. By means of the present writ petition, the petitioners have challenged the order dated 6.9.1994 contained as Annexure-1 to the writ petition. It is further prayed to issue a writ or direction in the nature of mandamus thereby commanding the respondents not to implement the impugned order dated 6.9.1994 and further they be restrained from proceeding anymore.

5. Factual matrix of the case is that the petitioners have been in physical possession over the plot No.5053 measuring 3 bighas 8 biswa and plot No.5054 measuring 3 bighas 7 biswa since the period of zamindari, however, their names were not recorded in the records of Unnao. When the consolidation proceeding