

**8-Ga is set aside.** The proceedings of the suit shall be conducted on behalf of appellant through the special power of attorney holder. In the event, the trial Court requires oral evidence of the appellant, that can be ensured through video conference.

15. The appeal is, accordingly, **allowed.**

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**(2023) 5 ILRA 1521**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: LUCKNOW 17.05.2023**

**BEFORE**

**THE HON'BLE RAJESH SINGH CHAUHAN, J.**

Public Interest Litigation (PIL) No. 415 of 2023

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

**Counsel for the Petitioner:**  
 Vinay Kumar Tiwari

**Counsel for the Respondents:**  
 C.S.C., Pankaj Gupta

**Public Interest Litigation - Removal of illegal encroachment over public utility land - The Court directed the Principal Secretary, Department of Revenue, Civil Secretariat, U.P., Lucknow, to issue necessary directions/directives/circulars to ensure that the public utility land of Gaon Sabha is free from encroachment and that such public utility land is utilized only for the purpose for which it has been recorded in the revenue records.**

**Allowed.** (E-5)

(Delivered by Hon'ble Rajesh Singh Chauhan, J.)

1. Heard Sri Vinay Kumar Tiwari, learned counsel for the petitioner and Sri

Yogesh Kumar Awasthi, learned Standing Counsel for the State-respondents no.1, 2 & 3. Notice for opposite party no.4/Gaon Sabha has been accepted by Sri Pankaj Gupta.

2. Sri Ganesh Nath Mishra, learned Advocate, has filed Vakalatnama on behalf of opposite party no.5, the same is taken on record.

3. By means of this petition, the petitioner has prayed following main reliefs:-

*"(i) Issue a writ, order or direction in the nature of Mandamus thereby commanding the opposite parties/ Authorities concern to ensure release of Gaon Sabha Land i.e. Gata No. 653/0.1980 hectare, recorded as Rasta in the revenue record situated in Village - Veshahapur, Motiganj, Seeha Gaon, Gonda, which are recorded as public utility land in the revenue record, from illegal encroachment of the land grabbers and restore it to its original shape.*

*(ii) Issue a writ, order or direction in the nature of mandamus commanding the opposite party no. 1 to initiate inquiry against inaction on the part of the authorities concern in not removing encroachment from Gaon Sabha Land i.e. Gata No. 653/0.1980 hectare, recorded as Rasta in the revenue record situated in Village -Veshahapur, Motiganj, Seeha Gaon, Gonda which are recorded as public utility land in the revenue record, from illegal encroachment of the land grabbers, in order to punish the guilty persons/authorities."*

4. At the very outset, Sri Ganesh Nath Mishra, learned counsel for opposite party no.5 has raised objection to the effect that

the present petitioner has not disclosed his complete credentials in terms of the High Court Rules, therefore, this PIL may be dismissed on this ground alone. Replying to the aforesaid contention, learned counsel for the petitioner has drawn attention of this Court towards paragraph nos.4, 5 & 6 of the writ petition wherein he has disclosed his credentials strictly in accordance with law in view of the High Court Rules.

5. Having considered the aforesaid paragraphs of the writ petition i.e. paragraph nos.4, 5 & 6, I find that the present PIL is maintainable so far as the prayer of the writ petition is concerned.

6. Sri Yogesh Kumar Awasthi, learned Standing Counsel has produced instructions letter dated 14.05.2023 preferred by the Sub Divisional Officer, Sadar, Gonda addressing to the Chief Standing Counsel of this Court enclosing therewith the comments, order dated 14.05.2023 passed by the Sub Divisional Officer, Sadar, Gonda, spot inspection report, statement of the villagers, Naksha Nazari, copy of Khetauni, other documents and copies of the recall applications dated 04.05.2023 preferred by opposite party no.5 and other persons, same are taken on record.

7. Before advertng to the issue in question, the Court puts its displeasure on record regarding casual and callous approach of the competent revenue authority who despite the specific order being passed on 25.11.2008 has not taken proper and positive efforts and endeavour to vacate/ remove the illegal encroachment from the public utility land, if any, against that encroachment. Therefore, it is expected that the District Magistrate, Gonda shall look into this aspect and shall pass appropriate orders on the administrative

side since this Court time and again has directed in couple of petitions of Public Interest Litigation that if there is any illegal encroachment over any public utility land, the same should be removed forthwith and if any order to remove the illegal encroachment is passed, the same shall be executed forthwith, strictly in accordance with law. Notably, in the present case, the order dated 25.11.2008 has not been executed till date and applications for recall of the order dated 25.11.2008, which have been filed after about 15 years, have been entertained by the Tehsildar (Judicial), Gonda and said applications have been kept pending. Since the recall applications have been filed by some of the villagers including opposite party no.5 on 04.05.2023, meaning thereby the order dated 25.11.2008 has not been assailed before the appellate authority till date. Therefore, in absence of any order being passed by the competent authority against the order dated 25.11.2008, the illegal encroachment over the public utility land is still existing, so this is the glaring example of casual and callous approach of the competent revenue authority, which should be handled by the superior authority on the administrative side for the purposes of setting example that if any competent revenue authority does not act strictly in accordance with law to remove the illegal encroachment from the public utility land, he may be subjected to any proper action, which would be required in the facts and circumstances of the issue in question.

8. It is also pertinent to indicate here that any illegal encroachment over the public utility land is not only illegal and unauthorized but the same creates serious prejudice to the villagers at large of the area and very purpose of public utility land is frustrated since such land has been

encroached illegally by some persons. Therefore, by means of this order, all the competent revenue authorities of the State of U.P. are directed to take up the matter of illegal encroachments seriously and if any complaint is received from any end regarding illegal encroachment over the public utility land of the Gaon Sabha, the spot inspection should be carried out immediately by a team of revenue officials/officers and if it is found that there is any illegal encroachment over the public utility land of the Gaon Sabha, prompt exercise removing the aforesaid illegal encroachment must be undertaken and after conclusion of the case so registered for removal of that illegal encroachment, the order passed by the competent revenue authority should be executed forthwith inasmuch as if the appropriate order for removal of illegal encroachment is not executed well in time, the purpose of passing appropriate order for removing/vacating the illegal encroachment would be meaningless and the illegal encroachment would be persisting for quite long time. The present case is a glaring example of non-execution of the order passed by the competent authority for removing the illegal encroachments.

9. In the present case, the Sub Divisional Officer, Sadar, Gonda has passed order dated 14.05.2023 wherein this fact has been indicated that seven persons have illegally encroached on some part of Gata No.653/0.198 hectare and the Tehsildar (Judicial), Sadar, Gonda has passed the order dated 25.11.2008 for removal and compensation against those persons but the exercise of removing such illegal encroachment is underway, therefore, the Sub Divisional Magistrate has constituted a team consisting of Naib Tehsildar, Revenue Inspector, four

Lekhpal and one Area Lekhpal to remove the illegal encroachment. I am unable to comprehend that when the Sub Divisional Officer, Sadar, Gonda has noticed the fact that the order for removal of illegal encroachment has already been passed on 25.11.2008, as to what action has been taken against the competent revenue authority on the administrative side seeking explanation as to why the illegal encroachment has not been removed in the last more than 14 years.

10. If it is presumed for the argument sake that the order dated 25.11.2008 is an ex-parte order against the illegal encroachers against which the recall applications have been filed on 04.05.2023 wherein the next date for hearing is fixed for 27.05.2023, I fail to understand and comprehend as to why no proper exercise has been carried out to execute the order dated 25.11.2008 within the time so prescribed under the U.P. Revenue Code, 2006 inasmuch as had the order dated 25.11.2008 been executed forthwith, the recall application, if it was so required, would have been filed immediately thereafter and disposal thereof would have been done strictly in accordance with law by the competence authority but on account of callous approach of the competent revenue authority, the order dated 25.11.2008 has not been executed till date and now, applications for recall of the order dated 25.11.2008 are pending consideration. All the aforesaid facts are self-explanatory wherein there is no need to ask any evidence, therefore, it is reiterated that if any appropriate action is not taken on the administrative side against the erring revenue officers/ officials by the District Magistrate concerned, it would encourage them to keep the execution of the orders passed to remove the illegal encroachment

over the public utility land of the Gaon Sabha pending.

11. Khetauni, which has been enclosed with the instructions letter, also indicates that the gata in question is recorded as Rasta (public pathway) in the revenue record and the public pathway/ Rasta may not be encroached by any person as such encroachment would create serious prejudice and hindrance to the public at large. Since the next date for hearing of the restoration/ recall applications has been fixed for 27.05.2023, therefore, I do not find any good ground or reason to keep this PIL pending any longer, accordingly, this PIL is disposed of at the admission stage directing the competent revenue authority to dispose of recall applications, strictly in accordance with law, by affording an opportunity of hearing to the parties concerned, with expedition, if possible on the date fixed or within further fifteen days and shall ensure that the illegal encroachment over the public utility land be removed strictly in accordance with law.

12. The Senior Registrar of this Court shall provide certified copy of this order to the Principal Secretary, Department of Revenue, Civil Secretariat, U.P., Lucknow and the Collector, Gonda within three working days for perusal and necessary action against the erring officials/ officers.

13. Since the aforesaid direction has been issued for the entire State i.e. State of U.P., therefore, the Principal Secretary, Department of Revenue, Civil Secretariat, U.P., Lucknow shall issue necessary directions/ directives/ circular to ensure that the public utility land of Gaon Sabha is free from encroachment and such public utility land be utilized only for the purpose it has been recorded in the revenue record.

14. This PIL is accordingly **disposed of.**

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**(2023) 5 ILRA 1524**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: LUCKNOW 03.05.2023**

**BEFORE**

**THE HON'BLE RAJESH SINGH CHAUHAN, J.**

Writ B No. 1002222 of 1999

**Kamlesh Kumar** ...Petitioner  
**Versus**  
**Board of Revenue Lucknow & Ors.**  
 ...Respondents

**Counsel for the Petitioner:**

T.N Gupta, Durga Prasad, I.D. Shukla, Mehdi Abbas Rizvi, S.K. Mehrotra, S.K. Singh, T.N. Gupta

**Counsel for the Respondents:**

C.S.C., R.N. Gupta, Seema Devi

**Civil Law - U.P. Land Revenue Act, 1901 - Section 218 - Section 218 of the Land Revenue Act h repealed by the U.P. Act No. 20 of 1997 w.e.f. 18.08.1997 - Section 10 of the 1997 Amendment Act - By the impugned order, the Board of Revenue remanded the case for a fresh decision to the Commissioner in accordance with S. 218 of the Land Revenue Act. Held: Following the law laid down in *Shri Ram Vs Board of Revenue U.P., Lucknow & ors.*, 1999 (1) JCLR 1010 and *Ravi Shanker Tripathi Vs Board of Revenue, U.P., Lucknow through its Chairman & Ors.*, 2007 (1) ADJ 23, the Court held that the transitory provision contained in Section 10 of the 1997 Amendment Act saved only those proceedings which were pending before the Board of Revenue. Therefore, the proceedings which were pending before the Commissioner or the Additional Commissioner on 18.08.1997 were**