judgments of this High Court have held that even though the statute/rule do not provide for a specific opportunity of hearing to be granted, when there are civil consequences affecting a party, the right approach is to grant an opportunity of hearing to him."

6. In light of the same, the impugned order dated August 12, 2024 is quashed and set aside with a direction upon the authorities to provide the documents they are relying upon, grant an opportunity of hearing to the petitioner, and thereafter, pass a reasoned order within a period of eight weeks from date.

7. We make it clear that once the relied upon documents are provided to the petitioner, he would not seek any adjournment on the date of personal hearing.

8. With the above directions, the writ petition is disposed of.

(2025) 5 ILRA 578
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 16.05.2025

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE OM PRAKASH SHUKLA, J.

Writ C No. 7005 of 2023
With other connected cases

Abbas Ansari ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Shobhit Mohan Shukla, Abhishek Khare, Manoj Kumar Chaurasiya, Mudit Agarwal, Mohd. Aslam Khan, Nitesh Kumar Mishra, Vatsala Singh, Vivek Singh

Counsel for the Respondents:
C.S.C., A.S.G.I., Dilip Kumar Pandey, Gaurav Mehrotra, Harsh Vardhan Mehrotra, Maria Fatima, Namit Sharma, Santosh Kumar Tripathi, Shailendra Singh Chauhan

Civil Law - U.P. Tenancy Act, 1939 - Applicability - Scope - The Act, 1939 applied to Agra and Oudh regions in respect of agricultural tenancies and connected matters - Act, 1939 stood repealed only in areas where Zamindari was abolished under the U.P. Zamindari Abolition and Land Reforms Act, 1950 (rural areas) and the U.P. Urban Zamindari Abolition and Land Reforms Act, 1956 (urban areas) — In areas. Rural or urban, where Zamindari was not abolished (Non-Z.A. lands), the Act, 1939 continues to apply - Nothing in the Act, 1939 excludes its operation merely because the land falls within a Municipality, Town Area or Cantonment, and if such land answers to the definitions of "land" [S. 3(10)], "holding" [S. 3(7)] or involves "improvements" [S. 3(8)], the Act, 1939 governs it — Khataunis and Khewats of Non-Z.A. lands are prepared under the U.P. Land Revenue Act, 1901 and Land Records Manual, but tenancy/tenure rights are determined under the Act, 1939 — In present case, Plot No. 93, Jiamau, Lucknow, though within municipal limits since 1912, had for decades been treated as Non-Z.A. land, khataunis prepared from 1359 Fasli onwards, entries never challenged. In absence of requisite pleadings and proof, Court in writ jurisdiction cannot record finding that land in question ceased to be "land" or "holding" under Act, 1939 merely because it was part of municipal limits in relevant Faslis. (Para 25 - 53)

B. U.P. Land Revenue Act, 1901 - U.P. Revenue Code, 2006 - Section 230 - Repeal - Section 230 of the Code, 2006 repeals the enactments specified in the First Schedule thereof which includes ZA Act, 1950, the Urban ZA Act, 1956 and the Act, 1901 - Saving under Section 230(2)©, repeal of such enactments shall not affect any other enactment in which such enactment has been applied incorporated or referred to. *Held :* Act, 1901 having been applied and referred to in Act, 1939, repeal of Act, 1901 by Section 230 of Code, 2006 does not affect its applicability in view of saving

under Section 230(2)© - Registers under Act, 1939 to be maintained under Section 32 of the Act, 1901 and correction therein to be made under the Act, 1901 as there is no such provision in Act, 1939 - Code, 2006 does not repeal Act, 1939 in its application to Non-Z.A. land, hence Act, 1939 continues to apply to Non-Z.A. land the Act 1901 also continues to apply in the context of application of the said Act, 1939 to Non-Z.A. land - By Section 2 of the Code, 2006 except Chapters VIII and IX, rest of the provisions apply to the entire State including Non-Z.A. lands - Section 38 of the Code, 2006 dealing with corrections of errors or omission in records will apply to Non-Z.A. areas also. Exercise for correction of records in respect of old records and the existing records could still be undertaken under Section 38 of the Code, 2006 - Merely because orders dated 14.08.2020 and 22.03.2021 refer to the Act, 1901 would not invalidate them (Para 54 -58)

C. U.P. Land Revenue Act, 1901 – Sections 33(2)(b), 38, 39 & 40-A – U.P. Revenue Code, 2006 – Sections 38 & 39 – Indian Evidence Act, 1872 – Section 35 – Scope of proceedings for correction of land records – Mutation entries – Whether confer title, right to possession, or extinguish the same – Held, revenue entries by themselves do not decide title, nor confer or deprive any person of title in respect of land – Corrections under S. 33(2)(b) of the Act, 1901 or S. 38 of the Code, 2006 not based on succession or transfer and by express provisos do not empower authority to decide dispute involving title – Mutation of land in revenue records does not create or extinguish title nor has presumptive value on title - Revenue records not documents of title - Even if entries in Record of Rights carry evidentiary value, same would not by itself confer title and presumption of correctness is rebuttable - Mutation entry in revenue records is only for fiscal purpose (Para 59 - 62)

D. U.P. Land Revenue Act, 1901 – Section 39(2) - U.P. Revenue Code, 2006 – Section 38 - Administration of Evacuee Property Act, 1954 - Section12 - *Suo motu power of correction of land records* - Maintainability of action on application by Advocate for Gaon Sabha – Held, sub-S. (2) of S. 39 of the Act, 1901 and S. 38 of the Code, 2006 make it clear that such power of correction can be exercised suo motu on requisite information coming to knowledge of Revenue Authority - Information received by Sub-Divisional Magistrate was sufficient basis – Absence of Gaon Sabha Jiamau not relevant, could be corrected, including old records, or were required to be corrected, especially as, old villages exist within municipal limits even if there is no Gaon Sabha (Para 63)

E. U.P. Land Revenue Act, 1901 - Sections3 3(2)(a), (b), 33(3), 39 & 227(5a) – U.P. Revenue Code, 2006 – Sections 38(2), (3) – Mutation/Entries in khatauni – Requirement of order of competent authority – *Held :* No change can be recorded in the khatauni without an order of the Collector or of the Tehsildar or the Kanoongo – Even under Code, 2006 no mutation or change can be recorded in the khatauni without order of competent authority – *If there is no order of competent authority to record a name in the khatauni, any such entry would be without legal basis*. (Para 64)

F. U.P. Land Revenue Act, 1901 - Sections 33 & 39 – U.P. Revenue Code, 2006 - Sections 38 & 39 – *Long standing entries in Record of Rights – Correction thereof – Held :* Even long standing entries, if fraudulent, forged, without any basis or without order of competent revenue authority, without following procedure prescribed can be corrected - Entries without valid legal basis, made without following prescribed procedure or without order of competent authority, are liable to be corrected irrespective of period of continuance in revenue records – Such errors can also be corrected suo motu if authority comes to knowledge of same - However, such correction cannot be made without notice/opportunity of hearing to recorded person whose name is proposed to be struck off - Only such entries legally and correctly recorded after following prescribed procedure under order of competent authority can be termed genuine and carry rebuttable presumption of correctness – Entry in revenue record must have a legal basis and no title could be claimed on basis of a wrong entry, howsoever long standing – (Para 65 - 69)

G. U.P. Land Revenue Act, 1901 - Sections 33 & 39 – U.P. Urban Planning and Development Act, 1973 - Section 15(9) – Maintainability of writ petition – Mutation

orders/correction of revenue records – Availability of alternative remedy of appeal/revision/recall – Held, Writ Court ordinarily does not entertain a writ petition challenging a mutation order or an order correcting the revenue records and entries therein except in exceptional circumstances, that too, at the behest of persons who were or are already recorded in the revenue records. (Para 70)

H. U.P. Land Revenue Act, 1901 - Sections 33, 34 & 39 – U.P. Revenue Code, 2006 - Sections 37 & 38 – Constitution of India, 1950 - Article 226 – Correction of entries in revenue records – Orders dated 14.08.2020 and 22.03.2021 – Effect – Scope of interference under Art. 226 – Held, entries in favour of Krishna Kumar Kalra and others in khatauni of 1369 and 1380 Fasli were without basis and rightly struck off by Sub-Divisional Magistrate – Restoration of entry of 1362 Fasli showing land as evacuee property in possession of Custodian was only a correction of records and did not amount to adjudicating title or divesting any person of rights – Such orders under Ss. 33/39 of Act, 1901 or S. 38 of Code, 2006 cannot be treated as conferring or extinguishing title; they are amenable to recall, appeal or revision – Petitioners if having valid sale certificates or title deeds are at liberty to assert their rights in appropriate proceedings, but such complicated questions of title and veracity of documents cannot be decided in writ jurisdiction – Mere striking off of names does not affect valid title or possession, if any, of petitioners – Denial of hearing under S. 34(5) to persons who had not reported succession/transfer held justified – Allegations of fraud/forgery of sale certificates cannot be adjudicated in writ proceedings – No interference warranted under Art. 226, but liberty granted to petitioners to seek recall/appeal/revision or initiate regular proceedings – Orders impugned not to be treated as deciding title, right of possession or evacuee nature of property. (Para 71 - 108)

I. Urban Planning and Development Act, 1973- Section 15(9) – U.P. Land Revenue Act, 1901 - Sections 33 & 39 – U.P. Revenue Code, 2006 - corresponding provisions – Constitution of India, Art. 226 – Show Cause Notices – Validity – Held, jurisdictional prerequisites for exercise of power under S. 15(9) are that permission was obtained by material misrepresentation or fraudulent statement or information – Fraud and misrepresentation are terms having definite legal connotation and not to be used casually – In present case, impugned notices dated 18.11.2020 issued by Lucknow Development Authority were based wholly on report dated 16.09.2020 of Sub Divisional Magistrate and order dated 14.08.2020 passed under Ss. 33/39 of Act, 1901 – Sub Divisional Magistrate has no power to decide title or to declare land as evacuee property, nor was there any finding that sale deeds and sale certificates relied upon by petitioners were forged or fabricated – Unless and until veracity of sale certificates is inquired into and proved to be forged or illegal, no action under S. 15(9) could be initiated – Notices being based on misconception of law and fact do not satisfy jurisdictional prerequisites and are liable to be quashed – Accordingly, show cause notices dated 18.11.2020 quashed – However, liberty reserved to Authority to proceed afresh, if cause so arises, in accordance with law. (Para 119 - 129)

Allowed. (E-5)

(Delivered by Hon'ble Rajan Roy, J.)

1. All these writ petitions have been clubbed and heard together.

2. In Writ C No. 661 of 2021 (Faraz Hussain vs. State of U.P. and others), Writ C No. 684 of 2021 (Asma Hussain vs. State of U.P. and others) and Writ C No. 687 of 2021 (Nadeem-Ur-Rehman and another vs. State of U.P. and others), order dated 14.08.2020 passed by the Sub Divisional Magistrate, Lucknow, District Lucknow in exercise of his powers under Section 33 read with Section 39 of the U.P. Land Revenue Act, 1901 (hereinafter referred to as the 'Act, 1901')

by which he has corrected entries in the 'records of rights' (Khatauni) pertaining to Gata No. 93 situated in Village Jiamau, Tehsil Sadar, District Lucknow, is under challenge. Apart from it, notices issued by the Vice Chairman, Lucknow Development Authority, under Section 15 (9) of the U.P. Urban Planning and Development Act, 1973 (hereinafter referred to as the 'Act, 1973') have also been challenged.

3. In Writ C No. 7005 of 2023 (Abbas Ansari vs. State of U.P. and others), apart from the order dated 14.08.2020 referred above, an order dated 22.03.2021 has also been challenged which reiterates the decision taken in the order dated 14.08.2020. Apart from it, the petitioner of this writ petition has prayed for issuance of a writ of mandamus to the opposite parties not to interfere in his possession. Opposite party no. 6 in this petition is his brother who is said to have similar rights as the petitioners, in the property in question.

Facts

4. Before proceeding further, we need to discuss the factual background leading to the impugned orders.

5. It is said that on 17.07.2020 the Secretary, Lucknow Development Authority wrote to the District Magistrate, Lucknow about certain facts which came to his knowledge regarding gata no. 93, whereupon, the District Magistrate, Lucknow sought a report regarding owners of the House No. 21/14A/1, 21/14B, 21/216A existing thereon.

On 28.07.2020, an alleged Advocate on the panel of Gaon Sabha filed a complaint regarding fabricated entries in respect of the aforesaid Gata, which, according to him, was Evacuee Property.

On 28.07.2020, the Sub Divisional Magistrate called for a report from the Tehsildar and on that very day the Tehsildar submitted a report before him *inter alia* stating that the property was recorded as Evacuee Property in 1362 Fasli, but, without any basis and without any order of the competent authority it came to be recorded in the name of Laxmi Narayan in 1369 Fasli and likewise without any basis or order of the competent authority in the 1380 Fasli it came to be recorded in the name of Krishna Kumar Kalra, who, transferred the properties to several persons, who ultimately came to be recorded, therefore, the entries require a correction, as, apparently, they were without any basis and were 'Farzi'.

On 06.08.2020 the Sub Divisional Magistrate directed registration of a case based on the report of the Tehsildar and also for issuance of notice to the concerned, fixing 10.08.2020 as the next date in the proceedings. These proceedings were apparently registered in exercise of his powers under Section 33 read with Section 39 of the Act, 1901.

On 10.08.2020, an order was passed for publication of notice in the newspapers fixing the next date as 13.08.2020 and on 14.08.2020, orders were reserved in the proceedings and on the same day the impugned order dated 14.08.2020 was passed. This order was passed after hearing the alleged counsel for the Gaon Sabha, none else.

6. By means of the impugned order dated 14.08.2020, the Sub Divisional Magistrate, Lucknow, District Lucknow has corrected the records pertaining to Gata/Plot No. 93 (5 Bigha, 3 Biswa, 10 Biswansi) situated in Village Jiamau,

Tehsil Sadar, District Lucknow on the ground that the said Non-Z.A. land was an Evacuee Property as is mentioned in the Khatauni of 1362 Fasli (1955). This property was mentioned at Sl No. RHZ-1/1 of register No. 10 pertaining to Evacuee Properties which is maintained by the Board of the Revenue, U.P., as an Evacuee Property. Therefore, subsequent entries in favour of Laxmi Narayan in 1369 Fasli, Krishna Kumar Kalra in 1380 Fasli and 9 other persons to whom it was allegedly transferred, namely, Ahsan Ehtesam, Aslam Ehtesam, Syed Ata Kareem, Krishna Kumar Kalra, Smt. Naseema Kamal, Smt. Malka Begum, Smt. Pasmin Som Siddiqui, Smt. Wazida Begum and Hilal Ahmed, without any basis/without any order of the competent authority, were illegal and 'Farzi'.

7. Accordingly, apart from the name of Krishna Kumar Kalra, the names of all 9 (nine) persons who were recorded in respect of the said plot/gata has also been struck off and the entry of 1362 Fasli (1955) has been restored wherein Mohd. Wasim was recorded with the endorsement that the property was in possession of the Custodian Evacuee Property.

8. Now, the case of the petitioners in this regard is that the aforesaid plot of land, on which existed a bungalow bearing No. 7, in Dalibagh, Lucknow, was owned by Barrister Wasim who migrated to Pakistan. By a notification under Section 7 of the Administration of Evacuee Property Act, 1950 (hereinafter referred as the 'Act, 1950') dated 31.07.1950 the said property was declared an 'Evacuee Property'. As a consequence of the aforesaid declaration under Section 7, the property vested in the Custodian, that is why the endorsement in the Khatauni of 1362 Fasli (1955) regarding possession of custodian Evacuee properties.

9. There was cross-migration between India and Pakistan consequent to partition which took place in 1947, therefore, to rehabilitate displaced persons another enactment, namely, the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as the 'Act, 1954') was promulgated to provide for the payment of compensation and rehabilitation grants to such persons and for matters connected therewith.

10. According to petitioners, aforesaid Gata no. 93 was acquired by the Central Government under Section 12 of the Act, 1954 for the purpose connected with relief and rehabilitation of displaced persons including payment of compensation to such persons by publishing a notification dated 26.11.1957 in this regard, which, as claimed, finds mention in the sale-certificates and certain judgments and decrees which are on record.

11. According to them, on publication of such notification on 26.11.1957 under Section 12 (1) of the Act, 1954, the right, title and interest of any Evacuee in the Evacuee Property stood extinguished and the Evacuee Property vested absolutely in the Central Government free from all encumbrances. It ceased to be an Evacuee Property, as has been held by Hon'ble the Supreme Court in the case of ***Lieutenant Governor of Delhi and others vs. Matwal Chand (Dead) through Legal Representatives1***.

12. It is also their case that the said land became part of the compensation pool referred under Section 14 of the Act, 1954. After rehabilitation and compensation to

displaced persons, as the said plot of land still remained unutilized, therefore, it was put to auction and settled with persons such as Krishna Kumar Kalra, Hilal Ahmed, Ata Kareem, Raj Kumari Chopra, etc. though they were not displaced persons and it was permissible to do so under Section 20 of the Act, 1954.

13. According to them, it is in these circumstances that the aforesaid plot 93, parts thereof, were auctioned and sold to various persons and the sale-certificates were issues to them.

Through these auction purchasers, petitioners claim to have acquired title and possession in respect of parts of plot no. 93.

14. In this very context, we may point out that the petitioner of Writ C No. 684 of 2021 (Asma Hussain) claims through one Hilal Ahmed who had purchased part of the said land in such an auction sale, as referred above, held on 05.07.1973, which is also the date of issuance of sale-certificate although it has been registered subsequently on 25.06.1979. The said petitioner claims to have purchased 4900 square feet of land which was settled in favour of Hilal Ahmed. The sale-deed in favour of Asma Hussain was executed and got registered by Hilal Ahmed on 24.06.1983. She says that thereafter she applied for permission/sanction of map under Section 15 of the Act, 1973 which was sanctioned on 22.07.1996. She thereafter built a house thereon and is residing in it. Hilal Ahmed is a person whose name finds mention in the order dated 14.08.2020 and in fact his name has been struck off from the Non-Z.A. khatauni and the earlier entry regarding the property being an Evacuee Property has been restored, as mentioned earlier. The fact that Hilal Ahmed was recorded in the Non-Z.A. khatauni is not in dispute but, we have not been told as to when said Hilal Ahmed came to be recorded in the Non-Z.A. Khatauni for the first time and on what basis and under which category. She also claims to have been recorded in the Record of Rights as Bhumidhar with transferable rights and has annexed photocopy of Khatauni of 1402 Fasli (1996).

15. The petitioner of Writ C No. 661 of 2021 - Faraz Hussain claims title/rights in the land/building in question through one Raj Kumari Chopra in whose favour aforesaid property was auctioned, similarly, on 06.09.1974. The sale-certificate is dated 06.09.1976 and it was registered on 16.11.1976. The said Raj Kumari Chopra executed a sale-deed in favour of Altaf Hussain father of Faraz Hussain (petitioner) and Irfan Hussain (uncle) on 09.06.1980 in respect of plot 10C (II) measuring 4000 square feet of land. On 05.02.2004 Irfan Hussain is said to have sold off 600 square feet of his share of land to his brother Altaf Hussain i.e. the father of the petitioner. Prior to it on 20.12.2003 it is said that a map was got sanctioned for construction of building and ultimately the father of the petitioner (Faraz Hussain) constructed a multi-storied apartment on plot no. 10C and in one of the flats the petitioner resides. Para 18 of his writ petition also mentions about other flat owners in the said apartment.

16. Now, Raj Kumari Chopra, the original predecessor in interest of Faraz Hussain was never recorded in the revenue records. Her name does not find mention even in the impugned order nor in the chart contained in para 20 of the counter affidavit

filed in this writ petition which mentions about 9 recorded persons in respect of the aforesaid plot no. 93 and in sub-plots carved therefrom, whose name has been struck off. In this view of the matter, Faraz Hussain's case is slightly different from other cases as the order dated 14.08.2020 does not even mention the name of Raj Kumari Chopra. It being so why he has challenged the said order? Faraz Hussain claims prejudice because of issuance of notice dated 18.11.2020 for cancellation of the map based on the order dated 14.08.2020, that is why he has challenged the said order also and also, as, according to him the said order affects/prejudices his title to the land.

17. The petitioners of Writ C No. 687 of 2021 (Nadeem-Ur-Rehman and Naushad Alam) claim through Ata Kareem albeit not directly but through a line of successors in interest of Ata Kareem. It is said that on 05.07.1973, part of plot no. 93 was auctioned in favour of Ata Kareem. The sale certificate in his favour is dated 05.07.1973 but it was registered on 25.06.1979. Ata Kareem died in April 1984 leaving behind two sons and two daughters, namely, S.S. Ahmed Rizvi, Masood Ahmed Rizvi (sons), Rehana Markada and Raees Fatima (daughters). Raees Fatima gifted her share to her nephew Irfan Ahmed. S.S. Ahmed Rizvi and Irfan Ahmed executed a sale-deed in favour of the petitioners with respect to 4900 square feet of land. The petitioners applied for sanction of map for constructing a building on 29.06.2004 which was permitted and thereafter they built a multi-storied building wherein the petitioners also reside. The names of other flat owners are mentioned in para 17 of their writ petition. Ata Kareem is one of the persons whose name finds mention in the order dated 14.08.2020 and whose name has been struck off from the khatauni, as already mentioned. Here again we have not been told of the year/Fasli in which Ata Kareem first came to be recorded in the Non-Z.A. Khatauni and its basis nor the category under which he may have been recorded initially.

18. As regards petitioner of Writ C No. 7005 of 2003 - Abbas Ansari, he claims through Krishna Kumar Kalra, in whose favour, a sale-certificate was allegedly issued on 30.12.1969 and was registered on 07.02.1970, although, not directly, but, through a long chain of his successors in interest. The said sale-certificate does not mention the area of land purchased by Krishna Kumar Kalra though it mentions the boundaries of the land auctioned in his favour. As already referred, Shri Kalra was recorded in Non-Z.A. Khatauni in 1380 Fasli (1973) under category 5 (ka) i.e. illegal occupant without title. It is said that Krishna Kumar Kalra, after purchasing three bighas of plot no. 93M (0.713 hectares) in the auction-sale held under the Act, 1954, sold various portions thereof to different persons and on 19.05.1995 about 11992.61 square feet was sold to Shakeela Begum wife of Mohammad Ahmad. The said Shakeela Begum executed a registered sale-deed in respect of the aforesaid plot in favour of one Dr. Shahid Hussain on 05.02.2001. Dr. Shahid Hussain in turn executed a registered sale-deed on 09.03.2004 in favour of Mohammad Shubhan Ullah Ansari, the grandfather of petitioner and opposite party no. 6. Mohammad Shubhan Ullan Ansari in turn made an oral gift (Hiba) in favour of his wife Rabia Begum. It is said that Rabia Begum executed a registered will in favour of the petitioner and opposite party no. 6 bequeathing the said property to her grandsons, aforesaid.

Neither Shakeela Begum nor any other successor in interest, including Mohammad Shubhanullah Ansari and Rabia Begum, were recorded in the revenue records.

19. The building/flat existing on the land purchased by the predecessor in interest of Abbas Ansari which allegedly belonged to Rabia Begum had already been demolished on 27.08.2020 in pursuance to an order dated 11.08.2020 passed by the Lucknow Development Authority, prior to filing of his writ petition, but, no relief has been sought regarding this action in his petition, though, a cursory reference has been made in para 42 of the petition regarding demolition of the building. We have already passed orders dated 15/16.01.2025 and 04.02.2025 in this regard.

20. After passing of the order dated 14.08.2020, the Sub Divisional Magistrate, Lucknow immediately communicated his order to the Secretary, Lucknow Development Authority as also to the District Magistrate, Lucknow which led to issuance of notices under Section 15 (9) of the Act, 1973 to the petitioners of three writ petitions i.e., Writ C No. 661 of 2021, Writ C No. 684 of 2021 and Writ C No. 687 of 2021, as to why their map in respect of the buildings existing on the aforesaid land, which had been sanctioned/permitted under Section 15 (1) of the Act, 1973, be not cancelled as they had made false statement and misrepresented the facts regarding their title to the land in question while applying for sanction of map. The said notices were issued on 18.11.2020 in all the above mentioned three writ petitions. We are not aware of issuance of any such notice to the petitioner of Writ C No. 7005 of 2023 - Abbas Ansari or his brother.

Analysis and Conclusions

21. We have heard Shri M.A. Khan learned Senior Counsel assisted by Mohd. Aslam Khan for the petitioner in Writ - C No. - 7005 of 2023, Shri J.N. Mathur, learned Senior counsel assisted by Shri Rajesh Chandra Mishra, Shri Mudit Agarwal and Ms. Aishwarya Mathur for petitioners in other petitions, Shri Shashi Prakash Singh, learned Additional Solicitor General of India assisted by Shri Deepanshu Das, learned counsel for the Union of India, Shri Ajay Kumar Mishra, learned Advocate General assisted by Shri Kuldeep Pati Tripathi, learned Additional Advocate General, Shri Sudhanshu Srivastava, Shri Ishan Mehta, learned Additional Chief Standing Counsel for the State of U.P., Shri Shailendra Kumar Singh, learned Chief Standing counsel, Shri Tushar Verma, learned Additional Chief Standing counsel, Shri Vivek Kumar Shukla, learned Additional Chief Standing counsel for the State of U.P., Shri Gaurav Mehrotra, learned counsel for the opposite party no. 6 in Writ- C No. 7005 of 2023, Shri Ratnesh Chandra, learned Counsel for the Lucknow Development Authority and Shri S.S. Chauhan, learned counsel for Nagar Nigam.

22. The contention of the rival parties shall be dealt with while discussing and deciding various issues which have arisen for our consideration.

23. Land bearing plot no. 93, which is subject matter of these writ petitions, is, as per the impugned order, a 'Non-Z.A.' land. The Khatauni which has been corrected is also referred as non-Z.A. Khatauni.

24. To understand the meaning of Non-Z.A. land or Non-Z.A. Khatauni we need to point out that a zamindari system was prevalent for collection of revenue in Agra and Oudh Region which was governed by an enactment known as United Provinces Tenancy Act, 1939 (hereinafter referred as the 'Act, 1939'). This Act, 1939 related to agricultural tenancies and matters connected therewith in the aforesaid Region. Zamindari came to be abolished in some of the rural areas by U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred as the 'ZA Act, 1950'). Likewise, in certain urban areas zamindari was abolished by the Urban Zamindari Abolition and Land Reforms Act, 1956 (hereinafter referred as the 'Urban ZA Act, 1956'). Both these Acts repealed the Act, 1939 but only in respect of areas to which they were made applicable. The areas, rural or urban, in which zamindari had not been abolished are known as Non-Z.A. land and khataunis in respect thereof as Non-Z.A. khataunis. These lands are governed by the Act, 1939. Thus, even after promulgation of the ZA Act, 1950 and the Urban ZA Act, 1956, the Act, 1939 continued to be applicable to Non-Z.A. lands. Land in respect to which zaminidari was abolished by ZA Act, 1950 or Urban ZA Act, 1956 are known as Z.A. land and they are governed by these Acts.

Applicability of the Act 1939, the Act 1901 and Ancillary Issues

25. In the context of challenge to orders dated 14.08.2020 and 22.03.2021, one of the issues which arose during the course of argument was as to whether the Act, 1939 and the Act, 1901 would be applicable to the land in question i.e. Plot No. 93 (Non-Z.A. land), which falls in an urban area i.e. in a municipality or municipal corporation with buildings existing thereon and whether Khataunis are at all required to be prepared in respect thereof and whether there was any requirement for the petitioners to get their names mutated therein.

26. It was argued by Shri Mathur on behalf of the petitioners that there are buildings existing on plot no. 93, one of which has been demolished, therefore, the land in question is not a land referable to Section 3 (10) of the Act, 1939 nor a 'holding' under Section 3 (7) of the said Act, consequently no khewats or khataunis were/are required to be prepared in respect thereof, as such, the entire exercise of preparation of khataunis and correction of records by the impugned order is non-est. Taxes are payable under the Act, 1959 to the Municipal Corporation where his clients were are recorded and in fact there was no requirement for the petitioners to get their names mutated in the revenue records which have been unnecessarily corrected by the impugned orders.

27. These pleas have not been specifically taken in the pleadings in any of the writ petitions except for a cursory reference in Abbas Ansari's case that the land being part of Municipal Corporation, Lucknow, it alone had jurisdiction in such matters.

28. We may point out that one of the petitioners Asma Hussain claims to have got her name recorded in Khatauni and has annexed photocopy thereof relating to 1462 Fasli (1955) and it is not in dispute that Hilal Ahmed, Ata Karim and Krishna Kumar Kalra alleged predecessors in interest of other petitioners were all recorded in the Non-Z.A. Khatauni pertaining to the land in question. These

facts apparently belie the assertion of the petitioners as noted above.

29. Further, there is no challenge to the Non-Z.A. khataunis which admittedly have been prepared in respect of this very land right from the 1359 Fasli till 1472 Fasli and in which predecessor in interest of most of the petitioners were recorded, so was one of the petitioners Asma Hussain, as claimed by her.

30. There is no pleading in any of the writ petitions that Zamindari was not abolished in respect of the land in question.

31. Section 3 (10) of the said Act, 1939 defines **'land'** to mean land which is let or held for growing of crops, or as grove-land or for pasturage. It includes land covered by water used for the purpose of growing singhara or other produce, but does not include land for the time being occupied by buildings or appurtenant thereto other than buildings which are improvements. **'Improvements'** are defined in Section 3 (8) which reads as under:

"(8) "improvement" means with reference to a tenant's holding :

(i) a dwelling-house erected on the holding by the tenant for his own occupation or a cattle shed or a store-house or any other construction for agricultural purposes erected or set up by him on his holding;

(ii) any work which adds materially to the value of the holding and is consistent with the purpose, for which it was let, and which, if not executed on the holding, is either executed directly for its benefit or is after execution made directly beneficial to it; and, subject to the foregoing provisions of this clause, includes –

(a) the construction of wells, water channels and other works for the supply or distribution of water for agricultural purposes;

(b) the construction of works for the drainage of land, or for the protection of land from floods, or from erosion or other damage by water;

(c) the reclaiming, clearing, enclosing, or levelling of land;

(d) the erection in the immediate vicinity of the holding otherwise than on the village site, of buildings required for the convenient or profitable use or occupation of the holding;

(e) the construction of tanks or other works for the storage of water for agricultural purposes;

(f) the renewal or reconstruction of any of the foregoing works, or such alterations therein, or additions thereto, as are not of the nature of mere repairs: Provided that such water channels, embankments, enclosures, temporary wells, or other works are made by tenants in the ordinary course of cultivation shall not be deemed to be improvements."

32. Except buildings which are 'improvements', other buildings are not included in the definition of 'land' under Section 3 (10). 'Improvements' as defined in Section 3 (8) are included in such definition of land.

33. Section 3 (7) of the Act, 1939 defines 'holding' to mean a parcel or parcels of land held under one lease, engagement or grant, or in the absence of such lease, engagement or grant under one tenure and in the case of a thekedar includes the theka area.

34. Section 21, mentions seven categories of tenants. Sections 22 to 31 explain as to what is meant by the tenancies referred therein.

35. Whether the land in question bearing plot no. 93 was a 'land' referred under Section 3 (10) of the Act, 1939 or a holding under Section 3 (7) or not, in the year 1369 Fasli (1962) and 1380 Fasli (1973), as, essentially, it is in these Faslis that the error is alleged to have occurred in the records pertaining to Laxmi Narayan and Krishna Kumar Kalra as per the opposite parties, is not a purely legal question. It will involve a factual inquiry as to the nature of land and the 'use' to which it was being put in the relevant years and it may involve scrutiny of relevant records relating to the those and earlier years.

36. Such issues about the nature of the land or the use to which it was being put in 1359 Fasli (1952), 1362 Fasli (1955) as also 1369 (1962) and 1380 Fasli (1973) when Laxmi Narayan and Krishna Kumar Kalra came to be recorded for the first time under category 5 (Ka) of Para 124A of the Land Records Manual read with Section 32 of the Act, 1901, or thereafter, can not be adjudicated in summary proceedings under Article 226 of the Constitution of India. Correction in the entries of the subsequent years or Faslis (upto 1472 Fasli) is only consequential to the correction in Non-Z.A. Khatauni of 1369 Fasli and 1380 Fasli and restoration of entry of 1362 Fasli which contained the remark that the property was in the possession of custodian evacuee properties.

37. Neither the petitioners nor the opposite parties have disclosed the Fasli when Hilal Ahmed and Ata Kareem came to be first recorded. Land use would have to be seen in respect of the Fasli when these persons came to be recorded, but, we have not been informed about these facts with supporting proof.

38. When we peruse Section 3 (10), as already noticed, it excludes land for the time being occupied by buildings or appurtenant thereto other than the buildings which are improvements. 'Improvement' as already noticed has been defined in Section 3 (8) of the Act, 1939. No such foundation has been laid down in any of the writ petitions with supporting proof that the land ceased to be a 'land' within the meaning of Section 3 (10) of the Act, 1939 or holding under Section 3 (7), if so, when, nor that there was absolutely no requirement in law to maintain the khewats or khataunis in respect thereof. Such an issue in the very nature of things requires evidence to be led that too relating to the year 1359 Fasli and onwards, especially 1369 Fasli, 1380 Fasli.

39. In fact, a copy of the sale-deed dated 02.03.1997 annexed by petitioner - Abbas Ansari, which relates to plot no. 93 and which is said to have been executed by Krishna Kumar Kalra son of Thakurdas in favour of Smt. Shakeela Begum, mentions that 'Mohd. Wasim was owner of **urban agricultural khasra** no. 93 area 8 Biswa, 16 Biswansi, 4 Kachwansi in Village Ziamau, Tehsil Lucknow, situated within Corporation limits'. The sale-deed goes on to mention that the plot is situated in the shape of 'Gaddha' and is used for agricultural purposes etc.

40. There is no undisputed proof regarding nature of the plot in the 1359, 1362, 1369 and 1380 Fasli. Mere existence of Bungalow thereon belonging to Mohd. Wasim would not by itself take it out of the

purview of definition of 'land' or 'holding' under the Act, 1939 if it was an improvement, especially in view of the recital in the sale-deed dated 02.03.1997 referred above.

41. The sale-deed dated 09.03.2004, copy of which has also been annexed by petitioner - Abbas Ansari with his rejoinder affidavit, which was executed by Dr. Shaheed Hussain, who had purchased it from Shakeela Begum, in favour of Shubhanullah Ansari states that the land is residential and is **wholly undeveloped** with 12 to 14 feet deep ditches therein. We cannot determine the veracity of these recitals in exercise of writ jurisdiction.

42. Nothing has been stated in the pleadings as to when the land became part of a Development Area, if any, declared under the Urban Planning and Development Act, 1973.

43. A notification dated 11.09.1974 was placed before us according to which 'Lucknow Development Area' comprised of limits of Municipal Corporation and also an area of 8 Km around it in all four directions.

44. Declaration of Development area under the Act, 1973 merely means that the area is required or proposed to be developed. It does not mean that it has already been developed. This is evident from the Act, 1974 and notification dated 11.09.1974 itself.

45. Land use of plot no. 95 measuring 5 Bigha, 3 Biswa and 10 Biswansi, that too, from 1362 Fasli onwards can not be decided/determined in these proceedings which are of summary nature.

46. We must reiterate that the exercise impugned herein does not relate only to the correction of records of 1427 Fasli (2020) or immediately preceding the same, in fact, its genesis lies in the records relating to 1362 Fasli, 1369 Fasli and 1380 Fasli (1973). Rest is consequential. There is a time period of 47 years in between. We do not know when the nature of land/holding changed from one referable to Section 3 (7) and Section 3 (10) of the Act, 1939 to any other land, if at all it changed; whether the buildings, etc. were improvements in terms of Section 3 (8) or were buildings excluded by Section 3 (1) of the Act, 1939.

47. No doubt Plot no. 93 is situated in village Jiamau. It now forms part of an area which is referred as Dalibagh and falls within Ram Manohar Roy ward of the Municipal Corporation, Lucknow. The counsel for the Municipal Corporation, Shri S.S. Chauhan, placed before us a notification dated 09.03.1912 as also the Schedule appended to it, wherein the boundaries of Lucknow Municipality were delineated and Village Jiamau finds mention therein, meaning thereby, at least since 9th of March, 1912 Village Jiamau became part of Lucknow Municipality. At that time the Municipalities were governed by an enactment known as United Provinces Municipalities Act, 1900 as amended from time to time. On 24.06.1916, the U.P. Municipalities Act, 1916 was published. Jiamau was part of Lucknow Municipality prior to coming into force of the Act, 1916 and continued to be so thereafter. In fact, even today, it is part of the Lucknow Municipal Corporation and in this context we may mention that ultimately the Municipal Corporation Act, 1959 was enacted which came into force in the same year. Shri Chauhan, learned counsel for the Municipal Corporation has placed before us a notification dated 11.02.1959 delineating the boundaries of

Municipal Corporation, Lucknow constituted under the Act, 1959 along with a map. The limits of the City of Lucknow have been demarcated and the area falling within it constituted the limits of Municipal Corporation, Lucknow. There is a map annexed with it. A notification dated 03.10.1974 was also placed before us, which is on record, according to which Ram Manohar Roy Road was part of Wart No. 2, Hazratganj.

Part IX of the Constitution of India dealing with Municipalities as also Municipal Corporation Act, 1959 were relied by the petitioners' counsel in this regard.

48. However, there is nothing in the Act, 1939 which excludes its application to an area or land merely because it is within a municipality, Town Area or Cantonment Board. There could be land or holding, as defined in the Act, 1939, within such area.

49. As already stated, none of the khataunis prepared since 1359 Fasli which are Non-ZA khataunis have been put to challenge in any proceedings or in these proceedings on the ground that these khataunis were not liable to be prepared as the land was not Non-ZA land. In fact, it is the Khewats which are prepared in respect of Non-ZA land and then the Khataunis but then there is no challenge in respect thereof also.

50. In respect of Non-ZA lands the khewats and khataunis are maintained as would be evident from the U.P. Land Revenue Act, 1901 and the U.P. Land Records Manual which have already been referred. We may in this regard refer to Para 174 of the Land Records Manual which refers to preparation of Khewats in respect of Non-ZA lands and also khataunis as is referred in Para 618-3 (A) of the said Manual. According to Para 123 (i), 441, 618-3 (A) (F) (5) khatauni shall be prepared only for the khewats. Para 254 of the U.P. Land Records Manual refers to preparation of mutation reports in respect of ZA and Non-ZA land both in terms of the U.P. Land Revenue Act, 1901. Para 585 (5) of the said Manual refers to testing of khewats and comparison of khataunis with errata list in the area to which the U.P. Zamindari and Land Reforms Act, 1950 does not apply, therefore, this refers to preparation of khewats, etc. in respect of Non-ZA land as such even where the Act, 1939 applies khewats and khataunis have to be prepared. Para 124A of the U.P. Land Records Manual shows that Category 6-A of land is Grove land, Category 9 (ii) refers to sites, roads, railways, buildings and lands put to non-agricultural uses. Section 32 of the Act, 1901 provides that Record of Rights shall consist of a register of all persons cultivating or otherwise occupying and specifying the particulars required by Section 55. There are various procedures relating to preparation of khewats and khataunis in respect of Non-Z.A. land i.e. land to which the Act, 1939 applies such as detailed in the Land Record Manual. The question as to whether the Act, 1939 applies to the property in question or not has already been dealt with earlier.

51. Pertinently the Act, 1939 only determines tenancy/tenures in respect of Non-Z.A. lands. Land Records including khataunis are not prepared under the Act, 1939. Every District in Uttar Pradesh is a Revenue District. Land records in such districts are maintained as per the Act, 1901 and under the U.P. Revenue Code, 2006 read with U.P. Land Records Manual. Determination of classes of land or

arrangement of holdings is not done under the Act, 1939. It is done under the U.P. Land Records Manual prepared under Section 243 (1) (b) of the Act, 1901. Arrangement of Non-Z.A. land or holdings or their classification is as per Para 124A of the said Manual. The U.P. Land Records Manual continues to be applicable even after promulgation of U.P. Revenue Code, 2006 by virtue of Section 234 (3) thereof.

52. The land in question has been treated as Non-ZA land for the past several decades khataunis have also been prepared as Non-ZA khataunis none of which have been put to challenge by the petitioners earlier or in these proceedings, therefore, it is difficult for this Court rather it is impossible for it, considering the constraints of writ jurisdiction and the summary proceedings before it, to record any such finding as to whether khataunis or khewats in respect thereof were required to be prepared or not, in the absence of requisite pleadings and proof, especially as, these issues could have far reaching consequences on the maintenance of records of ZA and Non-ZA land.

53. This issue cropped up during course of hearing, but, requisite pleadings and proof in this regard by either of the parties are absent. We, therefore, find ourselves unable to record any such opinion that the land in question merely because it was a part of municipal limits in the relevant Faslis, it ceased to be a land or holding as referred in the Act, 1939 or that the Act, 1939 was not applicable.

Repeal of the Act, 1901 by Section 230 of the Code, 2006, its saving in the context of application of Act, 1939 and Section 38 of the Code, 2006

54. Another issue raised by Shri Mathur and Shri Khan on behalf of the petitioners was as to whether the Act, 1901 under which the impugned orders 14.08.2020 and 22.03.2021 have been passed was available for exercise of power of correction of records by the Sub Divisional Magistrate, as it had been repealed by Section 230 of the Code, 2006, which came into force on 11.02.2016.

55. Section 230 of the Code, 2006 repeals the enactments specified in the First Schedule thereof which includes ZA Act, 1950, the Urban ZA Act, 1956 and the Act, 1901. Sub-Section 2 of Section 230 provides that notwithstanding anything contained in sub-Section (1), the repeal of such enactments shall not affect *inter alia* - ***'(c) any other enactment in which such enactment has been applied incorporated or referred to'***. The Act, 1901 has been applied and referred to in the Act, 1939 when referring to maintenance of registers and recording of entries in the records. There is repeated reference to the Act, 1901 in the Act, 1939 viz. in Sections 3 (15) Section 3 (16), Section 256 (2) and in Section 24 regarding presumption from entry at revision of records, the date first day of January, 1902 mentioned therein is the date on which the Act, 1901 came into force as is mentioned in Section 1 (3) thereof. For the purposes of Non-Z.A. areas the Act, 1901 was the enactment under which the revenue records were maintained, the corrections therein were undertaken. There was no other enactment in this regard. Section 3 (16) of the Act, 1939 defines "recorded" to mean recorded in a register maintained under the provisions of Section 32 of the United Provinces Land Revenue Act, 1901. Thus, what it means is that, the registers were to be maintained in respect of the areas to

which the Act, 1939 applied, as per the Act, 1901, which is also evident from Section 3 (15) of the Act, 1939. A *fortiori* correction in such records would also be made under the Act, 1901 as there is no such provision in the Act, 1939 and the same would not be affected by Repeal of the Act, 1901.

56. The Code, 2006 does not repeal the Act, 1939 in its application to Non-Z.A. land, therefore, the Act, 1939 continues to apply to such land, and, in view of Section 230 (2) C of the Code, 2006, the Act 1901 also continues to apply in the context of application of the said Act, 1939 to Non-Z.A. land.

57. The issue regarding applicability of the Act, 1939 to Plot No. 93 has already been discussed earlier. Buildings excluded in Section 3 (10) of the Act, 1939 would be excluded from the applicability of the Act, 1939 and consequently the Act, 1901, in this context, but, as stated earlier, we do not have requisite pleadings and material to decide as to what were the buildings, if any, existing in 1359 Fasli, 1362 Fasli, 1369 Fasli or 1380 Fasli and if any buildings came up on the land forming part of plot no. 93, the dates on which the said buildings came up, what was the nature of the said buildings, how far they were covered by the definition of 'improvements' which are included in Section 3 (10) read with Section 3 (8) of the Act, 1939, what was the nature of the land bearing Gata No. 93, when did its use change from agricultural use, if at all, when the area was actually developed, as already discussed earlier, therefore, this issue of non-applicability of Act 1901 is intertwined with the said issue.

58. Further, as per Section 2 of the U.P. Revenue Code, 2006 except Chapter VIII and IX, rest of the provisions of the Code, 2006 have been made applicable to the entire State of U.P. Application of Chapter VIII and IX of the Code, 2006 has been restricted to the areas to which the ZA Act, 1950 and the Urban ZA Act, 1956 were applicable. Chapter VIII and IX of the Code, 2006 deal with 'Management of land and other properties by Gram Panchayat or other local authority' and 'Tenures' respectively, meaning thereby, these chapters apply only to areas where Zamindari was abolished by the ZA Act, 1950 and Urban ZA Act, 1956 and not to other areas, but the remaining provision of the Code, 2006 apply to the entire State of U.P., including Non-Z.A. lands (where zamindari was not abolished), therefore, Section 38 of the Code, 2006, dealing with corrections of errors or omission in records will apply to Non-Z.A. areas also. Thus, the exercise for correction of records in respect of old records and the existing records could still be undertaken under Section 38 of the Code, 2006, as such, merely on this count i.e. alleged repeal of Act 1901, we would not invalidate the impugned orders. The contention of Shri Gaurav Mehrotra that passing of an order under a repealed provision is different from a case where an order is passed under a wrong provision, is not acceptable in the facts of this case.

Scope of proceedings for correction of land records and its impact on questions of title, right to possession, etc.

59. As regards the contention of learned counsel for the petitioners that the impugned orders have veritably decided and nullified their title to the land/building, revenue entries by themselves do not decide title, especially entries or corrections which are referable to Section 33 (2) (b) of the Act, 1901 which are not based on succession or transfer as is

evident from the proviso to said sub-Section according to which such changes shall not be construed as a decision on a dispute involving question of title. Corrections impugned herein are referable to Clause (b) of Section 33 (2). Likewise is the proviso to sub-Section (2) of Section 39. Similarly the explanation to Section 38 of the Code, 2006 makes it clear that power to make correction under Section 38 does not empower the authority to decide a dispute involving questions of title. In this context Section 40A of the Act, 1901 and Section 39 of the Code, 2006 are also relevant. Therefore, any such exercise for correction of records under the aforesaid provision, as has been undertaken in this case, can not by itself confer nor deprive any person of title in respect to land in question.

60. Hon'ble the Supreme Court in the case of ***Bhimabai Mahadeo Kambekar (Dead) through Legal Representative vs. Arthur Import and Export Company and Others2*** referring to the earlier decisions of Hon'ble the Supreme Court in ***Swarni (Smt.) vs. Inder Kaur (Smt.) and others3, Balwant Singh and another vs. Daulat Singh (Dead) by Lrs. and others4 and Narasamma vs. State of Karnataka and others5*** succinctly clarified the law in this regard as under:

"5. The law on the question of mutation in the revenue records pertaining to any land and what is its legal value while deciding the rights of the parties is fairly well settled by a series of decisions of this Court.

6. This Court has consistently held that mutation of a land in the revenue records does not create or extinguish the title over such land nor it has any presumptive value on the title."

In the case of ***Corporation Of The City Of Bangalore vs M. Papaiah And Anr.6,*** it has been held that "it is firmly established that the revenue records are not documents of title....."

In the case of ***State Of Himachal Pradesh vs Shri Keshav Ram And Ors7***, it was held that "an entry in the Revenue papers by no stretch of imagination can form the basis for declaration of title....."

In ***Union Of India & Ors vs Vasavi Co-Op. Housing Society Ltd. & Ors8,*** Hon'ble the Supreme Court referring to the earlier precedents held that even if the entries in the Record of Rights carry evidentiary value, that itself would not confer any title and the plaintiff will have to show, independent of those entries, that he had title over the property in question.

In the case of ***Narain Prasad Aggarwal (D) By Lrs vs State Of M.P9*** it was held that Record of right is not a document of title. Entries made therein in terms of Section 35 of the Indian Evidence Act although are admissible as a relevant piece of evidence and although the same may also carry a presumption of correctness, but it is beyond any doubt or dispute that such a presumption is rebuttable.

A Division Bench of this Court in the case of ***Harish Chandra vs. Union of India and others10*** referring to the precedents of the Supreme Court has held that "the revenue records do not confer title and even if the entries in the revenue record of rights carry value that by itself would not confer any title upon the person claiming on the basis of the same". We concur with the opinion expressed by the Coordinate Bench of this Court.

In ***Ramesh Dutt and others vs. State of Punjab and others*** it was held that a revenue entry does not 11create title;

absence thereof does not extinguish the same.

61. In this context, we may fruitfully refer to para 7 of the supplementary counter affidavit dated 19.02.2025 filed on behalf of the State in Writ C No. 7005 of 2023 wherein it has been stated as under:

"7. That the mutation entry does not confer any right, title or interest in favour of the persons and the mutation entry in the revenue records is only for fiscal purpose."

62. Thus, the legal position in this regard has also been accepted by the State that mutation entries by themselves do not confer any right title or interest in favour of the person, and mutation entry in the revenue record is only for fiscal purpose. This is precisely what was argued by learned Advocate General on behalf of the State during hearing also.

Suo Motu Powers to Correct Land Records

63. It was submitted by the petitioners that the Central Government in which the land bearing Plot No. 93 vested under Section 12 of the Act, 1954 did not raise any dispute but on an application by an Advocate on the panel of counsel for Gaon Sabha, the impugned action has been taken though there is no Gaon Sabha Jiamau existing. This is not a factor which by itself will invalidate the impugned action, if the records were liable to be corrected otherwise, as, sub-Section (2) of Section 39 of the Act, 1901 and a similar provision contained in Section 38 of the Code, 2006, makes it clear that such power of correction can be exercised suo motu on requisite information coming to knowledge of the Revenue Authority, as in this case, where information was received by the Sub Divisional Magistrate vide letter dated 28.07.2020. The fact that there is no Gaon Sabha Jiamau is also not of much relevance, if the records could be corrected, including old records, or were required to be corrected, especially as, old villages exist within municipal limits even if there is no Gaon Sabha.

Entries in Record of Rights only under Order of Competent Authority.

64. Further, in view of sub-Section (3) of Section 33 no change or transaction as referred in sub-Section (2) (a) and (b) can be recorded in the khatauni without an order of the Collector or of the Tehsildar or the Kanoongo. Even as per the Code, 2006 no mutation or change can be recorded in the khatauni without order of any competent authority. The power to make corrections under Section 39 read with 33 of the Act, 1901 now vests in the Sub Divisional Magistrate as per Section 227 (5a) of the Act, 1901 and Section 38 (2) and (3) of the Code, 2006. If there is no order of the competent authority to record a name in the khatauni then any such entry would be without any legal basis.

Correction of Long Standing Entries in Record of Rights

65. It was next contended by Shri Khan appearing for some of the petitioners that long standing entries could not have been corrected by the Sub Divisional Magistrate. We beg to differ. Even long standing entries, if they are fraudulent, forged, without any basis or without any order of a competent revenue authority, surreptitiously made, Farzi (fictitious, not

genuine) without following the procedure prescribed, suffering from apparent and obvious error, can be corrected12. Of course, this cannot be done without notice/opportunity of hearing to the person whose name is being struck off from the record but such opportunity is required to be given to a recorded person whose name is proposed to be struck off13. It is trite that any entry in the revenue records has to be on the basis of an order passed by the competent revenue official and not otherwise. There has to be a legal basis for it.

66. Only such entries in the revenue records which have been legally and correctly recorded after following the procedure prescribed under an order of the competent authority can be termed as genuine and only with regard to such entries there is a presumption of correctness, albeit rebuttable14.

67. In the case of ***Vikram Singh Junior High School vs. District Magistrate and others15***, Hon'ble the Supreme Court held that an entry in the revenue record must have a legal basis and that no title could be claimed on the basis of a wrong entry which may have continued in favour of any person through negligence or failure of the Revenue Officer or the Consolidation Officer to correct the record.

68. A learned Single Judge of this Court in the case of ***Lakhan vs. Board of Revenue16 held that, the law laid down in Mangroo and others vs. Ram Sumer17*** and ***Jagdeo vs Deputy Director of Consolation18***, that had placed the revenue entries on a sacrosanct pedestal if they be of long standing, almost as an unimpeachable evidence of valid possession and good title, is no longer good law in view of decision of a Division Bench of this court in ***Sriram and others vs. DDC Allahabad camp Fatehpur and others19.*** The learned Single Judge further opined and clarified the law that 'entries howsoever long standing in the revenue records that do not have a valid legal basis about them cannot be permitted to continue inasmuch as such entries cannot confer title by mere long continuance. If an entry has been made in the revenue records without following the procedure prescribed and without there being an order of the competent authority, then, obviously it is an entry surreptitiously made and could also be termed as a fraudulent entry. In any case it is certainly an entry which is without any basis and apparently/obviously incorrect and erroneous, therefore, it could be corrected irrespective of the period it has remained in the revenue records'. We respectfully agree with the enunciation of law by the learned Single Judge. The contention of the petitioners to the contrary is rejected.

69. Such errors can be corrected ***suo motu*** also, as mentioned earlier, if concerned authority comes to have knowledge whether on its own scrutiny of the records or relevant facts being brought to its knowledge by a third party, provided there are errors of the kind referred hereinabove.

Maintainability of these writ petitions challenging orders dated 14.08.2020 and 22.03.2021

70. As regards the objection of learned Advocate General regarding maintainability of these writ petitions as impugned orders did not decide title, and there was a remedy of appeal/revision against such orders which can always be

availed by the petitioners or they could seek a recall of the orders impugned, a writ Court ordinarily does not entertain a writ petition challenging a mutation order or an order correcting the revenue records and entries therein except in exceptional circumstances, that too, at the behest of persons who were or are already recorded in the revenue records. The reason we have heard these writ petitions is, based on the orders impugned herein, at least in three writ petitions, show cause notices have been issued by the Development Authority under section 15 (9) of the act 1973 alleging fraud and misrepresentation on the part of the petitioners as regards their title to the land in question and proposing to cancel the maps sanctioned in their favour, that too, when the buildings have already been constructed and such notices are based entirely on the exercise culminating in the orders dated 14.08.2020 and 22.03.2021 impugned before us, which have been passed in the proceedings under Section 33 read with 39 of the Act 1901 and validity of these notices could not be seen by revenue Courts. The other reason was the issue pertaining to applicability of the Act, 1939, Act 1901 the requirement of preparation of khatauni in respect to the land in question, etc. and the plea that no notice or opportunity of hearing was given to the petitioners and also that the entire exercise was conducted and completed in eight days in a hurried and mala fide manner and that it amounted to negating the title of the petitioners by treating it to be an evacuee property. We, however, propose to address this issue further in the succeeding paragraphs.

Impugned Orders dated 14.08.2020, 22.03.2021 and Interference under Article 226 of the Constitution of India

71. We may now discuss the correction made by the orders dated 14.08.2020 and 22.03.2021 which are impugned. In these cases, Laxmi Narayan and Krishna Kumar Kalra were entered in the khataunis of 1369 Fasli and 1380 Fasli under category 5 (Ka) or 5 (A) of Para 124A of the Land Records Manual. Category 5 (Ka) refers to occupiers of land without title when there is no one already recorded in respect of Column 5 of the Khasra. Note to 5 (A) 2 Para 124A, also mentions that where Zamindar denies admission to the tenancy or recognition of such person as tenant they shall be entered as (5-A).Non-occupancy tenants under Clause 5 of Para 124A of the Land Records Manual do not have transferable rights20.

We may point out that category 5 (I) is incorrectly mentioned in the impugned order, as, in photocopies of khatauni contained in the records produced before us, Laxmi Narayan and Krishna Kumar Kalra are mentioned as category 5 (Ka).

72. There is no order referred in the Khatauni of 1362 Fasli and 1380 Fasli or any other Fasli for recording the names of Krishna Kumar Kalra, etc., therefore, it has been stated in the impugned orders that the entries are without any basis.

73. It is pertinent to mention that name of Krishna Kumar Kalra was not entered in the Khatauni based on the sale certificate dated 30.12.1969, on which heavy reliance was placed by the petitioners.

74. There is no evidence before us that Hilal Ahmed or Ata Kareem were recorded on the basis of sale certificate dated 05.07.1973 and 06.07.1976

respectively nor do we know under which category they were recorded. As stated earlier, none of the parties have informed us as to when Ata Kareem and Hilal Ahmed were recorded in the revenue records, for the first time, and under which category?

75. Interestingly, the sale-certificates, being relied upon by the petitioner contain an endorsement to the Tehsildar for mutation in the revenue records. If so, why Krishna Kumar Kalra was not recorded as valid tenant or title holder, is a question which has not been answered. In fact, the said endorsement in the documents relied by the petitioners, itself belies the argument that khataunis were not required to be maintained and names were not required to be recorded because the land was part of a municipality.

76. It is the own case of the petitioners that plot no. 93 had been declared an Evacuee Property under the Act, 1950 and thereafter it became part of the compensation pool under the Act, 1954, consequently it ceased to be an Evacuee Property and became a property which vested in the Central Government and thereafter they were settled in favour of various persons including predecessor in interest of the petitioners on different dates based on an auction sale. If this stand of the petitioners is taken at its face value, then, it is inexplicable as to why the name of Krishna Kumar Kalra came to be recorded in 1380 Fasli in respect of the aforesaid land under category 5 (Ka) i.e. illegal occupant without title. Why no effort was made to get the records corrected? Why did he not get his name recorded based on the sale certificate? No effort was made by Krishna Kumar Kalra to get it corrected though Sri Kalra died much later in 2018.

77. As per the Sub Divisional Magistrate, there is no order of a competent authority on record under which names in question were recorded, which was mandatory. As regards Ata Kareem and Hilal Ahmed, we do not know when they were recorded and under which category? Whether they were recorded on the basis of sale certificate? Whether any order was passed for recording their names by any competent authority. It is not known as to on what basis these entries were made. No such pleading or proof has been filed. The Sub Divisional Magistrate seems to have struck off their names as a consequence of correction of records of 1369 Fasli and 1380 Fasli and restoration of entry of 1362 Fasli.

78. Petitioners have not brought on record any order which may have been passed by a competent revenue authority for recording the name of Ata Kareem or Hilal Ahmed or Krishna Kumar Kalra as bhumidhars with transferable rights or any other category of tenants nor any such khatauni is annexed. Asma Hussain has annexed photocopy (not a certified copy) of a khatauni of 1402 Fasli but it does not mention as to on what basis her name has been recorded i.e. whether any order had been passed nor has she annexed any such order.

79. It is inexplicable as to why, Raj Kumari Chopra through whom some of the petitioners claim; if she had a valid sale-certificate in her favour, did not get her name recorded in the revenue records whereas others were recorded. We say no more.

80. Whether the revenue records in respect of the land in question were required to be maintained is an issue which has already been dealt with earlier.

81. Much emphasis was laid by the counsel for the petitioners upon a judgment and order dated 12.11.1971 passed in Case No. 51/162/83 of 1971 by the Judicial Commissioner Mall Lucknow in a suit filed by Laxmi Narayan under Section 229-B of the ZA Act, 1950 against the Municipal Corporation in which it is said that Krishna Kumar Kalra was also a party, so was the Collector. Reliance was also placed upon a judgment passed by the Additional Commissioner, Lucknow Division, Lucknow on 19.05.1973 in an appeal bearing Number 133 under section 229-D of the ZA Act, 1950 filed by Laxmi Narayan arising out of the judgment dated 12.11.1971 referred hereinabove, as, according to the petitioners in these judgments, the notifications under the ZA Act 1950, declarations under the Act 1954, as also the sale certificates relied upon by them have been referred. However, on a perusal thereof we find that the suit under Section 229-B of the ZA Act 1950 was dismissed as not maintainable on the ground that the property was evacuee property, meaning thereby, it was dismissed in view of the bar contained in Sections 45 and 46 of the Act, 1950 regarding maintainability of such suits in respect of evacuee property before civil or revenue courts. Therefore, it is highly debatable as to how far these judgments could be relied upon by the petitioners to claim title, that too in writ jurisdiction. Whether the property ceased to be an evacuee property after the declaration under Section 12 of the Act, 1954 can also not be decided in these summary proceedings, as the said declaration is not on record. The suit referred herein, if any, was not maintainable and the primary question framed therein was decided accordingly as the property was held to be evacuee property on the date on which Laxmi Narayan was claiming rights in respect thereof. We say no more, as, in any case, we are not deciding title in respect of the land in question nor the veracity of such documents as referred above and, in fact, we cannot, in summary proceedings under Article 226 of the Constitution of India. We are primarily concerned with scope of the proceedings impugned herein for correction of revenue records, its impact upon the rights, if any of the petitioners, and validity of any consequential action taken on the basis of such correction of revenue records.

82. The Sub Divisional Magistrate after finding the entries in favour of Krishna Kumar Kalra and other nine persons as mentioned hereinabove to be without any basis, has ordered striking off their names and as a consequence, as, nobodyelse had claimed mutation of their names nor submitted a report under Section 34 (5) of the Act, 1901 whether on the basis of succession or transfer, therefore, he has simply restored the earlier entry of 1362 Fasli by which the property was recorded as an Evacuee Property in possession of the Custodian i.e. in 1362 Fasli. In doing so, considering the scope of the correction proceedings under Section 33/39 of the Act, 1901 or for that matter under Section 38 of the Code, 2006, as discussed earlier, his orders cannot be treated as deciding/adjudicating title of any person in respect of the said property, including that of the Central or State Government nor that the property is evacuee property. In fact the State of U.P. also does not treat it so, as has been specifically mentioned by then in para 7 of their supplementary counter affidavit extract of which has already been quoted. Thus, the impugned orders cannot be construed as divesting the petitioners of any title if they have one nor can they be

made the basis for their dispossession, if they are in rightful possession.

83. The Sub Divisional Magistrate has merely corrected the revenue records based on an apparent error as perceived by him. If aggrieved and if they so choose, recall of such orders can be sought by the petitioners or they can be challenged in appeal or revision as the case may be raising all pleas raised herein.

84. In fact, one Ahsan Ehtesham who, as per Asma Hussain, was recorded, challenged the said order in Revision before the Board of Revenue which was admitted and an interim order was also granted but ultimately it was dismissed as informed in the judgment dated 09.11.2020 passed by this Court in Writ Petition ***bearing No. 20098 (MS) of 2020 (Smt. Ann Marie Kalra vs. State of U.P. and others)*** filed by Ann Marie Kalra questioning the order dated dated 14.08.2020 passed against a dead person and he has challenged the said order before a Single Judge Bench, as informed.

85. So far as Asma Hussain petitioner of Writ C No. 684 of 2021 is concerned, she claims to have purchased part of the land in question from Hilal Ahmed, who was earlier recorded in respect of the land in question and after purchase of the land vide sale-deed dated 24.06.1983 her name was mutated in the revenue records, and in this regard, she relies upon extract of a khatauni annexed as RA-2 wherein she is recorded as a bhumidhar with transferable rights. She has also asserted that one Ahsan Ehtesham had also purchased part of plot number 93 from Hilal Ahmed and his name was also recorded in the revenue records and the mutation order in this regard is annexed as RA-8. 10.02.2025. However, while annexing the photocopy of khatauni in respect to her she has not annexed any order of any competent authority by which her name was ordered to be entered in the records, which is mandatory. Ahsan Ehtesham is not a petitioner before us. Interestingly, she did not file copy of the khatauni of 1362 Fasli with the writ petition. Had she done so the State would have responded as to its veracity. She has filed it as Annexure RA2 with her rejoinder affidavit filed on 10.02.2025. This is not a certified copy. Copy of the khatauni annexed does not mention any order having been passed for recording her name, nor any such order has ben annexed by her. We may point out that Asma Hussain petitioner is not mentioned in the impugned order as being recorded in respect of the land in question though her predecessor in interest Hilal Ahmed is so mentioned. Photocopy of the khatauni annexed by Asma Hussain as annexure RA-2 does not mention order of any revenue authority by which the said mutation was directed to be made nor has any such order been filed. In these circumstances, if the petitioner, Asma Hussain so chooses she can also seek a recall of the orders impugned as per law which if filed would not be dismissed on the ground of limitation, if any, prescribed for the said purpose, but, would be considered and decided on merits or if she chooses she may challenge the orders in appeal or revision as the case may be, which shall also not be dismissed on the ground of limitation, but, would be considered and decided as per law.

86. In view of what has already been held by us regarding scope and impact of such proceedings, her rights, if she has a valid title and is in rightful possession, cannot be disturbed merely on account of

the orders dated 14.08.2020 and 22.03.2021.

87. In law, such orders under Section 33/39 of the Act, 1901 or under Section 38 of the Code, 2006 cannot be treated, as one conferring or divesting any person of any right, title or interest in respect of such land, if it is based on valid documents or valid legal basis. As held by the Supreme Court of India in the case of ***Ramesh Dutta*** (supra) such an entry does not create title; absence thereof does not extinguish the same. Such an order can also not be treated as one which nullifies the sale-certificates issued in favour of any person, if they are genuine and based on a valid auction as per law.

88. In this regard, the contention of Shri M.A. Khan that the Sub Divisional Magistrate has veritably cancelled the sale-certificate which he could not have done, is an argument based on misconception of facts and law.

89. As regards petitioner of Writ C No. 661 of 2021 he is claiming through one Raj Kumari Chopra, she was never recorded in the revenue records pertaining to plot no. 93 nor does her name figure in the impugned order dated 14.08.2020 and 22.03.2021, therefore, if the petitioner of Writ C No. 661 of 2021 claims any right, title or interest in such land based on some valid title-deeds/documents, then, the same would also not be affected merely by the impugned orders dated 14.08.2020 and 22.03.2021 nor would these orders adversely affect her if she is in possession. She is also at liberty to submit a report under Section 34 (1) of the Act, 1901 as also seek a recall of the impugned orders or avail remedy of appeal or revision, if so chooses.

90. These orders are amenable to recall or challenge by way of appeal or revision where factual issues can be thrashed out, an exercise which cannot be undertaken in writ jurisdiction.

91. Anybody who has a title based on valid documents or any valid legal basis would not be adversely affected by the impugned orders dated 14.08.2020 and 22.03.2021. If any persons seeks to challenge the title of any such person, then, he can do so as per law. Our order shall also not come in way in this regard.

92. As regards right of hearing and its denial asserted by the petitioners, we may in this regard refer to Section 34 (1) of the Act, 1901 which reads as under:

"34 (1) Every person obtaining possession of any land by succession or transfer other than succession or transfer which has already been recorded under Section 33-A, shall report such succession or transfer to the Tahsildar of the Tahsil in which the land is situate."

Similar provision is contained in Section 33 (1) and 34 (1) of the U.P. Revenue Code, 2006 requiring a report to be submitted by a person who has obtained possession on the basis of succession or transfer.

93. The petitioners did not file any report under Section 34 (5) of the Act, 1901 nor get their names recorded in the revenue records, except one i.e. Asma Hussain, as claimed, whose case has already been discussed. In her case also there is no order on record which may have been passed for recording her name.

94. As regards other petitioners, they, not being recorded and they not

having submitted a report under Section 34, the legal requirement to hear them is highly suspect. We may in this context refer to Section 34 (5) of the Act, 1901 which is as under:

"(5) No Revenue Court shall entertain a suit or application by the person so succeeding or otherwise obtaining possession until such person has made the report required by this section.

Explanation. - For the purposes of this section, the word 'transfer' includes - (i) a family settlement by which the holding or part of the holding recorded in the record-of-rights in the name of one or more members of that family is declared to belong to another or other members; or (ii) an exchange of holding or part thereof under Section 161 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950."

95. On same lines is Section 37 of the Code, 2006 which is as follows:

"37. Bar against certain suits.- No suit or other proceeding shall lie in any revenue Court at the instance of any person obtaining possession of any land by succession or transfer, until he has made a report under Section 33 or Section 34, as the case may be."

96. In this context we may point out that Krishna Kumar Kalra has already died. His wife Ann Marie Kalra filed a writ petition challenging the order dated 14.08.2020 and succeeded on the ground that the order had been passed against a dead person (not on merit). After remand, she did not participate in the proceedings by the Sub Divisional Magistrate resulting in the order dated 22.03.2021, which she has chosen not to challenge. The affidavit in her writ petition was sworn by Anil Kalra, her son. He has also not challenged the said order nor has any other legal heir of Krishna Kumar Kalra.

97. Abbas Ansari who claims to be successor in interest of Krishna Kumar Kalra in respect of a part of Plot No. 93, challenged the order dated 14.08.2020 and 22.03.2021 by filing his writ petition but only in the year 2023 i.e. after almost 3 years of the cause of action, if any, which itself is rather intriguing. His brother who is opposite party no. 6 also did not bother to file a writ petition challenging the said orders. Hilal Ahmed and Ata Kareem had sold off their property. Their successors in interest did not file any report under Section 34 (1) of the Act, 1901 or under the corresponding provisions under the Code, 2006.

98. The petitioners if they want to submit a report under Section 34 (1) of the Act, 1901 as also to seek recall of the order dated 14.08.2020 and 22.03.2021 on the grounds raised before us and such other grounds as the law may permit, they can do so and in such an eventuality the Sub Divisional Magistrate would be obliged to consider their application/claim objectively, independently, fairly on merits without dismissing it on ground of limitation. They can avail the remedy of appeal or revision as the case may be, which are statutory remedies as per law.

99. As regards the plea that there was no requirement of getting their names recorded in the revenue records as buildings had come up on the land which was now part of a municipality, we have already dealt with this issue earlier and the petitioners can seek a recall of the impugned orders on this ground also, where

a factual inquiry can be held in the light of legal provisions, as already discussed.

100. We have already held that such orders cannot and do not divest the petitioners of any right title or interest in the property in question, if they have a valid one. Mere fact that the name of predecessors in interest of some of the petitioners has been struck off would not by itself enure to their disadvantage, if they have a valid title based on valid documents and are in possession based on such valid title. If they are not in possession, then, it is open to them to claim possession as per law.

101. If the petitioners so choose, they can assert their rights, establish and prove the sale-certificates as also the notifications and declarations under the Act, 1950 and the Act, 1954 in this context, either before the Sub Divisional Magistrate by seeking recall of his orders or in regular proceedings before a competent Court, if required, as, veracity of the documents relied by them and questions of fact based thereon as to the declaration under Section 12 of the Act, 1954, etc. may require a factual inquiry and adducing of evidence for which writ jurisdiction is not suited.

102. It was contended by the learned Advocate General that the documents being relied by the petitioners to claim title in respect of the land in question are forged and fabricated and against one of them that is Abbas Ansari criminal proceedings have also been instituted. In this regard, mere filing of a charge-sheet against one of the petitioners Abbas Ansari would not prove the documents to be fraudulent or forged. Fraud and forgery are questions of fact which have to be adjudicated and proved after a right of hearing unless, of course, the documents are so apparently unacceptable so as to lead to a conclusion that they are not genuine documents, regarding which no material has been placed before us. Whether the sale certificate issued in favour of Krishna Kumar Kalra was forged or fraudulent is not a finding recorded in the impugned orders dated 14th August 2020 nor the subsequent order dated 22.03.2021 nor any such finding has been recorded in respect of the other sale-certificates or deeds, therefore, when the Sub Divisional Magistrate himself has not recorded any such finding, assuming that he could do so within the constraints of the correction proceedings, it is anybody's guess as to how far we can do so under Article 226 of the Constitution of India. We cannot consider nor decide the genuineness or otherwise of the documents being being relied by the petitioners in these proceedings nor can we vouch for their veracity as already observed earlier.

103. The sale certificates, which have been filed, their veracity cannot be vouched for by this court in writ jurisdiction which is not to say that the petitioners cannot claim rights and interests based on the said sale certificates and the pleas raised herein, but, only to say that such complicated questions of title, rights and interests based on such documents cannot be decided under 226 of the Constitution of India.

104. The fact that the Act, 1950 and the Act, 1954 were repealed by the Act, 2005 and this repealing Act of 2005 itself was repealed in 2017 is not of much consequence as this was what is termed in legal parlance as 'spring cleaning' as held by Hon'ble the Supreme Court in the case reported in ***Jethanand Betab vs The State Of Delhi21.***

105. In view of the above, we see no reason to interfere with these orders dated 14.08.2020 and 22.03.2021 in exercise of writ jurisdiction. Petitioners are at liberty to avail the remedies referred above.

106. For all these reasons, we do not go into the plea that the impugned orders were passed in a hurried manner on an application by counsel for Gaon Sabha, especially as, no personal malafides have been alleged nor has the Officer who passed the orders been impleaded by name and as an we have already granted liberty to seek a recall or challenge the same in appeal or revision.

107. However, we have no hesitation in stating that if any other action has been taken under any other statue based only on the aforesaid orders dated 14.08.2020 and 22.03.2021 treating them to have decided right, title and interest in respect of plot no. 93, without any independent consideration, then, such action, to this extent, would be invalid in the eyes of law.

108. In view of the above discussion, but, subject to what has been held by us with regard to the impact of the orders dated 14.08.2020 and 22.03.2021 on questions involving title, right of possession, etc. and the liberty granted to the petitioners, we are not inclined to interfere with the orders referred above in exercise of our discretionary and extraordinary jurisdiction under Article 226 of the Constitution of India. We, however, make it clear once again that the said orders by themselves will not amount to deciding any question involving title, right of possession of plot no. 93 nor that the property is/was an evacuee property. Anybody claiming title or possession in respect of the said plot or any part thereof can do so by initiating regular proceedings before a competent Court or Forum as per law wherein such issues can be considered and adjudicated. An endorsement to this effect shall be made in the relevant khewats and khataunis pertaining to the said plot. Any criminal proceedings which may have been initiated against any of the petitioners regarding the documents being relied upon by them, etc. will remain unaffected by this judgment.

Relief No. iv in Abbas Ansari's Case

109. In the writ petition of Abbas Ansari a relief has also been sought in the nature of a direction to the opposite parties not to dispossess and not to interfere in his peaceful possession and occupation over the property in question. In this context it needs to be mentioned that neither Abbas Ansari nor his brother Umar Ansari who is opposite party no. 6 in his writ petition are recorded in the revenue records. In the entire writ petition filed by the petitioner - Abbas Ansari there is not a single pleading which may persuade us to, even prima facie, form an opinion that he was in possession of the land/house in question on the date of passing of the impugned order dated 14.08.2020 or on the date of filing of the writ petition.

110. No document has been filed by the said petitioner which could show that his name has been mutated in the municipal records (if not the revenue records) in respect of the building in question and that he may have paid taxes in his name. There are no electricity bills or any other documents to show that he has been in possession of the said land/building or his brother was in possession.

111. Of course, he claims that his grandmother Rabia Begum had title and was also in possession and that she was recorded in the municipal records and had been paying municipal taxes, but, the only municipal tax receipt in this regard on record is of 2014. She died in 2018. It is claimed that municipal taxes have been paid even thereafter, but, no receipts have been annexed.

112. It is true that Abbas Ansari claims title in respect of land/building existed thereon, which has since been demolished on 27.08.2020, on the basis of registered gift-deed, but, so far his possession of the land/building is concerned, requisite pleadings and documents are absent. It is only in the rejoinder affidavit filed by him on 11.02.2025 after we had put some queries and had passed certain orders on 15/16.01.2025 and 04.02.2025, a cursory claim has been raised of being in possession without any proof having been annexed therewith.

113. In para 42 of his petition there is a cursory reference to demolition having taken place. During course of hearing, we were been informed that such demolition took place on 27.08.2020 in pursuance to an order dated 11.08.2020. Surprisingly, this action was not put to challenge in this writ petition which itself was filed after three years of passing of the order dated 11.08.2020 i.e. on 11.08.2023. Even Abbas Ansari's brother Umar Ansari who also claims similar rights did not file any such petition. If Abbas Ansari or his brother and/or were in possession of the land/building whatever was existing and the said land/building was being demolished, then, even if they could not challenge it for some reason in the year 2020, assuming it to be so, there is no reason as to why they did not do so while filing this petition on 11.08.2023. No relief in this regard has been sought nor is there any pleading as to when the demolition took place, whether any notice was issued to them or not which creates a serious doubt as to whether they were actually in possession or not, especially in absence of any pleadings in the writ petition and the absence of documentary proof in the form of house tax assessment, municipal taxes, electricity bills, etc. No relief has been sought that they should be put back in possession.

114. An application for amendment of the writ petition was filed on 04.02.2025 which was taken up on the same day wherein for the first time the action of demolition which in fact took place in August, 2020 was sought to be challenged after more than four and half years of the cause of action, if any. Shri M.A. Khan, learned Senior Counsel appearing for Abbas Ansari withdrew the said application with liberty to file a fresh writ petition challenging the said action. We have not been informed about any such writ petition having been filed till reserving of our judgment.

115. In this context, we may point out that the counsel for the Lucknow Development Authority informed us during course of hearing that total area of land claimed by the petitioner measured 1114.49 square meters and the building existed on 800 square meters area, the said building has been demolished and another building has been constructed by the State authorities under the Pradhan Mantri Awas Yojna, who are in possession. Photographs of newly constructed building have also been annexed. Though the counsel for the

Lucknow Development Authority claims that the construction of said building has been completed but there is an interim order of Hon'ble the Supreme Court in favour of Abbas Ansari to the effect that further construction shall not be raised. We say no more, as, demolition or construction of the new building is not the subject matter of this writ petition.

116. We do not have enough material to arrive at any conclusion as to whether petitioner is still in possession on any part of the land over which he claims his right, after demolition of the building on 27.08.2020, if so, on which part or whether he was in possession prior to such demolition or filing of the petition. As already stated, there is no relied prayed as regards the demolition.

117. In this very context, we may point out that Smt. Ann Marie Kalra wife of Krishan Kumar Kalra had also filed a writ petition challenging the order dated 14.08.2020 bearing No. 20098 (MS) of 2020 which was allowed by the learned Single Judge on 09.11.2020 as it had been passed against a dead person and the matter was remanded back. The learned Single Judge did not consider the merits of the issues involved. After remand, the proceedings were held afresh, but, Smt. Ann Marie Kalra never participated in the said proceedings and ultimately the earlier order dated 14.08.2020 was reiterated by the Sub Divisional Magistrate vide his order dated 22.03.2021 which has not been challenged by Smt. Ann Marie Kalra. All along the petitioner - Abbas Ansari and his brother Umar Ansari in spite of the fact that they claim to have a registered gift-deed in respect of the said property, remained silent and idle which is rather intriguing. It is only after more than two years of passing of the order dated 22.03.2021 that Abbas Ansari filed his writ petition joining his brother as opposite party no. 6, although both of them claim through the same gift-deed.

118. In view of the above, we are unable to grant relief no. IV as prayed by Sri Abbas Ansari. We make it clear that none of our observations on the question of possession of this petitioner shall come in his way if he claims it separately as these observations are only in the context of these proceedings.

Show Cause Notices dated 18.11.2020 and Interference under Article 226 of the Constitution of India

119. Now coming to the validity of the show cause notices dated 18.11.2020 issued by the Lucknow Development Authority under Section 15 (9) of the Urban Planning and Development at 1973, on a bare perusal of the same, we find a recital therein that a map was presented for being sanctioned by the petitioners of the three writ petitions referred earlier (Writ C No. 681 of 2021, Writ C No. 684 of 2021 and Writ C No. 687 of 2021) annexing therewith the sale deeds by which they claimed to have acquired title in respect of the land in question and the said map was sanctioned as per rules and on payment of due fee. Accordingly, maps were issued through permits. The notices thereafter go on to state that the District Magistrate vide is letter rated 16.09.2020 informed about an inquiry which was got conducted through Sub Divisional Magistrate, Sadar. The Sub Divisional Magistrate, Sadar also vide his letter dated 16.09.2020 informed the authority that the aforesaid plot number 93 situated at village Jiamau Pargana, Tehsil and District Lucknow is registered in

Register Number 10 of the Board of revenue as evacuee property. Accordingly, an inference was drawn that as per the letter of the District Magistrate and Sub Divisional Magistrate, Sadar the petitioners did not have title in respect of land for which they had got the map sanctioned, therefore, it appeared to the authority that the petitioners had, fraudulently and on misrepresentation, got the map sanctioned. The notices then refer to condition number one of the sanction and the recital therein that in the event of breach of conditions of sanction, the same would stand cancelled automatically. Accordingly, the notices go on to state that it has become necessary to cancel the sanction and a show cause notice has been issued, asking the petitioners to place their version as to why the map sanctioned in their favour be not cancelled. It is these notices which have been challenged by the petitioners.

120. There are interim orders operating in these three writ petitions on account of which the said notices have not been acted upon.

121. Section 15 (9) of the Act, 1973 under which the notices have been issued reads as under:

"(9) If at any time after the permission has been granted under Subsection (3), the vice-Chairman is satisfied that such permission was granted in consequence of any material misrepresentation made or any fraudulent statement or information furnished, he may cancel such permission for reasons to be recorded in writing and any work done there under shall be deemed to have been done without such permission).Provided that a permission shall not be cancelled without affording to the person or body concerned a reasonable opportunity of being heard."

122. On a reading of sub-Section (9) of Section 15 quoted hereinabove, it is evident that there are certain prerequisites for exercise of power under the said provision, that is, there should be material misrepresentation made or any fraudulent statement or information furnished to obtain the permission as granted under sub-Section (3) of section 15. Fraud and misrepresentation are terms which have a certain meaning in legal parlance. These are not words to be used casually. To understand the meaning of misrepresentation, we can take the guidance of Section 18 of the Indian Contract Act, 1872. In ***S.P. Chengalvarya Naidu (Dead) by Lrs. vs. Jagannath (Dead) L.Rs. and others22*** fraud was explained as an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is cheating intended to get an advantage.

123. On a perusal of the impugned show notices, we find that the same have been issued on an inference drawn from the reports dated 16.09.2020 referred therein that the petitioners did not have title in respect of the land in question, but, they misrepresented and furnished fraudulent information or statement that they had title in respect thereof and obtained the permission under sub-Section (3) of Section 15. It is not in dispute that while seeking such permission which was prior to passing of the impugned orders dated 14.08.2020 and 22.03.2021, the petitioners had annexed sale deeds by which they had purchased the land/building, which have not been cancelled by any Court of law nor is it anybody's case that they are forged or

fabricated, at least it has not been so held by any Court, etc. The letter dated 16.09.2020 referred in the show cause notice merely reiterates that the land/property in question has been found to be an evacuee property on an inquiry by the Sub Divisional Magistrate, which is nothing but a reference to the exercise resulting in the order dated 14.08.2020 impugned herein, legal significance of which has already been considered by us earlier. There is no independent consideration in the show cause notice as to any fraudulent statement or information furnished or material misrepresentation made so as to attract sub-Section (9) of section 15, what to say of a finding by the Vice Chairman, Lucknow Development Authority in terms thereof. The show cause notice is wholly based on the exercise conducted by the Sub Divisional Magistrate culminating in the order dated 14.08.2020. We are constrained to observe that the show cause notice proceeds on an incorrect factual and legal premise that in proceedings under section 33 read with 39 of the Act 1901 or corresponding provisions of the UP Revenue Code, 2006 for correction of revenue records, the Sub Divisional Magistrate has powers to decide question of title in respect of any land or property or to declare it as an evacuee property. In the order dated 14.08.2020 there is no consideration of the sale certificates and sale deeds being relied upon by the petitioners in support of their claim to title, much less, a finding that the said documents are forged and fabricated. The order dated 14.08.2020 refers to the entries in the revenue records as 'Farzi' only because there was no order mentioned for recording the names of Krishna Kumar Kalra and 9 other persons and in 1362 Fasli it was recorded as being in possession of Custodian Evacuee Property but the petitioners claim that these persons had sale certificates in their favour based on which sale-deeds, etc. were executed by them, an aspect which has not been considered by the Sub Divisional Magistrate.

124. Unless and until the veracity of the sale-certificate relied upon by the petitioners is inquired and it is proved that such sale-certificates are either fabricated, forged or otherwise de-hors the law and unless the subsequent transactions culminating in the sale-deeds, etc. are held to be patently illegal, fraudulent or based on misrepresentation, an action under Section 15 (9) of the Act, 1973 could not be initiated. The Sub Divisional Magistrate has not recorded any such finding assuming he could do so, and as the impugned notices are based only on the exercise conducted by him and his decision, therefore, consequentially the notices are bad on facts and in law.

125. Considering the discussion already made in the context of scope of proceedings under Section 33 read with 39 of the Act 1901, etc. as the order dated 14.08.2020 or any other report or order passed under the said provisions, cannot be treated as a decision on question of title in respect of the property in question, therefore, the very factual and legal basis of the impugned show cause notices is a misconception about the scope of such proceedings and law on the subject.

126. Proceedings under Section 15 (9) can be initiated only if the jurisdictional prerequisites that is material misrepresentation made or any fraudulent statement or information furnished are satisfied, *prima facie,* which are wanting in the impugned show cause notices.

127. We have already clarified the scope of the inquiry/decision/order passed by the Sub Divisional Magistrate which is referred in the letter dated 16.09.2020, therefore, in view of what has already been stated hereinabove we have no hesitation to state that the notices under section 15 (9) being based wholly and entirely on the order dated 14.08.2020 and the letter dated 16.09.2020, do not satisfy the jurisdictional prerequisites referred above and these notices are liable to be quashed.

128. We accordingly quash these notices dated 18.11.2020 in Writ C No. 661 of 2021, Writ C No. 684 of 2021 and Writ C No. 687 of 2021. It shall, however, be open for the authority to proceed against the petitioners afresh in the light of the discussion made hereinabove, if there is a cause to proceed against them.

129. An objection had been raised by Shri Ratnesh Chandra, learned counsel for the Authority that these are mere notices, therefore, the petitioner should be asked to respond to the same and whatever pleas are raised by them, they would be considered by the Vice Chairman, Lucknow Development Authority. We are not persuaded by this submission for reasons which are obvious from the discussion made earlier. When the jurisdictional prerequisites are themselves not satisfied, why should we make the petitioners suffer the proceedings under section 15 (9) of the Act 1973 based on apparently illegal notices issued to them. We, therefore, reject this submission, subject to the liberty granted.

130. Writ C No. 684 of 2021, Writ C No. 661 of 2021 and Writ C No. 687 of 2021 are ***allowed in part*** in terms aforesaid. Writ C No. 7005 of 2023 is ***disposed of*** in terms of the discussion made hereinabove.

(2025) 5 ILRA 608
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 19.05.2025

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 1000151 of 2001

Mohammad Rafiq & Ors. ...Petitioners
Versus
Addl. Commissioner Admn. Gonda & Ors. ...Respondents

Counsel for the Petitioners:
H.D. Srivastava, Gyan Singh Chauhan, Pramod Kumar Singh, R.B. Singh

Counsel for the Respondents:
C.S.C., R.N. Gupta

(A) Revenue Law - Land dispute - right to fair hearing - U.P. Zamindari Abolition and Land Reforms Act, 1950 - Sections 167/168 - Vesting of land under U.P. Zamindari Abolition and Land Reforms Act, 1950 - Validity of ex-parte orders without proof of service of notice on purchasers of land alleged to be hit by fragmentation provisions - An order affecting rights cannot be passed without proof of proper service of notice - absence of finding on service renders the order illegal and ex-parte - Failure to record a finding on the service of notice vitiates the proceedings - admission through non-filing of counter affidavit strengthens petitioner's claim - An order passed without recording a finding on the proper service of notice is illegal and liable to be set aside as ex-parte. (Para - 7 to 10)

Petitioners, landless labourers, purchased land - orders under Ss. 167/168 U.P.Z.A. & L.R. Act vesting land in State were passed ex-parte without proof of notice service - no rebuttal filed by respondents - leading to an ex-parte order