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**(2009) 10 AHC CK 0104**  
**In the Allahabad High Court**

Kissu and Others

APPELLANT

Vs

Collector Jhansi and Others

RESPONDENT

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**Date of Decision :** 29-10-2009

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2009) 10 AHC CK 0104

**Hon'ble Judges :** Dilip Gupta, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Dilip Gupta, J.—List has been revised. No one appears to press the petition.

2. This petition seeks the quashing of the order dated 15th October, 1992 passed by the Assistant Collector/Tehsildar district Jhansi as well as the order dated 4th February, 1993 passed by the Collector, Jhansi.

3. Proceedings u/s 122B of the Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950 (hereinafter referred to as the "Act") were initiated against the petitioners. It was alleged that the petitioners had encroached some area of Gaon Sabha land. The Assistant Collector/Tehsildar by the order dated 15th October, 1992 directed for ejectment of the petitioners and also imposed fine. The Collector, Jhansi rejected the Revision on 4th February, 1993 filed by the petitioners against the said order.

4. Learned Standing Counsel has submitted that in view of the Division Bench judgment of this Court in Rajendra Singh v. State of U.P. and Ors. 2008 (4) ADJ 37 the petition should be dismissed as the petitioner can file a suit u/s 122B(4-D) of the Act.

5. The Division Bench after analyzing the provisions of Section 122B of the Act observed as follows:

From the plain reading of the aforesaid section, it is clear that Legislature

introduced a self corrective process to determine land of Gaon Sabha or local authority. Since the title dispute cannot be resolved by the executives, Legislature intended to get the dispute resolved by suit. Any person upon being aggrieved with the order of the Assistant Collector, will be entitled to file a revision before the Collector within the prescribed time and upon being aggrieved therefrom, file a suit for final decision. No person will be allowed to ignore the stage of revision and file a suit directly from the order of the Assistant Collector.

Disputed question of fact regarding land purportedly under permissive occupation or under adverse possession or even under forcible occupation of any aggrieved person cannot be resolved by passing the remedy under suit. In either of the cases ascertainment of the right, title and interest is involved which cannot be done by the Writ Court under Article 226 of the Constitution of India as any alternative to a suit. Proceeding under Article 226 of the Constitution of India is basically meant to see violation of principles of natural justice, fundamental right of a citizen and vires of the Act as well as jurisdiction or competency of an authority. Later two are not relevant for the purpose. So far as violation of principles of natural justice and/or fundamental right is/are concerned, those are also inbuilt in an Act. The protection of fundamental constitutional rights through the common law is main feature of common law constitutionalism. An Act made by the Legislature represents the will of the people and that cannot be lightly interfered with....

Therefore, according to us, having alternative and efficacious remedy of suit u/s 122B of the Act of 1950, there is no scope for the aggrieved person to invoke the writ jurisdiction of the Court either from the order of the Assistant Collector or from the order of the Collector. It is clarified hereunder that a self corrective process to invoke the jurisdiction of the Assistant Collector, then by way of revision before the Collector and thereafter by filing suit before the Court, is the integral part of the Act, which cannot be avoided. Thus, in our considered opinion, contentions of the writ petitioners, cannot be held to be sustainable, consequently, all the aforesaid writ petitions are dismissed without imposing any cost. Interim order, if any, stands vacated. However, aggrieved persons are at liberty to file civil suit for appropriate relief in accordance with law, if they are so advised.

6. In view of the Divisions Bench judgment of this Court the petitioners have a remedy of filing a suit u/s 122B of the Act. The Court, therefore, declines to entertain the petition.

7. The writ petition is, accordingly, dismissed. However, as the petitioners had been granted interim protection by the Court, they shall not be evicted for a period of three months from today from the land in dispute.