

**(1965) 07 AHC CK 0003**  
**In the Allahabad High Court**  
**Case No : S.A. No. 831 of 1956**

Mool Chand and Others

APPELLANT

Vs

Phool Singh

RESPONDENT

---

**Date of Decision :** 28-07-1965

**Acts Referred:**

Uttar Pradesh Land Utilization Act, 1947 — Section 3(4), 6  
Uttar Pradesh Land Utilization Act, 1947 — Section 3(4), 6  
Uttar Pradesh Land Utilization Act, 1947 — Section 3(4), 6

**Citation :** (1965) 35 AWR 611

**Hon'ble Judges :** S.N. Katju, J

**Bench :** Single Bench

**Final Decision :** Dismissed

---

## Judgement

S.N. Katju, J.—This is a Defendants' appeal arising out of a suit for restraining the Appellants from interfering with the Plaintiff Respondent's possession over plot No. 614 situate in village Mohammadpur Newada district Mainpuri.

2. The Plaintiff contended that he had obtained a registered lease dated 26.10.1951 from the zamindar Chiddu Singh and was hereditary tenant of the plot in suit and had subsequently become the Sirdar thereof. It was alleged that after the execution of the aforesaid lease he was in culttyatory possession of the plot in suit.

3. The Defendants contended that they had no knowledge of the aforesaid lease and alleged that the Collector had executed a lease of the plot in dispute in their favour on 14.4.1952 u/s 3(4) of the U.P. Land Utilisation Act v. of 1948. They further contended that they were in possession of the plot in suit and had become Sirdars thereof. It was further alleged that u/s 6 of the aforesaid Act the order of the Collector granting the lease in favour of the Defendants could not be questioned and the court had no jurisdiction to try the suit.

4. The trial court while holding that the jurisdiction of the court was not barred

held that the Defendants were not Sirdars. On appeal the lower appellate court found that the Defendants knew about the lease executed by Chiddu Singh in favour of the Plaintiff. It further found that the Plaintiff was in possession and was cultivating the plot in suit. It held that the Collector had no jurisdiction to settle the land in suit with the Defendants. It found that the Plaintiff was the hereditary tenant of the plot in suit and after the coming into force of the Z.A. and L.R. Act had become the Sirdar thereof. The finding by the lower appellate court that the Plaintiff was in cultivatory possession of the plot in suit after the execution of the lease in his favour on 26.10.1951 is a finding of fact which cannot be assailed in second appeal.

5. It was contended that Section 6 of the U.P. Land Utilization Act (No. v. of 1948) barred the jurisdiction of the court in entertaining the suit. The relevant provision of the U.P. Land Utilization Act No. v. of 1948 are as follows:

Section 3. Utilization of uncultivated land.-(1) Notwithstanding anything contained in the United Provinces Tenancy Act, 1939, or in any other enactment for the time being in force, the Collector may, by notice in writing in the form specified in the Schedule call upon the landlord of any land, situated within his jurisdiction, which is not grove land or land let to or held by a tenant, and which has not been cultivated or, if previously cultivated, has not been cultivated during the Rabi and Kharif immediately preceding the commencement of this Act, to let out such land or pre arrange for the cultivation thereof within fifteen days from the date of the service of such notice or within such further period as the Collector may extend....

(2) The notice shall be served on the landlord by delivering or tendering to him a copy of such notice. But if the landlord is not readily traceable or refuses to accept the notice, the service shall be effected by affixing a copy of such notice to the chaupal or some other public place in the village and thereupon the landlord shall be deemed to have been sufficiently served.

(3) If the landlord within one week from the date of the service of the notice shows to the satisfaction of the Collector that the land is not capable of being cultivated or that it is already being cultivated or has been let out for cultivation, the Collector shall cancel the notice.

Section 6. Saving as to orders- No order made in exercise of any power conferred by or under this Act or any rule made thereunder shall be called in question in any Court.

6. Before the Collector proceeds to let out any land u/s 3 of the Act, he has to see, apart from other things, that the land is not let to or held by a tenant or, if in previous cultivation, has not been cultivated during the Rabi and Kharif season immediately preceding the commencement of the Act. Furthermore, he has to make enquiries from the landlord by giving him notice in writing in the form specified in the schedule and if the notice is not complied with within the prescribed period then in that case the Collector could let it out to a tenant for

cultivation. In the present case there is no finding that any notice was sent to Chiddu Singh and any enquiry was made from him. If any such enquiry had been made it would have been found out that the land was in the cultivatory possession of the Plaintiff and it was beyond the powers of the Collector to let out the land in suit to the Defendants. Furthermore, if the Collector had made any enquiry from Chiddu Singh he would have found out that the latter had executed a lease with respect to the land in dispute to the Plaintiff and it was not open to the Collector to resettle it with the Defendants. The court below has found that:

The plot in suit was let out by Chiddu Singh to the Plaintiff on 26.10. 1951, that the Plaintiff was already holding it as a tenant and that it was already in his cultivation when the Collector executed the lease dated 14. 4.1956 in favour of the Defendants." It is, therefore, obvious that the Collector in executing the lease of the plot in suit in favour of the Defendants had acted beyond the powers conferred on him u/s 3(1) of the U.P. Land Utilization Act v. of 1948.

7. The provisions of Section 16 of the Temporary Control of Rent and Eviction Act, 1947 and Section 16 of the U.P. (Temporary) Accommodation Requisition Act, 1947, are similar to the provisions of Section 6 of the U.P. Land Utilization Act of 1948. The provisions of Section 16 of the aforesaid two Acts were considered in *Mst. Ahmadi Begum v. The District Magistrate, Agra* (1) (1951 ALJ 669), *Ram Chandra v. The District Magistrate, Aligarh* (2) (1952 ALJ 114), *R.N. Seth Vs. Girja Shanker Srivastava*, and *Shri Bhakat Shiromani v. The RC and EO and another* (4) ( 1953 ALJ 553).

8. Applying the principles enunciated in the aforesaid decisions of this Court to the present case it is clear that where the Collector purports to Act u/s 3 of the U.P. Land Utilization Act, 1948, and it is found that his action was beyond the powers conferred on him by the provisions of the Act, it would follow that the Collector had acted without jurisdiction and it could not be said that the order made by him was in exercise of any power conferred on him under the Act and consequently there would be no bar to the order of the Collector being questioned in a Court of law. The court below was, therefore, right in holding that Section 6 of the Act did not bar the jurisdiction of the Civil Court in the present suit. I see no reason to disagree with the decision of the court below.

9. The appeal fails and is dismissed with costs.