

**(2017) 09 UK CK 0016**  
**In the Uttarakhand High Court**  
**Case No : 1127 of 2008 (M of S)**

**Mohd. Aslam and others Vs District UP Sanchalak Consolidation /?  
Collector Haridwar and others**

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**Date of Decision :** 13-09-2017

**Acts Referred:**

<a href=>Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972</a>, Section 9(A) (2) -  
Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Act, 1956, Section 132, Section 117

**Citation :** (2017) 09 UK CK 0016

**Hon'ble Judges :** Sharad Kumar Sharma

**Bench :** Single Bench

**Advocate :** S.K. Shandilya, Pankaj Purohit

**Final Decision :** Dismissed

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## Judgement

1. In the writ petition, the petitioner has questioned the order passed by the Appellate Authority, i.e. Assistant Settlement Officer, Consolidation on 25th October, 2002, as well as the order passed by the Deputy Director, Consolidation on 10th March, 2008.

2. A short controversy which was agitated by the petitioner by way of filing of an objection under Section 9 (A) (2) of the Consolidation of Holdings Act, the petitioner was seeking a declaration of his rights as an owner and bhumidhar over Gata No. 1930/5, lying in khata No. 523, having an area of 3 bigha, 7 biswa and 0 biswansi.

3. The basis of the claim of the petitioner was that though he admits the fact that the land has been recorded in Shreni 4, as apparent from the revenue record pertaining to 1368 fasli, but, he contends that since he has been in possession for a considerable long time which he claims that it dates back to last 45-50 years, he claims his right to have been matured by way of adverse possession. The Consolidation Officer, based upon the pleadings, by virtue of an order dated 15th March, 1994, has allowed the objection of the petitioner and

thereby, passed an order of declaration in his favour and directed him to be recorded in Shreni-3, Asami. Although from the perusal of the operative portion of the order as well as the findings recorded by the Consolidation Officer, the Consolidation Officer, too, was conscious of the fact that the land, in question, at the time when he was making a declaration by the judgment dated 15th March, 1994, was principally recorded as "Khala". Under Section 117 sub-section 6 of the Act, all water bodies are the properties which are vested with the Gaon Sabha and if Section 117 is read with Section 132 of the Zamindari Abolition Act, the land lying as "khala" are the property vested in the Gaon Sabha, is a land over which no bhumidari rights would accrue.

4. When the Consolidation Officer was considering the objection filed by the petitioner under Section 9 (A) (2), the Consolidation Officer was conscious of the fact that at the time when he was rendering the judgment, it was recorded as "khala", it ought to have considered the aforesaid aspect and restrictions of law, as to whether a declaratory right could be granted in favour of the petitioner to a land which is covered by Section 132, which creates a restriction from grant of bhumidari rights.

5. Against this judgment, the Gaon Sabha, respondent No. 4, preferred appeal under Section 11 (1) of Consolidation of Holdings Act, which was allowed by the impugned order dated 25th October, 2002, holding thereof that irrespective of the length of possession over the land in question, no bhumidari rights could have been granted by the Consolidation Officer when it is an admitted fact borne out of the record that the land was a land falling under Section 132.

6. On a challenge being given to the Appellate Court's order dated 25th October, 2002, by the petitioner by filing a Revision under Section 48 of the Act, the same has been dismissed by the Revisional Court by the impugned order dated 10th March, 2008.

7. This Court is of a considered view that it may be in whatsoever circumstances, no right or title could have been declared in favour of the petitioner who is an encroacher / occupant of a land lying in Shreni-4 and which has been recorded in the revenue recorded as "khala", being a land covered under Section 132, i.e. land reserved for public purpose over which Legislature has created a restriction that no declaratory rights could be granted. Thus, from that limited view point, the writ petition is deserved to be dismissed.

8. The philosophy of adverse possession and the claim of right based on adverse possession is not now being deprecated by the various judgments rendered by the Courts of Law. The theory behind it being that a person cannot claim benefit by a wrongful act, i.e. occupying the land belonging to other without authority and that is why it would not be out of context to observe that it would amount to be a theft of a property belonging to other. This theory of theft is to be more stringently followed in relation to those lands which are vested in local bodies, Gram Sabha or State land where it is not possible for the authorities to keep a

strict and regular vigil to obstruct encroachment or possession. Hence, by granting a right of declaration in favour of a person who claims title by adverse possession would amount to judiciously certifying the illegal act which ought to be desisted now and requires re-consideration.

9. The contention of the petitioner is that since he has been in possession for a considerable long time, hence, he would acquire a right and title over the land in question, is not sustainable, for the reason, the restriction created under law for getting a declaration over a land which is a public utility land, no period or length of possession has been envisaged. Hence, the period of possession is irrelevant for the purposes of declaration and that too when recently the Hon''ble Apex Court in one of the judgments in the case of Gurudwara Sahib Vs. Gram Panchayat Village Sirthala and another reported in 2013 (2) U.D., 381, has held that no suit for declaration of title is maintainable by virtue of a claim based on adverse possession. However, the Court held that only benefit which the occupant could claim by virtue of adverse possession is to retain possession till he is dispossessed by the competent authority in accordance with law.

10. Even so much so, the Hon''ble Apex Court in the case of State of Haryana Vs. Mukesh Kumar and others reported in [2012 (115) RD 349], in para 50 has laid down the same proposition, wherein, the rights which an occupant claimed by way of an adverse possession has been given a re-look by the Hon''ble Apex Court. Hence, the Hon''ble Apex Court in this judgment, too, has laid down that no declaratory rights could be granted to an occupant of the land based on an adverse possession. Para 50 of the said judgment reads as under : "50. In our considered view, there is an urgent need for a fresh look of the entire law on adverse possession. We recommend the Union of India to immediately consider and seriously deliberate either abolition of the law of adverse possession and in the alternate to make suitable amendments in the law of adverse possession. A copy of this judgment be sent to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India for taking appropriate steps in accordance with law."

11. In that view of the matter, this Court feels that since the land being a public utility land covered under Section 132 and being land vested in Gram Sabha under Section 117 of ZA & LR Act and the petitioner has based his declaratory rights on the basis of the adverse possession, which is barred under law, he has no right to get himself declared as owner of the land which is lying in Shreni-4, belonging to Gram Sabha.

12. Hence, the writ petition is dismissed. No order as to costs.