

(2006) 09 AHC CK 0147
In the Allahabad High Court
Case No : Writ Petition No.6375 of 1989

Putti and Others	Vs	APPELLANT
Assistant Director of Consolidation and Others		RESPONDENT

Date of Decision : 20-09-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Uttar Pradesh Land Records Manual — Chapter 7, Para 121, Para 80, Para 81A, Para 89A
Uttar Pradesh Land Revenue Act, 1901 — Section 18, 32(e), 54, 57

Citation : (2006) 09 AHC CK 0147

Hon'ble Judges : Devi Prasad Singh, J

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—Question involved in the present writ petition relates to evidentiary value of entry made under Clause 9 in the Khasra, and when entry made in the said column may be treated as valid entry to grant right and title on the basis of adverse possession over a land. The other question relates to validity of settlement entry and necessary procedure required to be followed for the purpose of recording of settlement entry. The brief facts of the present case are as under:

2. The controversy relates to title of Khata No.109 situated in Village Gajabari, Pargana Chanda, Tahsil Nanpara, District Bahraich. According to the learned counsel for the petitioners Sri Jai Shankar Misra the basic year entry stood recorded in the name of the petitioners. It has been submitted that petitioners are the recorded tenure holder of the land in question. It has been further submitted that the land in question is the petitioners' ancestral property which has been cultivated by his family from the period of their forefathers.

3. On the other hand, respondents claimed possession over the land in question on the basis of adverse possession. It has been further submitted by the petitioners' counsel that entries have been made in Form P.A.10 has been done

without following the procedure given in the Land Record Manual. It has been further submitted that the entry in the Khatauni made in 1366 Fasli is false and forged one and lacks binding effect as no settlement of land was done in 1366 Fasli in accordance to provisions contained in Land Record Manual.

4. According to the respondents' counsel Dr. L.P. Mishra, the land in question has been recorded under Clause 9 in the name of the respondents since more than 15 to 20 years. The ARO has also recorded the name of respondent No.3 in 1366 Fasli during course of settlement. Accordingly respondent No.3 had acquired bhumidhari right over the land in question on the basis of adverse possession.

5. Respondent No.3 had filed an objection under Section 9 of the U.P.C.H. Act which was referred to the Consolidation Officer concerned. The Consolidation Officer by judgment and order dated 8.6.1989 (Annexure1) rejected the objection of the respondent No.3 disbelieving the entry made in Form P.A10. It has been held by the Consolidation Officer that the land in question i.e. plots No.1910 and 1911 of Khata No.109 have been recorded in Column1 in the name of the petitioners, namely, Putti, Shyam Lal, Parmeshwar, Pheran and Khirodhar. Khirodhar died during the pendency of proceedings hence his legal heirs Virendra and Ram Kishore filed the present writ petition along with others. In part 2 of the Khatauni respondent No.3 Balairam son of Bechu Dayal has been recorded in Column 9. At the time of spot inspection by the Consolidation Officer, possession of respondent No.3 has been alleged to be mentioned for 15 years.

6. Before the Consolidation Officer, respondent No.3, Balairam had produced the Khasra of 1369 to 1379 and 1380 to 1382 Fasli. Respondent No.3 Balairam himself appeared as PW1 and one Sugreev Prasad as PW2. In the Khasra of 1368 and 1384 petitioners have been recorded as "Kastkar" where respondent No.3 has been recorded as "Sikmi1. During the course of trial before the Consolidation Officer, the copy of Form P.A10 was not produced by the respondent No.3. Respondent No.3 has also not produced any copy of the order by which his name was recorded under Column 9. Opposite party No.3 had claimed the possession of land in question since 2627 years and on the other hand Sri Sugreev Prasad had stated that he is in possession since 2025 years. Sugreev Prasad had failed to make any statement relating to actual possessor. He failed to verify the boundaries of the land in question. Witness Sugreev Prasad also could not make any statement relating to the actual possessor of the land in question. Keeping in view the facts and circumstances of the case and evidence on record the learned Consolidation Officer had recorded a finding that entries made in Form P.A10 was not made in accordance to provisions contained in Land Record Manual hence lacks evidentiary value and rejected the objection.

7. Feeling aggrieved with the order passed by the Consolidation Officer opposite party No. 3 had filed an appeal under Section 11(1) of U.P.C.H. Act which was allowed by the impugned order dated 9.9.1986, a copy of which has been filed as Annexure2 to the writ petition. The Settlement Officer of Consolidation while allowing the appeal had recorded a finding that in view of order passed by the

ARO in 1366 Fasli in pursuance to record operation the entry made in Form P.A.10 loses its "importance. In the Khatauni of 1366 Fasli name of opposite party No. 3 has been recorded and it cannot be disputed and is binding. The Appellate Authority had allowed the appeal and granted bhumidhari right to the respondent No. 3 over the land in question.

8. Feeling aggrieved with the order passed by the Settlement Officer of Consolidation the petitioners preferred a revision under Section 48 of U.P.C.H. Act. The revisional authority had reiterated the finding recorded by the Settlement Officer of Consolidation and dismissed the revision. While dismissing the revision the learned Deputy Director of Consolidation had observed that the entries of the year 1 366 Fasli has been recorded with remark "without payment of land revenue". Petitioners have assailed the entry of the year 1 366 on the ground that it does not disclose the title of the private respondents indicating the column. The discussion on the issue in the judgment of the learned Deputy Director of Consolidation concerned is reproduced as under:

However, the learned Deputy Director of Consolidation had not recorded any finding on the objection raised by the petitioners relating to the filling of respective column in the Khatauni. The learned Deputy Director of Consolidation had recorded a finding that name of the private respondent Balai has been continuously recorded in Khasra under Clause 9 against the Column 5 entries. Accordingly, it has been held that on account of long standing Clause 9 entry private respondent shall become Bhumidhar under adverse possession. Efforts made by the parties to summon the record and verify the entry and its" genuineness seems to be in vain because of their nonavailability. But learned Deputy Director of Consolidation had recorded a finding that it shall not be justified to enter into the basis of the entry on account of their continuity for longer period with the following words:

9. While assailing the impugned order the learned counsel for the petitioner Sri Jai Shankar Misra submits that since the entries made in the Khasra and Khatauni were not done in accordance to provisions contained in Land Record Manual and they cannot be relied upon from grant of adverse possession. It has been submitted that the entry contained in 1366 Fasli cannot be treated as settlement year entry being not done in accordance to provisions contained in Chapter IV of the Land Revenue Act. Petitioner"s counsel submits that last settlement in the State of U.P. was done in 1345 to 1346. The entry done in 1366 Fasli is a fictitious entry without indicating the column and payment of land revenue as required under law. It has been also submitted that private respondent has not been in continuous possession for the period of 12 years hence no adverse possession can be granted. Petitioner"s counsel submits that entry made in 1366 Fasli is rebuttable, even if, Section 57 of the Land Revenue Act is made applicable. Learned counsel for the petitioner submits that the condition necessary to declare adverse possession as settled by this Court as well as Hon"ble Apex Court or the Board of Revenue are not fulfilled hence impugned

order passed by the appellate as well as revisional authority is not sustainable under law and is liable to be set aside. Learned counsel for the petitioner has relied upon the judgments reported in 1992 RD 1 ; State of U.P. and another v. Surendra Nath and another. 2001(19) LCD 1082; Bal Krishan v. Satya Prakash and others. 2001 (19) LCD 232; Roop Singh (dead) by LRs. v. Ram Singh (dead) by LRs. 1996(14) LCD 482; Meethivan Siddiqu v. Muhammad Kunju Pareeth Kuttv and others. 1974 RD 268; Ratan Singh and others v. Chief Justice. H.C. of Judicature at Alld. and others. 1952 RD 142; Pargas Koeri v. Jhaman Koeri.

10. On the other hand while defending the impugned judgment and orders Dr. L.P. Misra, learned counsel for the respondents submits that in view of long standing entries in the revenue records there may be presumption of the adverse possession. Further submission of the respondents' counsel is that entry of 1366 Fasli being the entry of settlement year attains finality and thus should be relied upon. According to the learned counsel for the respondents petitioners' other brothers have not raised any objection and there shall be presumption of correctness of the entry. Learned counsel for the respondents has relied upon the judgments reported in 1948 RD 424; Bhika and others v. Bhopa and others; 1985 All. CJ 759; Lal Bihari and others v. Ram Adhar and others, 1992 Supp. (2) SCC 70; Hasan Ali and others v. State of U.P. and others; 1952 RD 142; Pargas Koeri v. Jhaman Koeri.

In view of above, in the present case question involved for adjudication relates to alleged settlement entry for the year 1966 as well as evidentiary value of Clause 9 entry for the purpose of adverse possession. Accordingly, it is necessary to consider certain statutory provisions contained in Land Revenue Act and Land Record Manual relating to entry made in Khasra and Khatauni.

11. Under Section 28 of the Act every year the Lekhpal of the village concerned prepares map and field book of each village of the district and make entry in Khasra: The power has been conferred by Section 28 of the Land Revenue Act. Under Section 73 of the Land Revenue Act it shall be incumbent upon the district authorities to prepare the record of rights by making necessary entries in the Khatauni with particulars required by Section 55 of the Act. Under Section 33 of the Land Revenue Act it shall be duty of the Collector to maintain the record of rights by making necessary entry in register mentioned in Section 32 of the Act. For convenience Sections 28, 32 and 33 of the Land Revenue Act are being reproduced as under:

"28. Maintenance of map and field book The Collector shall in accordance with rules made under Section 234, maintain a map and fieldbook of each village in his district and shall cause annually, or at such longer intervals as the State Government may prescribe, to be recorded therein all changes in the boundaries of each village [* * *] or field and shall correct any errors which are shown to have been made in such map or fieldbook.

32. Record of Rights There shall be a record of rights for each village subject to

such exceptions as may be prescribed by rules made under the provisions of Section 234. The recordofrights shall consist of a register of all persons cultivating or otherwise occupying land specifying the particulars required by Section 55.

33. The annual registers (1) the Collector shall maintain the recordofrights, and for that purpose shall annually, or at such longer intervals as the State Government may prescribed, cause to be prepared an amended [register mentioned in Section 32],

The register so prepared shall be called the annual register.

[(2) The Collector shall cause to be recorded in the annual register

(a) all successions and transfers in accordance with the provisions of Section 35; or

(b) other changes that may take place in respect of any land;

and shall also correct all errors and omissions in accordance with the provisions of Section 39;

Provided that the power to record a change under Clause (b) shall not be construed to include the power to decide a dispute involving any question of title.]

[(3) No such change or transaction shall be recorded without the order of the Collector or as hereinafter provided, of the Tahsildar or [the Kanungo].]

[(4) The Collector shall cause to be prepared and supplied to every person recorded as bhumidhar, whether with or without transferable rights, asami or Government Lessee a Kisan Bahi (Pass book) which shall contain

(a) such extract from the annual register prepared under subsection (1) relating to all holdings of which he is so recorded (either solely or jointly with others);

(b) details of grants sanctioned to him; and

(c) such other particulars as may be prescribed;

Provided that in the case of joint holdings it shall be sufficient for the purpose of this subsection if Kisan Bahi (Pass book) is supplied to such one or more of the recorded cosharers as may be prescribed.

(4A) The Kisan Bahi (Pass book) referred to in subsection (4) shall be prepared in such manner and on payment of such fee, which shall be realizable as arrears of land revenue, as may be prescribed.

(5) Every such person shall be entitled, without payment of any extra fee, to get any amendment made in the annual register under subsection (2) incorporated in his Kisan Bahi (Pass book).

(6) The State Government may make rules to carry out the purposes of this

section (including, in particular, rules prescribing the mode of reception in evidence, and of proof in judicial proceedings, of entries in the [Kisan Bahi (Pass book)], and the mode of its revision and authentication upto date and for issue of duplicate copies thereof, and the fees, if any, to be charged for any of the said purposes.

(7) In this section, "prescribed" means prescribed by rules made by the State Government.

(8) Nothing in subsections (4) to (7) shall apply in relation to any area which is either under consolidation operations or under record operations]."

12. Chapter 4 of the Land Revenue Act provides procedure for revision or resurvey of records by prior notification in the gazette. In case a notification is issued then the competent authority shall proceed to settle the entry in accordance to law. Notification issued for settlement of entry or resurvey shall deem to be completed after issuance of another notification declaring the operation to be closed. Record Officers are appointed and new records are prepared in pursuance to power conferred by Section 53 of the Act. Though, dispute relating to boundaries are decided by Record Officer in pursuance to provision contained in Section 48 of the Act. However, disputes relating to entries are decided by Record Officer in pursuance to provision contained in Section 54 of the Act. Every order of the Assistant Record Officer is subject to appeal (and revision) under Sections 210 and 219 of the Land Revenue Act. For convenience Sections 48, 49, 52, 53 and 54 of the Land Revenue Act are reproduced as under:

"48. Notification of record operations If the State Government thinks that, in any district or other local area a general or partial revision of the records or a resurvey, or both, should be made, it shall publish a notification to that effect.

Effect to notification And every such local area shall be held to be under record or survey operations, or both, as the case may be, from the date of the notifications until the issue of another notification declaring the operations to be closed therein.

49. Record Officers The State Government may appoint an officer, hereinafter called the Record Officer, to be in charge of the record operations or the survey, or both, as the case may be, in any local area and as many Assistant Record Officers, as to it may seem fit, and such officers shall exercise all the powers conferred on them by this Act so long as such local area is under record or survey operations, as the case may be.

52. Records to be prepared in resurvey When any local area is under survey operations the Record Officer shall prepare for each village therein a map and field book, which shall thereafter be maintained by the Collector as provided by Section 28, instead of the map and fieldbook previously existing.

[53. Preparation of new record of rights Where any local area is under record operation, the Record Officer shall frame for each village therein the record

specified in Section 32 and the record so framed shall thereafter be maintained by the Collector instead of the record previously maintained under Section 33.]

[54. Undisputed entries and disposal of disputes regarding entries by record officer (1) For revising the map and records under this Chapter the Record Officer shall, subject to the provisions hereinafter contained, cause to be carried out survey, map correction, field to field Partial and test and verification of current annual register in accordance with the procedure prescribed.

(2) after the test and verification of the current annual register in accordance with subsection (1) the NaibTahsildar shall correct clerical mistakes and errors, if any, in such register, and shall cause to be issued to the concerned tenureholder and other persons interested, notices containing relevant extracts from the current annual register, and such other records as may be prescribed, showing their rights and liabilities in relation to land and mistakes and disputes discovered during the operations mentioned in the said subsection.

(3) Any person to whom notice under subsection (2) has been issued may, within twentyone days of the receipt of notice, file before the NaibTahsildar objection in respect thereof disputing the correctness or nature of the entries in such records or extracts.

(4) Any person interested in the land may also file objection before the NaibTahsildar at any time before the dispute is settled in accordance with subsection (5), or before the Assistant Records Officer, at any time before the objections are decided in accordance with subsection (6).

(5)The NaibTahsildar shall

(a) where objections are filed in accordance with subsection (3) or subsection (4) after hearing the parties concerned; and

(b) in any other case after making such inquiry as he may deem necessary;

correct the mistake, and settle the dispute, by conciliation between the parties appearing before him, and pass orders on the basis of such conciliation.

(6) The record of all cases which cannot be disposed of by the NaibTahsildar by conciliation as required by subsection (5), shall be forwarded to the Assistant Record Officer who shall dispose of the same, in accordance with the provisions of Sections 40, 41 or 43, as the case maybe, and where the dispute involves a question of title, he shall decide the same after a summary inquiry.

(7) Where after summary inquiry under subsection (6), the Assistant Record Officer is satisfied that the land in dispute belongs to the State Government or a local authority, he shall cause the person in unauthorized occupation of such land to be evicted and may, for that purpose use or cause to be used such force as may be necessary.

(8)Every order of the Assistant Record Officer

(a) made under subsection (6) shall, subject to the provisions of Sections 210 and 219, be final;

(b) made under subsection (7) shall subject to the result of any suit which the aggrieved person may file in any court of competent jurisdiction, be final."

13. During revision of records it shall be incumbent upon the Assistant Record Officer or the competent authority to fill up in the Khatauni of the tenureholder with all necessary particulars provided by Section 55 of the Act. All entries made in the recordofrights or Khatauni in accordance to provisions of Chapter 4 of the Act shall presume to be true until contrary is proved in view of provisions contained in Section 57. For convenience Sections 55 and 57 of the Land Revenue Act are reproduced as under:

[55. Particulars to be stated in the list of cultivators The register of persons cultivating or otherwise occupying land specified in Section 32 shall specify as to each tenureholder the following particulars:

(a) the class of tenure as determined by the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950.

(b) the revenue or rent payable by the tenureholder, and

(c) any other conditions of tenure which the State Government may by rules made under Section 234 require to be record.

Explanation For the purposes of this section the year for which the register is prepared shall be reckoned as a complete year.]

57. Presumption as to entries "All entries in the recordofrights prepared in accordance with the provisions of this Chapter shall be presumed to be true until the contrary is proved; and all decisions under this Chapter in cases of dispute shall, subject to the provisions of subsection (3) of Section 40, be binding on all Revenue Courts in respect of the subjectmatter of such disputes; but no such entry or decision shall affect the right of any person to claim and establish in the Civil Court any interest in land which requires to be recorded in the registers prescribed by Section 32."

14. According to provisions contained in Chapter 5 of the Land Record Manual, (in short hereinafter referred as "Manual") provisions have been given for preparation of Khasra. Under Chapters of the Manual in orderto maintain map and Khasra prescribed by Section 28 of the Manual it shall be duty of the Lekhpal to make three field to field inspections every year of every village of his halka commencing from 10th August, 1st January and 1st May. Under Para 60 of the Manual the entry should be filled up in various columns of Khasra in Form P3. Lekhpal shall be responsible for accuracy of all entries in Column 4 of the Khasra, made on the basis of holding recorded in Khatauni. However, in Column 5, the name of such person is recorded who is either original cultivator or replaced by other cultivator. But colour of ink shall be different. Details relating to the entry

which should be made in Column 5 of the Khasra have been given in Para 71 to 85 of the Manual. Entry of subtenant is made in Column 6 of the Khasra. Column 6 also contains the name of occupier without consent of the person whose name is entered in Column 5 of the Khasra. The change of cultivatory occupation in land is entered in Column 6, whereas the cultivatory possession is done in Column 5 with black ink but change is done in red ink. Different colours of ink have been provided for use for the different situations. According to provisions contained in Para 89A and 89B, it shall be duty of Lekhpal to prepare in triplicate a consolidated list of new and modified entries in Khasra by filling Form P.A.10. For convenience Para 89, 89A and 89B of the Manual are being reproduced as under:

"89. Changes in rent (Columns 5 and 6) When the cultivator of field is changed or the rent paid for the field is altered, the new rent shall be shown in red ink in Column 5 in case of a tenant and in Column 6 in the case of subtenant, tenant of sir or a tenant of a permanent tenureholder in accordance with the following instructions:

(i) If the holding is held on a lump cash rent, the whole rent shall be entered opposite the field in the holding with addition of some such words as "bilmuqta", opposite the other fields in the holding a reference to the first number shall be given.

(ii) If the rent of each field has been fixed in cash separately, the rent with be entered opposite field.

(iii) If the rent is fixed by a cash rate on the bigha, the rate will be entered.

(iv) If the rent is a rent in kind, consisting of so many seers or maunds of a particular grain (true jinspher) the amount and nature of the grain to be delivered shall be entered thus; "do man gehun etc."whatever the crop actually sown may be.

(v) When the rent is taken by division or appraisalment of the crop, the entry will show the method of division and the share taken by the landlord, e.g., batainisfi or kankut tikur or as the case may be.

(vi) If a grainrented field bears a crop which by local custom pays a cash rent (zabti or jinspherj the Lekhpal shall note the amount of rent according to the customary rate in the column of remarks and will not enter it in Column 5 or 6 as the case may be, until he can ascertain the amount of rent actually determined.

(vii) In all cases the rent entered shall be the amount that is actually payable to the landlord for the current year.

89A. List of changes (i) After each Kharif and Rabi partial of a village the Lekhpal shall prepare in triplicate a consolidated list of new and modified entries in the Khasra in the following form:

Form No.P10

Khasra No

Area

Details of entry

Details of entry

Verification

Remarks

of Plot

in the last year

made in the current

report by the

year

Supervisor

Kanungo

(ii) The Lekhpal shall fill in first four columns and hand over a copy of the list to the Chairman of the Land Management Committee. He shall also prepare extract from the list and issue to the person or persons concerned recorded in Columns 3 and 4 to their heirs, if the person or persons concerned have died, obtaining their signature in the copy of the list retained by him.

[(iii) The [Bhulekh Nirikshak] shall ensure at the time of his partial of the village the extract have been issued in all the cases and signatures obtained of the recipients].

89B. Report of changes The copy of the list with the Lekhpal containing the signatures of the recipients of the extracts shall be attached of the Khasra concerned and filed with the Registrar Kanungo along with it on or before 31st July, of the following year [subparagraph (iv) of paragraph 60].?

15. A perusal of Para 89A and 89B, at the face of record, shows that while filling Form P.A.10 it shall be incumbent upon the Bhulekh Nirikshak or Lekhpal to ensure that the extract of his entry is issued in all cases to record tenureholder and in lieu thereof signatures of the recipient are obtained. Report of every change is communicated to the Registrar Kanungo.

16. Preparation of map and khasra has been provided in Chapter AV of the Land Record Manual. Chapter AV of the Land Record Manual relates to area to which U.P.Z.A. & L.R. Act applies. According to Para A55, Lekhpal has to visit and make inspection every year thrice. Para A81 and A81A provide how the books should be maintained by Lekhpal and how the diaries are filled up. Para A81 further provides that after every partial in the memorandum in Form P24 shall be signed

by the Lekhpal and the signature of supervisor Kanun go shall be obtained on the diary. All the tenure holders of the village including the persons in whose favour entries made, shall be informed and mentioned in the memorandum delivered to Bhulekh Nirikshak. For convenience ParaA80 and ParaA81 and ParaA81A are reproduced as under:

[A80. The Lekhpal while on partial in the village shall keep with him a book of memorandum of facts of possession in cases of the type mentioned in paras A72 (ii) and A72 (iii). The pages in the book shall be machine numbered from 1 to 100. Whenever cases of possession of person over plots in respect of which Columns 4 and 5 are blank or plots over which the name of a person is already recorded in Columns 4 and 5 come to his notice the Lekhpal shall make enquiries regarding the nature of the possession and record the facts in brief in Column 6 of the memorandum in Form PA24 given below. He shall, at the same time record in his diary the number, of the plots in respect of which entries have been made by him in the memorandum together with the serial number of the entries made therein. Such entry in diary shall not under any circumstances mentioned any names of person found in possession of the nature of claim or dispute.

Form PA24

Memorandum offsets of possession in cases of the type mentioned in paras A72 (ii) and A72 (iii) coming to the notice of the Lekhpal in the course of his partial:

Village.....Pargana.....Tahsil.....Session any year.....total No. of entries in.....Date of commencement.....of partial.....the memorandum.....of partial.

Date of conclusion of partial.....date on which this form..... is handed over to [Sahayak Bhulekh Adhikari]

Serial

Serial No.

Khasra

Entry in

Entry in

List of

Remarks

No.

of diary

plot No.

column 4

colum

report

with

of area

of the

no. 5

khasra

of the

khasra

signature of Lekhpal with, date.....

[A81. (i) After completing the kharif/rabi orzaid partial of a village each page of the memorandum in Form PA24 shall be signed by the Lekhpal and the total number of entries made in the memorandum will be written in the column meant for the purposes at the top of each page.

(ii) The pages of the memorandum relating to the village of which complete partial has been made shall be detached from book and delivered personally by the Lekhpal to the (Bhulekh Nirikshak) within ten days from the completion of the partial. The Lekhpal shall obtain in his diary the signatures of the Supervisor Kanungo in acknowledgment of this memorandum. The Bhulekh Nirikshak shall, while acknowledging receipt of the memorandum, specify the date when he intends to visit the village for checking the partial of the Lekhpal. The [Bhulekh Nirikshak] will take further action on the memorandum in accordance with the procedure given in para 423.]

[A81A. The Lekhpal shall inform the Chairman. Land Management Committee, and all tenureholders of the village including persons concerned with the entries made the memorandum delivered to the [Bhulekh Nirikshak] under para A80 of the date of the visit of the [Bhulekh Nirikshak] to the village and request them to remain available when the [Bhulekh Nirikshak] goes round the fields for partial. He shall also paste a notice on the notice board of the Gaon Sabha indicating the date of the visit of the [Bhulekh Nirikshak] to the village. A certificate will be got recorded on the copy of the notice under the signature of the Chairman, Land Management Committee, to the effect that wide publicity of the programme of the [Bhulekh Nirikshak] has been done amongst tenureholders of the village. This copy of the notice shall be taken by the [Bhulekh Nirikshak] on his arrival in the village and field with the memorandum in Form PA24.]

17. In a case reported in 1980 RD 1907; Smt. Bitiya Bano v. Dv. Director of Consolidation and others, this Court had proceeded to hold as under:

"The Assistant Director of Consolidation after carefully examining the evidence on record has recorded a finding that it has not been proved that PA10 was issued for the year 1370 Fasli. It also does not bear signatures of the Pradhan and there is no evidence to show that the same was served on the respondents. Para A80 of the Land Record Manual lays down the provision for issue of P.A.10 in a case of new or change entries. Compliance of this provision is not required in every year for the subsequent entries. It is only at the first stage that P.A.10 must be issued. Similar view has also been taken in a case reported in Summeri v. Nathoo Singh (1). In view of Para 102C of the Land Record Manual (introduced on February 25, 1958 and deleted on July 31, 1965) the entries without compliance of the aforesaid provision have to be ignored."

18. Khatauni is the title record showing the cultivatory possession of the recorded tenure holder, is prepared in pursuance to provisions contained in Section 32(e) of the Land Revenue Act. So far as the areas, which are not covered by U.P.Z.A. & L.R. Act, procedure for preparation of Khatauni has been given in Chapter VII of Manual. Para 121 of the Land Record Manual defines Khatauni. For convenience Para 121 of the Manual is reproduced as under;

"121. Definition The Khatauni is the register of persons cultivating or otherwise occupying land in a mahal, prescribed by Section 32(e) of the Land Revenue Act. The record shall be prepared in the form given below (P11):

19. After promulgation of U.P. Zamindari Abolition and Land Reforms Act, 1950, a different provision has been given relating to preparation of Khatauni and errata list in Chapter AVIII of the Land Record Manual. Para A121 of the manual defines Khatauni for the areas where the U.P.Z.A. & L.R. Act is applicable. For convenience Para A121 of the Manual is reproduced as under:

"A121. Definition The Khatauni is the register of all persons cultivating or otherwise occupying land in a village prescribed by Section 32 of the U.P. Land Revenue Act as amended by the Uttar Pradesh Zamindari Abolition and Land Reforms Act. The record shall be prepared hexnnially in the form given below:

Para 123 of the Manual provides the method of preparation of Khatauni. For convenience the same is reproduced as under:

"123. Method of Preparation (i) The Khatauni shall be prepared from the Khatauni of the previous year, incorporating all changes which the Khasra and Khewat show to be required. All such changes shall be shown in red ink.

(ii) A separate Khatauni shall be prepared for each mahal in village. If a mahal consists of two more villages or portions of village, a separate Khatauni shall be prepared for each village or portion.

(iii) Within the mahal the entries shall be arranged by thoks, patties and khewatkhatas following the order of the khewat, the name of thoks, patties and proprietors and numbers of the khewatkhatas, shall correspond with the entries in the khewat in the year, and be written across the column of the form, if a thok

or patti or any part thereof is leased to a thekedar the fact shall be noted after the name of the thok or patti, concerned, the amount of the lease money and the term of the lease being noted in column of remarks."

20. The arrangement of holdings and entries in Oudh area is done in accordance to provisions contained in Para 124 of the Manual by filling various columns of the khatauni as indicated therein.

Methods of preparation have been given in para A123 and how the arrangement is to be made has been provided in Para A124. Para A124 has been divided in various clauses, provides particulars which are to be filled up in the Khatauni. Clause 1 relates to entry of Bhumidhar whereas Clause 9 relates to recording of name of occupier of land without consent of person entered in Column 4 of the Khasra. For convenience Clauses 1A, 1B, Clause 2 of part 1 and Clause 9 of Khatauni as contained in part 2, are reproduced as under:

"(1A) Land held by bhumidhars.

(1B) Land held by persons under the Government Grants Act.

(2) Land held by Sirdars.

(9) Occupiers of land without the consent of the person entered in Column 4 of the Khasra."

21. From the various provisions of the Land Record Manual, reproduced, referred and discussed hereinabove, it is evidence that specific provision has been given to record the name of original tenant as well as unauthorized occupant indicating the colour of ink also. A combined reading of Para 89A, 89B as well as Para 80,81A, A80 and A81A, at the face of record, shows that the Land Record Manual not only provide to use specific colour of ink to record the tenancy or the change of tenancy or the name of authorized or unauthorized occupant but also it commands the Lekhpal to serve the copy of entry so made on the Land Management Committee as well as all tenure holders of the village including the person concerned indicating the entries made in the memorandum delivered to Bhulekh Nirikshak. Noncompliance of provisions contained in Land Record Manual while filling the Khasra or Khatauni shall render such entry illegal and no benefit can be granted to the person who claims right and title of the land on the basis of unauthorized occupation or adverse possession for the period how so long it may be. Where a possession is acquired either before the promulgation of U.P.Z.A. & L.R. Act or subsequent to it entries made in violation of Land Record Manual shall not be advantageous to unauthorized occupants.

22. As is evident from the plain reading of Clause 9 of the Khatauni itself, reproduced hereinabove, the name of occupier of land without consent of the recorded tenure holder given in Column 4 of the Khasra is entered into Clause 9 of the Khatauni but such entry must be done in accordance to provisions contained in Para 89A and 89B and in required colour of ink while filling the entries coupled with para A80, A81 and A81A.

Not only the entries to be made in the manner provided in Land Record Manual but entries so made should also be communicated to Land Management Committee as well as recorded tenure holder whose name exist in Column 1 of the Khasra or Khatauni.

23. Coming to next question relating to adverse possession. According to the "Law Lexicon" by Ramanatha Aiyer the word "adverse possession" has been defined as under:

"Adverse Possession may be defined as "holding possession under a claim of title inconsistent with that of the true owner". (Ency. Of the Laws of England); See also possession may be adverse ab initio or may become adverse subsequently. 24 CWN 659=68 1C 745)

Other definitions "Adverse possession" designates a possession in opposition to the true title and real owner and implies that it commenced in wrong and is maintained against right. (Alexander v. Polk, 39 Miss. 755) Adverse possession, generally speaking, is a possession of another's land which, when accompanied by certain acts and circumstances, will vest title in the possessor. (Black L. Oct.; Bouvier L. Dct). Decisions and text books are unanimous in declaring that the possession must be actual, visible, exclusive, hostile, and continued, during the time necessary to create a bar under a statute of limitations.

For the purpose of acquiring title by adverse possession, the nature of the animus possidendi is material, whether the animus is based on real, false or pretended title. The title acquired cannot be higher than what it would be if the pretence or falsehood were true. Mithale Veetil Raman v. Puthulal Ambu 24 1C 95. Possession in order to be adverse must be adequate in continuity, in publicity and extent. The mere act of tethering cattle and throwing cow dung on the land of another without the assertion of any adverse right does not by itself constitute adverse possession. Mahabir Misser v. Nanda Kishore Misser. 27 1C 640. Storing straw ricks upon a land, a part of the Gramanatham which is the property of Government will not by itself give a person any title as against Government by adverse possession."

According to Black's Law Dictionary, the word "adverse possession" has been defined as under:

"A method of acquiring title to real property by possession for a statutory period under certain conditions, esp. a nonpermissive use of the land with a claim of right when that use is continuous, exclusive, hostile, open, and notorious. Cf. PRESCRIPTION (2).

Constructive adverse possession. Adverse possession in which the claim arises from the claimant's payment of taxes under color of right rather than by actual possession of the land."

24. In one another case reported in 1983 RD 53; Shri Nath v. D.D.C. and others, this Court held that noncommunication of entry to the person recorded in column

5 of the Khasra cannot be relied upon and is liable to be ignored. Relevant portion from the case of Shri Nath (supra) is reproduced here as under:

"Due to the enforcement of U.P. Act No.1 of 1951, it is well known that some of the tenure holders in order to get their land from the possession of subtenants have tried to get wrong entries in their favour and to me this case appears one of such instances. The materials on record do not indicate that the entries in favour of the petitioner tenure holder were communicated to the person recorded in Column No.5 of the Khasra, hence the aforesaid entries relating to the year 1361F. onwards are not in accordance with paras. A80 and A81 of the U.P. Land Records Manual as they stood in the year 1361 F. if the Patwari and Kanoongo have failed in performing their duties regarding the entries of 136162 Fasli. In think no reliance can be placed on such entries in favour of the petitioner."

Similar preposition of law finds place in the judgments of Board of Revenue reported in 1985 RD 90; Latkanv. Mohan Lal and 1965 RD151; Banshraj v. Pyarey.

25. In view of settled proposition of law any entry made in the khasra or khatauni in violation of provisions contained in Land Record Manual cannot be relied upon to extend benefit of such entries in favour of a person who claims right or title over the land on the basis of adverse possession. In the present case from the evidence on record it is apparent that no finding has been recorded either by the appellate Court or by the revisional Court that the entries made in khasra and khatauni were done by following the procedure contained in Land Record Manual.

26. Chapter IV of the Land Revenue Act deals with the revision of maps and records. An entry made by following the procedure contained in Chapter IV of the Act is done in pursuance to notification issued by the State Government under Section 48 of the Act. Only those entries may be called "settlement entries" or "resurvey entries" which are made in compliance of notification issued under Section 48 of the Act. In the present case it has been neither pleaded nor stated by the respondents' counsel that the alleged entries of the 1366 Fasli were done in pursuance to notification issued under Section 48 of the Act. Every entry cannot be termed as settlement entry. Accordingly, submission of the petitioner's counsel Sri Jai Shankar Misra seems to have got force that the entry of 1366 was not settlement entry. Argument advanced by the petitioner's counsel that last and third settlement entry was done in 1345 and 1346 Fasli has not been repulsed. Learned appellate authority had held that entry of 1366 Fasli in Khatauni was a resurvey entry, but finding has been recorded as to whether a notification under Section 48 of the Act was issued or not and whether the procedure provided by Chapter IV was followed or not.

27. Section 54 of the Land Revenue Act provides specific procedure for making of settlement entry which includes opportunity of hearing to the parties and to decide the dispute by Assistant Record Officer in the event of an objection raised

by a party. The entry made in the year 1366 without communication and information to the petitioner creates reasonable doubt relating to genuineness of the said entry.

28. There are more reasons why the entry made in 1366 Fasli seems to be not genuine. Admittedly, in the Khatauni of 1366 Fasli name of private respondent has been recorded without assigning revenue rent. The khatauni also does not indicate in what column the name of opposite party No.3 was recorded. Section 55 of the Land Revenue Act, at the face of record, indicates that while recording the particulars of each tenureholder it shall be incumbent on the competent officer to indicate the class of tenure acquired by the persons concerned. It shall also be incumbent to record the revenue rent payable by the tenure holder. In absence of entry of class of tenure and revenue rent payable by private respondent, the entry of 1366 Fasli cannot be relied upon to declare the private respondents as the tenure holder of the land in question. The noncompliance of the provisions contained in Section 55 of the Land Revenue Act render the entry illegal and not sustainable under law. It cannot be acted upon to decide a title of the land in question in favour of the respondents and it cannot be treated as an entry made in settlement proceeding in pursuance to provisions contained in Chapter IV of the Act.

29. Section 57 of the Act provides all the entries in the record of rights prepared under Chapter IV shall be presumed to be true until the contrary is proved. The facts and circumstances and the nature of entries existing in record, as discussed hereinabove, at the face of record indicate that the presumption provided by Section 57 shall not be available to the private respondent. Any entry made in noncompliance of the provisions contained in Chapter IV of the Land Revenue Act cannot be treated as settlement entry or entry made under record operation. Hence no benefit shall accrue on the basis of such entry to the claimant.

30. For the purpose of acquiring the title by adverse possession, the name of Animus possidendi is material where the animus is real, false or pretended title. There should be open assertion of hostile, possession should be continuous in the knowledge of the recorded tenure holder. There should be material evidence to show that the recorded tenure holder has disclaimed his right and the person who is in unauthorized occupation of a land has asserted his right and occupancy of such land is in the knowledge of recorded tenure holder.

31. The burden to prove adverse possession shall always be on the person who claims unauthorized occupancy. Specific pleading should be made by the unauthorized occupant indicating therein the actual date of unauthorized occupancy.

The Hon'ble Supreme Court in a case reported in AIR 1957 SC 314; *P. Lakshmi Reddi v. L. Lakshmi Redd*], held as under:

"Now, the ordinary classical requirement of adverse possession is that it should be *nee vi nee clam nee precario*. (See *Secretary of State for India v. Debendra*

Lal Khan, 61 Ind App 78 at p.82: (AIR 1934 PC 23 at p.25)(A). The possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. (See Radhamoni Devi v. Collector of Khulna, 27 Ind App 136 at p.140 (PC) (B). But it is well settled that in order to establish adverse possession of one coheir as against another it is not enough to show that one out of them is in sole possession and enjoyment of the profits, of the properties. Ouster of the nonpossessing coheir by the coheir in possession who claims his possession to be adverse, should be made out. The possession of one coheir is considered, in law, as possession of all the coheirs. When one coheir is found to be in possession of the property it is presumed to be on the basis of joint title. The coheir in possession cannot render his possession adverse to the other coheir not in possession merely by any secret hostile animus on his own part in derogation of the other coheir's title. [See Corea v. Appuhamy, 1912 AC 230 (C)]. It is a settled rule of law that as between coheirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute ouster. This does not necessarily mean that there must be an express demand by one and denial by the other. There are cases which have held that adverse possession and ouster can be inferred when one coheir takes and maintains notorious exclusive possession in assertion of hostile title and continues in such possession for a very considerable time and the excluded heir takes no steps to vindicate his title. Whether that line of cases is right or wrong we need not pause to consider. It is sufficient to notice that the Privy Council in N. Varada Pillai v. Jeevarathnammal, AIR 1919 PC 44 at p.47 (D) quotes, apparently with approval, a passage from Culley v. Deod Taylerson, (.1840) 3 P & D 539: 52 RR 566 (E) which indicates that such a situation may well lead to an inference of ouster "if other circumstances concur". (See also Govindrao v. Rajabai, AIR 1931 PC 48 (F). It may be further mentioned that it is well settled that the burden of making out ouster is on the person claiming to displace the lawful title of a coheir by his adverse possession."

32. The aforesaid principle relating to adverse possession has been reiterated by the Hon'ble Supreme Court in a case reported in 1996 (14) LCD 482: Mitivan Siddiqu v. Mohd. Kuni Prettikur. Hon'ble Supreme Court in the case of Mitivan Siddiqu (supra) held that unless there is specific plea and proof that the recorded tenure holder disclaims his right and unauthorized occupier had asserted hostile title and possession to the knowledge of recorded tenure holder within the statutory period and later acquiesced to it, the claim of adverse possession shall not succeed.

33. In one another case reported in 2001 (19) LCD 1082; Balkrishna v. Satya Prakash and others, the Hon'ble Supreme Court held that adverse possession must be proved with sufficient evidence and it must be in continuity in publicity and there should be pleading to show when possession became adverse. For convenience the relevant portion from the case of Balkrishna (supra) is reproduced as under;

"The law with regard to perfecting title by adverse possession is well settled. A person claiming title by adverse possession has to prove three "nec" nee vi, vec clam and nee precario. In other words, he must show that his possession is adequate in continuity, in publicity and in extent. In *S.M. Karim v. Mst. Bibi Sakeena*, AIR 1964SC 1254, speaking forthls Court, Hidayatullah, J. (as he then was) observed thus:

"Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found."

34. In a case reported in 1976 AIR 1485; *Vishwa Vijai Bharti v. Fakrul Hashan*, their Lordships of Hon"ble Apex Court held that normal presumption relating to adverse possession shall not be available in case there is evidence relating to commission of fraud (Para 14).

35. In one another case reported in AIR 1972 SC 2157: *Bachan and another v. Kankar and others*, the Hon"ble Supreme Court held that any entry make in khasra or khatauni in violation of provisions contained in Land Record Manual shall not extend any right to claim adverse possession. For convenience relevant portion from the judgment of Bachan and another is reproduced as under:

"One of the principal matters mentioned in the section is that the khasra or khatauni of 1356 Fasli is to be prepared under Sections 28 and 33 of the U.P. Land Revenue Act, 1901. The U.P. Land Records Manual in Chapter AV in paragraphs A55 to A67 lays down the manner in which the khasra or field book showing possession is to be prepared by the Patwari in the areas to which Zamindari Abolition and Land Reforms Act, 1950 applies. There are detailed instructions about the manner in which the enquiry should be carried out about actual possession, and change in possession and corrections in the map and field book, and the form in which the khasra is to be prepared. The form of khasra is given in paragraph A80. The form shows that the Lekhpal has to prepare a consolidated list of entries after partial or proper investigation. Again paragraphs A70 to A73 of the U.P. Land Records Manual show how entries have to be made in khataunis every year showing the nature of tenure of each holder. The khatauni is meant to be a record of tenure holders. The manner of changes to be made there is laid down in paragraphs A82 to A83. Entries are to be checked. Extract has to be sent to the Chairman, Land Management Committee as contemplated in paragraph A82 (iii). In this context Section 20(b)(i) of U.P. Zamindari Abolition and Land Reforms Act which speaks of the record "as occupant" in the khasra or khatauni of 1356 Fasli refers to the khasra or khatauni being prepared in accordance with the provisions of the Land Revenue Act, 1901. Khasra is the field book provided for by S.28 of the Land Revenue Act. Khatauni is an annual register prepared under Section 32 of the Land Revenue Act, 1901. It has to be emphasized that the entry under Section 20(b)(i) of the U.P.Z.A. & L.R. Act, 1950 in order to enable a person to obtain adhivasi rights must be an entry under the provisions of law."

36. The other cases referred by the petitioner's counsel Sri Jai Shankar Misra also assert the same proposition of law recorded hereinabove. The proposition of law reflected from the cases of Bhikha (supra), Lal Bihari (Supre) and Pargas Koeri (supra) relied upon by the respondents' counsel is not disputed. The presumption under Section 57 of the Act is rebuttable. Such presumption shall not be available in case an entry is made without following the procedure contained in Chapter IV of the Land Revenue Act coupled with provisions contained in Land Record Manual, referred hereinabove. Similarly, the entry made in pursuance to para A80 and A81 of the Land Record Manual shall be available only in case it has been done in accordance to provisions contained therein. Accordingly, the case of State v. Devendra Singh shall also be of no assistance to respondents' counsel.

37. In the case of Hasan Ali (supra) the Hon'ble Supreme Court held that concurrent finding of the competent authority based on record of rights and evidence should not be interfered by the High Court by reappreciation of evidence. But under the facts and circumstances of the case in hand as discussed hereinabove the case of Hasan Ali (supra) shall also be of no assistance to the learned counsel for the respondents. The entry indicating the right and title of unauthorized occupancy was not done in accordance to provisions contained in Land Record Manual as well as Land Revenue Act. In case entries are made in violation of statutory provisions, it reflects reasonable doubt over such entries. This Court is very well within the power to interfere with such findings, recorded by the Consolidation Courts. The appellate authority as well as revisional authority has been failed to exercise jurisdiction vested in them by law. They have not considered the statutory provisions referred and discussed hereinabove while recording a finding on the basis of adverse possession in favour of the private respondents.

38. Their Lordships of Hon'ble Apex Court in the cases reported in 2003 (6) SCC 675; Surya Dev Rai v. Ram Chandra Rai and others, followed by other judgment reported in 2005 (7) SCC 211: Atma Ram v. Shakuntala Rani, while discussing the supervisory power under Article 227 of the Constitution of India held that in case subordinate Courts, body or tribunal failed to exercise jurisdiction vested in them or decision rendered by them causes serious miscarriage of justice then this Court shall be very well within power to exercise jurisdiction under Article 226 or 227 of the Constitution of India.

In the case of Surya Dev Rai (supra) in Para 38 the Hon'ble Apex Court has discussed various conditions and situation when this Court can exercise supervisory jurisdiction or issue a writ of certiorari. Relevant portion from the case of Surya Dev Rai (supra) is reproduced as under:

"38(3). Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate Court is found to have acted (i) without jurisdiction by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or

(iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is selfevident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a longdrawn process of reasoning. Where two inferences are reasonably possible and the subordinate Court has chosen to take one view, the error cannot be called gross or patent."

39. In the case of Atma Ram (supra) the Hon"ble Apex Court has again proceeded to hold as under:

"It was then faintly submitted before us that the High Court ought not to have exercised its revisional jurisdiction under Article 227 of the Constitution in view of the fact that the two Courts below had concurrently found in favour of the appellant. The submission is misconceived. This is not a case where the High Court interfered with concurrent findings of fact. The High Court interfered because there was a serious error of law committed by the Courts below and as a consequence thereof they failed to exercise jurisdiction vested in them by law. The exercise of revisional jurisdiction in a case of this nature cannot be faulted."

In view of settled proposition of law and keeping in view the substantial illegality committed by the Court below the present writ petition is very well maintainable and a writ in the nature of certiorari is issued accordingly.

40. To sum up, it is evident that the entries relied upon by the respondents" counsel to claim adverse possession over the land in question were not recorded in accordance to provisions contained, in Land Record Manual. The entry of 1366 Fasli in the Khatauni also may not be treated as settlement entry or entry made in record operation as it does not seem to have been recorded in accordance to provisions contained in Chapter IV of the Land Revenue Act. Necessary factual material warranted by Section 55 of the Land Revenue Act was also not recorded

in the Khatauni of 1366 Fasli. Hence also it loses its legal sanctity. Private respondent has not indicated that since when he claimed adverse possession over the land in question. Burden to prove adverse possession by demonstrating that entries were recorded in accordance to provisions contained in Land Record Manual as well as Land Revenue Act was on the shoulder of opposite party No.3, which has not been discharged. Even in the counter affidavit filed in this Court the opposite party No.3 has not specifically pleaded relating to the procedure adopted by revenue authorities to make endorsement in Khasra and Khatauni of the respective years. It has also not been stated while filing the counter affidavit in this Court that from which year opposite party No.3 claimed adverse possession over the land in question. No evidence has been lead or material has been placed by specific pleadings as to how entry of 1366 Fasli in Khatauni was made. In the absence of any material alongwith specific pleading opposite party No.3 shall not be entitled to claim adverse possession over the land in question. He has been failed to prove by material evidence to install his claim of adverse possession.

41. Right to claim title on the basis of adverse possession is a legacy of British law. Courts should be slow to declare right on the basis of adverse possession. In case liberal approach is adopted to extend right and title on the basis of adverse possession then it may become a weapon in the hands of mighty persons to acquire the property of the weaker sections of the society. Accordingly, it shall always be incumbent upon the Courts to do close scrutiny of the evidence and material on record within the four comers of law as settled by Apex Court, discussed hereinabove. Even little reasonable doubt on the evidence relied upon by a party to claim right and title on the basis of adverse possession may be sufficient to reject such claim under a particular fact and circumstances.

There shall not be presumption of continuous possession to declare right and title on the basis of adverse possession unless year to year entries made in accordance to law in the Khasra or Khatauni are proved by cogent and trust worthy evidence. Burden of proof of such entries shall lie, as discussed hereinabove, on the person who claims Seerdari or bhumidhari right on the basis of adverse possession. In the absence of any such proof, presumption shall be in favour of recorded tenure holder whose name has been recorded in Column 1 of the Khatauni.

42. It is settled that authorities should do a thing in the manner provided by Act or Statute or not at all vide; *Nazir Ahmed v. King Emperor*. AIR 1936 PC 253; *Deep Chand v. State of Raiasthan*. AIR 1961 SC 1527; *Patna Improvement Trusty. Smt. Lakshmi Devi and others*, AIR 1963 SC 1077; *State of U.P. v. Singhara Singh and others*. AIR 1964 SC 358; *Barium Chemicals Ltd, v. Company Law Board* AIR 1967 SC 295 (para 34); *Chandra Kishore Jha v. Mahavir Prasad and others*. 1999 (8) SCC 266; *Delhi Administration v. Gurdip Singh Uban and others*, 2000(7) SCC 296. Accordingly, entries made in revenue records in violation of statutory provisions contained in Land Revenue Act as well as Land

Record Manual relied upon to extend any benefit to the private respondent.

43. In the present case evidence relied upon by the appellate authority as well as revisional authority does not inspire confidence. Entries have been made in violation of provisions contained in Land Record Manual as well as Land Revenue Act. Appellate authority as well as revisional authority have been failed to exercise jurisdiction vested in them while appreciating the evidence on record. Accordingly, writ petition deserves to be allowed.

44. In view of above, the writ petition is allowed. A writ in the nature of certiorari is issued quashing the impugned orders dated 9.9.1986 and 8.6.1989 as contained in Annexure No.1 and 2 to the writ petition respectively passed by opposite party No.1 and 2 with consequential benefits. The judgment and order passed by Consolidation Officer is restored with all consequential benefits. Writ petition is allowed accordingly. No order as to costs.

(Petition allowed)