

**(2015) 10 AHC CK 0095**  
**In the Allahabad High Court**  
**Case No : Writ-B No. 53738 of 2015**

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| Purushottam Rai and Others | Vs | APPELLANT  |
| State of U.P. and Others   |    | RESPONDENT |

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**Date of Decision :** 06-10-2015

**Acts Referred:**

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 18, 18(1)(a), 19-A(2), 20, 3(2)  
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 4, 4(1), 7(aa)

**Citation :** (2015) 129 RD 771

**Hon'ble Judges :** Ram Surat Ram (Maurya), J.

**Bench :** Single Bench

**Advocate :** R.P. Mishra and S.K. Pandey, for the Appellant; R.C. Upadhyay and Manoj Kumar Yadav, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Ram Surat Ram (Maurya), J.—Heard Sri R.P. Mishra, for the petitioner, Standing Counsel for State of U.P. and Sri Manoj Kumar Yadav, Standing Counsel for Gram Panchayat.

2. The writ petition has been filed against the orders of Consolidation Officer dated 04.01.2010, Settlement Officer Consolidation dated 19.08.2011 and Deputy Director of Consolidation, dated 04.09.2015, passed in the proceeding under Section 9-A of U.P. Consolidation Act, 1953 (hereinafter referred to as the Act).

3. The petitioners and others villagers filed time barred objections, for reserving plot 141 and 161 of village Godaur, tahsil Mohammadabad, district Ghazipur, as khalihan along with delay condonation application on 30.06.1990. It has been stated that land in dispute was falling in mohal of the ancestors of the petitioners and it were used as khalihan, from the time of immemorial. After date of vesting it was illegally recorded as banjar land. The petitioners could not know about the

aforesaid entries earlier. It is only when notice for publication of village under Section 52 of the Act was served then they could know about it. The land reserved for khalihan during consolidation operation was either in illegal occupation or in other public use and some of the plots are not suitable for khalihan as it were lying at low level area.

4. It may be mentioned that in view of Section 3(2) of the Act, banjar land is not included in consolidation area. However, under Section 9-A(2) , of the Act, Assistant Consolidation Officer has been authorized to allot such land in the chak of a tenure holder or use it for the purposes of carving out sector road, chak road or chak nali, after determination of its valuation in exceptional circumstances. Initially Consolidation Committee did not demand for reserving the land in dispute as khalihan at the time of preparation of Statement of Principles under Section 8-A nor any tenure holder of the village filed any objection under Section 9 of the Act, in this respect. After finalization of consolidation operation, this objection was filed.

5. Assistant Consolidation Officer submitted his report dated 27.07.1990, mentioning therein that plots 141 (area 6-9-3 bigha), 161 (area 1-6-16 bigha) and 313 (area 3-14-4 bigha) were recorded as banjar land in basic consolidation year. At the time of framing of Statement of Principles, during consolidation operation plots 166 (area 0-6-8 bigha), 459 (area 0-13-15 bigha), 516 (area 0-6-0 bigha), 575 (area 0-2-2 bigha), 576 (area 0-4-14 bigha), 577 (area 0-4-14 bigha), 578 (area 0-4-17 bigha) and 581 (area 0-10-16 bigha) total area 2-15-6 bigha were reserved as khalihan. The village was notified under Section 9 on 01.04.1967, Section 20 on 30.05.1973. It may be mentioned that during pendency of the objection the village was notified under Section 52 of the Act on 02.07.1996.

6. The objection was heard by Consolidation Officer, who by his order dated 04.01.2010 held that plots 141, 161 and 313 were recorded as banjar land and found as such on the spot during spot inspection. During consolidation operation plots 166 (area 0-6-8 bigha), 459 (area 0-13-15 bigha), 516 (area 0-6-0 bigha), 575 (area 0-2-2 bigha), 576 (area 0-4-14 bigha), 577 (area 0-4-14 bigha), 578 (area 0-4-17 bigha) and 581 (area 0-10-16 bigha) total area 2-15-6 bigha were reserved as khalihan and are being used as such by the villagers. The village was notified under Section 52 of the Act on 02.07.1996 and after close of consolidation operation, it would not be proper to determine valuation of banjar land and reserve it as khalihan. Now a days, the villagers use to keep his khalihan on their plot itself. On these findings he dismissed the objections.

7. The petitioners filed an appeal (registered as Appeal No. 1357) from the aforesaid order. The appeal was heard by Settlement Officer Consolidation, who by his order dated 19.08.2011, upheld the findings of Consolidation Officer and dismissed the appeal. The petitioners filed a revision (registered as Revision No. 1109/1441) from the aforesaid order, which was also dismissed by Deputy Director of Consolidation by order dated 04.09.2015. Hence this writ petition was

filed.

8. The counsel for the petitioners submitted that the land in dispute was used as khalihan, from the time of immemorial. Land in dispute was falling in the mohal of the ancestors of the petitioners. The villagers have been using the land in dispute as khalihan since before the date of vesting. Their right to use it as khalihan has been protected under Section 7(aa) of U.P. Act No. 1 of 1951. The land in dispute was not vested in State of U.P. nor it was re-vested in Gaon Sabha. Entry of banjar land is incorrect. The petitioners and other villagers through out used the land in dispute as khalihan during consolidation operation. Section 19-A (2) of the Act permits the consolidation authorities to determine the valuation of the banjar land and allot it. The land reserved as khalihan during consolidation operation were unsuitable for using it as khalihan. In such circumstances, the valuation of the land in dispute was liable to be determined and it were liable to be reserved as khalihan. The villagers had no objection is taking the plots already reserved as khalihan in lieu of it. The orders of consolidation authorities are illegal and liable to be set aside.

9. I have considered the arguments of the counsel for the parties and examined the record. First question arise as to what was vested in State of U.P. under Section 4(1) of U.P. Act No. 1 of 1951. Relevant provisions are quoted below:--

"Section-4 -Vesting of estate in the State.--(1) As soon as may be after the commencement of this Act, the State Government may, by notification, declare that, as from a date to be specified, all estate situate in Uttar Pradesh shall vest in the State and as from the beginning of the date so specified (hereinafter called the date of vesting) all such estate shall stand transferred to and vest, except as hereinafter provided, in the State free from all encumbrances."

The word "estate" has been defined under Section 3(8) as follows:--

Section-3(8) .--Estate means and shall be deemed to have always meant the area included under one entry in any of the registers described in clause (a), (b), (c) or (d) and in so far as it relates to a permanent tenure holder in any register described in clause (e) of Section 32 of U.P. Land Revenue Act, 1901 as it stood immediately prior to the coming into force of this Act, or subject to restriction mentioned with respect to the register described in clause (e), in any of the register mentioned in under Section 33 of the said Act or in similar register described in or prepared or maintained under any other Act, Rule Regulation or Order relating to the preparation or maintenance of record-of-rights in force at any time and includes share in or of an estate.

Section-6 . Consequences of vesting of an estate in State.--When the notification under Section 4 has been published in the Gazette then, notwithstanding anything contained in any contract or document or in any other law for the time being in force and save as otherwise provided in this Act, the consequences as hereinafter set forth shall, from the beginning of the date of vesting, ensue in the area to which the notification relates, namely--

(a) all rights, title and interest of all the intermediaries--

(i) in every estate in such area including land (cultivable or barren), grove-land, forests whether within or outside village boundaries, trees (other than trees in village abadi, holding or grove), fisheries, tanks, ponds, water-channels, ferries, pathways, abadi sites, hats, bazars and melas other than hats, bazars and melas held upon land to which clauses (a) to (c) of sub-section (1) of Section 18 apply, and

(ii)(ii) in all sub-soil in such estates including rights, if any, in mines and minerals, whether being worked or not;

shall cease and be vested in the State of Uttar Pradesh free from all encumbrances;

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10. Supreme Court in Maharaj Singh Vs. State of Uttar Pradesh and Others, , held that reading the two sister sections together, certain clear conclusions emerge. Emphatically, three things happened on the coming into force of the Act. By virtue of Section 4 the right, title and interest of all intermediaries in every estate, including hats, bazars and melas, stood terminated. Secondly, this whole bundle of interests came to be vested in the State, free from all encumbrances, the quality of the vesting being absolute. Thirdly, one and only one species of property in hats, bazars and melas was expressly excluded from the total vesting of estates in the State viz. such as had been held on lands to which Section 18(1) (a) to (c) applied.

11. Supreme Court, while considering similar provisions and interpreting words "free from all encumbrances" in State of Himachal Pradesh Vs. Tarsem Singh and Others, , held that word "encumbrance" means a burden or charge upon property or a claim or lien upon an estate or on the land. "Encumber" means burden of legal liability on property, and, therefore, when there is encumbrance on a land, it constitutes a burden on the title which diminishes the value of the land. In Abdul Karim Khan and Others Vs. Managing Committee, George High School, it was held that encumbrance would include easementary right of drainage over the land. In Rashid Allidina Vs. Jiwandas Khemji and Another, , it was laid down that the word "encumbrance" has always been understood to include easementary right. In Ganga Vishnu Swaika Vs. Machine Manufacturing Co. Ltd. and Another, , it was ruled that an easementary right to discharge water on other's land comes within the meaning of encumbrance on the right in the land. In the aforesaid decisions, it was laid down that the right of easement on land is an encumbrance on the land and once the land vests in the State free from all encumbrances, the easementary right pertaining to that land shall also vest in the State.

12. Certain rights have been conferred under Sections-7 and 9 of the Act. In this case the petitioner relies upon Section 7(aa) of the Act which is quoted below:

"Section-7 . Saving in respect of certain rights.--Nothing contained in this chapter shall in any way affect the right of any person-

(a) ....

(aa) being a bhumidhar, sirdar, adhvasi or asami of any land, to continue to enjoy easement or any similar right for the more beneficial enjoyment of the land, as he was enjoying on the date immediately preceding the date of vesting;"

13. The provisions of Section 9 is not applicable in this case. The counsel for the petitioner relied upon the provisions of Section 7(aa) of U.P. Act No. 1 of 1951, which confers right to enjoy any easement or similar right for more beneficial enjoyment of the land. The word "easement" or "similar right" have been further specified in reference for more beneficial enjoyment of the land. Thus, it is clear that all the easements are not protected. Only those easements which are more beneficial for enjoyment of the land of bhumidhars, sirdars, adhiwasis, asami of any land, has been protected.

14. Khalian (threshing floor) is a land which is used for threshing the crops. In old times, the crops were harvested and heaped at one place as threshing used to take quite long time. Nowadays, the combined harvesters used to harvest and thresh the crops at the same time in the land itself. The other thresher used to thresh the crop after harvesting it. The agriculturist now instead of collecting the crop at one place, used to harvest and thresh the crop in the field itself, as in this process, his labour who is collecting the crop from the field to the threshing field, is saved. Thus, at present, the threshing floor (khalian) is not beneficial for enjoyment of the land, much less, it cannot be said that more beneficial for enjoyment of the land. Supreme Court in State of Himachal Pradesh Vs. Tarsem Singh and Others, held that easement of grazing cattle over pasture land is not saved after the date of vesting. Thus, khalian cannot be said to be more beneficial enjoyment of the land, nor it falls within the purview of Section 7 (aa) of U.P. Act No. 1 of 1951.

15. This Court in Ch. Surat Singh v. Paltoo, 1963 R.D. 80 and Rajaram v. State of U.P. and others, 1964 RD 226 , relying upon the earlier Full Bench decisions of this Court, held that khalian is not easement, but is appurtenance of the holding of agriculturist. Thus, this Court found that khalian is not an easement. So far as the finding that it is appurtenant to the holding is concerned, Supreme Court in Maharaj Singh Vs. State of Uttar Pradesh and Others, held that there could be no appurtenance to the land. Relevant portion of the judgment of Supreme Court is quoted below:--

"Ordinarily, what is necessary for the enjoyment and has been used for the purpose of the building, such as easements, alone will be appurtenant. Therefore, what is necessary for the enjoyment of the building is alone covered by the expression "appurtenance". If some other purpose was being fulfilled by the building and the lands, it is not possible to contend that these lands are covered by the expression "appurtenances". Indeed it is settled by the earliest

authority, repeated without contradiction to the latest, that land cannot be appurtenant to land. The word "appurtenances" includes all the incorporeal hereditaments attached to the land granted or demised, such as rights of way, of common...but it does not include lands in addition to that granted" (Words and Phrases,).

Thus, the law laid down by this Court being directly in contradiction with the law laid down by the Supreme Court, is not liable to be followed.

16. As stated above, in view of Section 3(2) of the Act, banjar land is not included in consolidation area. However, under Section 19-A (2) , of the Act, Assistant Consolidation Officer has been authorized to allot such land in the chak of a tenure holder or use it for the purposes of carving out sector road, chak road or chak nali, after determination of its valuation in exceptional cases. At the time of framing of Statement of Principle, the public utility land is required to be reserved in consultation with the Consolidation Committee of the village. In this case, at the time of preparation of Statement of Principle, no demand has been made for reserving this plot as khalihan land by the Consolidation Committee, nor after notification of Section 9 , any tenure holder has filed objection under Section 9 of the Act for reserving the land in dispute as khalihan land. It is only after finalization of the consolidation operation in the village, a demand has been made in this respect. The Consolidation Officer found that the plots reserved as khalihan was being used by the villagers for that purpose. Thus the petitioners have an alternative place for khalihan land and no need was there for reserving the land in dispute as khalihan. Thus there was no exceptional circumstances to justify determination of valuation of the banjar land and reserving it as khalihan in exercise of powers under Section 19-A(2) of the Act.

17. In view of the aforesaid discussion, the writ petition has no merit and is dismissed.