
(2007) 09 AHC CK 0067
In the Allahabad High Court

Ram Narain, Lakshmi Narain, Ajay Kumar and Rajiv Kumar	APPELLANT
Vs	
Sub Divisional Officer and Others	RESPONDENT

Date of Decision : 07-09-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 286

Citation : (2008) 1 AWC 35 : (2007) 103 RD 478

Hon'ble Judges : Sabhajeet Yadav, J;Anjani Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Anjani Kumar and Sabhajeet Yadav, JJ.—By this petition, the petitioners have sought relief of certiorari for quashing the notice dated 7.06.1989 purporting to be under Rule 115-C and Rule 115-D of U.P. Zamindari Abolition and Land Reforms Rules 1952 (hereinafter referred to as "the Rules") contained in Annexure-1 and report of Tehsildar respondent No. 2 dated 24.5.1989 contained in Annexure-14 and order dated 20.6.1989 passed by respondent No. 1 contained in Annexure-15 respectively to the writ petition and further relief in the nature of mandamus directing the respondents not to give effect the impugned order and not to make Amal Daramat in revenue records on the basis of impugned orders and not to change the nature of land in dispute, have also been sought for. By notice dated 7.8.1989 contained in Annexure-1 of the writ petition the Tehsildar/Assistant Collector, Tehsil Kairana District Muzaffarnagar has asked the petitioners to vacate the land in question belonging to Gaon Sabha and hand over possession of it to the Gaon Sabha and vide report dated 24.5.1989 contained in Annexure-14 of the writ petition submitted by the Tehsildar in the court of Sub Divisional Officer, Kairana in case No. 2/88-89 State v. Surajbhan, it appears that recommendation has been made with regard to respondents no 3 to 45 to give benefit of Section 123(1) of the U.P.Z.A. and L.R. Act 1950 (hereinafter referred to as "the Act"), whose names were mentioned in Form P.A. 24. Vide impugned order dated 20.6.1989 the Sub Divisional Officer has directed that on the basis of possession on 30th June 1985 the names of the aforesaid

persons may be recorded in the revenue records.

2. The facts of the case in brief are that the plot in dispute namely plot No. 2362 (area 1 bigha 14 biswas) situate in Qasba Shamli, District Muzaffarnagar lies within the limits of Municipality, Shamli. One Khajan Singh claimed himself to be land holder of said plot. However, there was lis between State of Uttar Pradesh and Khajan Singh. A notice purporting to be under Rule 115-C and Rule 115-D of the Rules was issued by the Tehsildar, Kairana way back on June 17th 1960. By means of the aforesaid notice it was claimed that the land in dispute belonged to the then Gaon Samaj and Khajan Singh was asked to remove his constructions and hand over possession of the land to the Gaon Sabha, or else appear in the court on 18th July 1960. Khajan Singh gave reply to the said notice claiming that he has been cultivating the land in dispute since 1358 fasli. He claimed that since before 1359 fasli he has become Sirdar of land in dispute. The Tehsildar, Kairana on being satisfied with the contention raised by late Khajan Singh discharged the notice and directed the file to be consigned. A copy of the notice dated 17th June 1960 and order dated 31 st July 1960 passed by the Tehsildar are on record as Annexures-1 and 2 to the writ petition. However, yet another notice was issued once again purporting to be under Rule 115-C of the Rules by Sub Divisional Officer, Kairana some times in the March 1962. This notice related to the land in dispute and contained more or less same facts as were stated in previous notice. A true copy of the said notice is on record as Annexure-3 of the writ petition. Khajan Singh filed objection before Sub Divisional Officer and vide order dated 30th June 1962 the Sub Divisional Officer held that proceeding cannot go since no notification as required by Section 117 of the Act had been published, he, therefore, directed the file to be consigned. A true copy of the order dated 30th June 1962 is on record as Annexure-4 of the writ petition. Thereafter proceeding for eviction of Khajan Singh had been initiated u/s 4 of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 but the said notice was also discharged and possession of Khajan Singh was found as Sirdar. The State did not prefer any appeal against the aforesaid order.

3. It is stated in writ petition that in pursuance of the aforesaid judgment the revenue records were rectified and name of Vaish Degree College, Shamli was struck off from the records but on account of some mischief the name or the State was again mutated, therefore, Late Khajan Singh filed a suit u/s 229-B of the Act for declaration of his right over the land in dispute. The suit was initially dismissed by Sub Divisional Officer, Kairana vide order dated 14th August 1968 but ultimately appeal No. 580 of 1968 filed by said Khajan Singh before Additional Commissioner, Meerut was allowed and suit was decreed vide order dated 30th January 1971. Thereafter Vaish Degree College, Shamli went up in second appeal before the Board of Revenue, which too had been dismissed. A copy of judgement of Additional Commissioner, Meerut dated 30th January 1971 is on record as Annexure-5 of the writ petition. The result of the aforesaid litigation was that the names of both the State of Uttar Pradesh and Vaish Degree College, Shamli were struck off from the records, thereafter the name of

Khajan Singh came to be mutated in the revenue records.

4. It is also stated in the writ petition that after aforesaid series of litigations were over, the State Government by means of notice dated 6th July 1976 divested the Nagar Palika, Shamli from ownership of the land in dispute. Since the same was in the ownership of Late Khajan Singh, it is stated that during the pendency of appeal before the Board of Revenue taking advantage of emergency proclamation in the country certain persons belonging to the scheduled castes took forcible possession of the land in dispute. They also raised temporary hutments over it. Later on Khajan Singh became Bhumidhar with transferable right. His name was entered as such in the revenue records by the order of Sub Divisiona Magistrate dated 18th May 1979. After the death of Khajan Singh, in his place the names of his grandsons namely Sri Ajendra and Akshay were mutated by the order of Supervisor Kanoongo, Shamli dated 25th June 1988. The petitioners purchased the land in dispute through registered sale deed dated 10th June 1984 executed by Ajendra and Akshay, thereafter they also, as abundant caution, obtained declaration u/s 143 of the Act that the land had ceased to be agricultural holding. A true copy of the aforesaid certificate dated 11th October 1984 is on record as Annexure 7 of the writ petition. Thereafter petitioners instituted three suits namely suit No. 547 of 1986, 548/1986 and 683 of 1986 in the Civil court. The first two suits are against the illegal occupants who are the members of scheduled castes, the last suit was instituted against the Municipal Board, Shamli which too was asserting hostile title in respect of the land in dispute. The suits were instituted in the court of Civil Judge for possession of land in dispute. The complaints of aforesaid three suits are on record as Annexures-8, 9 and 10 respectively to the writ petition.

5. It is further stated in the writ petition that despite the land in dispute falls within Municipal limit of Nagar Palika, Shamli and the provisions of the Act are not applicable to it, the District Authorities which had been nourishing grudge against Late Khajan Singh and consequently against the petitioners were also sympathetic towards members of scheduled castes issued a notice u/s 123 of the Act asking the petitioners to show cause as to why the possession of persons mentioned in the accompanying form PA-24 be not regularised. A copy of the aforesaid notice is on record as Annexure-11 of the writ petition. The petitioners gave elaborate reply to the said show cause notice on 4th July 1988. A copy of the reply of petitioners is on record as Annexure-12 of the writ petition. The petitioner has also challenged the notice in the writ petition earlier filed by them, which was disposed of finally on 3.11.1988 with a direction to the respondent No. 2 to dispose of the objections filed by the petitioners. The Tehsildar has submitted a report on 24.5.1989 to the effect that land may be settled with respondents No. 3 to 45 u/s 123 of the Act. The report of the Tehsildar is cryptic. He has not considered the legal aspect nor has recorded any finding in this respect. A true copy of the report dated 24.5.1989 is on record as Annexure-14 of the writ petition. On a receipt of the report of Tehsildar, the respondent No. 1 has passed the impugned order dated 20.6.1989 to the effect that mutation of

names of contesting respondents No. 3 to 45 may be made in revenue records on the basis of possession prior to 30th June 1985. a certified copy of the impugned order is on record as Annexure-15 to the writ petition.

6. The submissions of learned Counsel for the petitioner in nut-shell are that since the land in dispute being within the Municipal limit of Nagar Palika Parishad Shamli, therefore, the provisions of the Act are not applicable to it. Secondly, the land in dispute being not in the nature of the land described under Section. 122-C (2) of the Act, therefore, the Tehsildar, Kairana had absolutely no authority under law to issue impugned notice. Thirdly, even assuming that land in dispute is such to which provisions of the Act are applicable, the predecessor-in-interest of the petitioners having been obtained the declaration u/s 229-B of the Act in respect of the land in dispute and the petitioners having been obtained a declaration u/s 143 of the Act, the respondents have absolutely no authority under law to settle the land u/s 123 of the Act in favour of contesting respondents no. 3 to 45. Thus, the entire proceedings are illegal, void and non-est and fourthly, the binding judgement culminating in appeal to the Board of Revenue and discharge of previous notices under Rule 115-C of the Rules ought to have been taken note of and could not be ignored by the respondents while passing the impugned order. Lastly, the suit regarding possession being pending in Civil court, the Tehsildar, Kairana respondent No. 2 has no authority under law to recommend regularisation of possession of respondents no. 3 to 45 in respect of land in dispute and thus to frustrate the suit.

7. A detailed counter affidavit along with stay vacation has been filed by the respondent No. 14 on behalf of respondents No. 3 to 45 of the writ petition, wherein the assertions made in the writ petition have been refuted and denied in various paragraphs. In para 8, 9 and 10 of the counter affidavit it is stated that answering respondents are in possession over the land in dispute since. 1971 and they were neither made parties in different legal proceedings referred in the writ petition nor were informed about the same. In respect of judgement dated 20th 1971 of Additionl Commissione, Meerut, it is stated that in spite of rightful possession of the contesting private respondents, they were never informed about and made parties in the said proceedings even in the second appeal filed by Vaish Degree College, Shamli, the respondents were never made parties and were never given opportunity to show their possession and protect their right. Similar averments have been made again in para 13 of the counter affidavit and it is stated that possession of respondents is also established from the statement of Lekhpal made in legal proceeding initiated against them under U.P.PP Act before Sub Divisional Officer, Kairana, District Muzaffarnagar in which Lekhpal has admitted the respondents" possession. A copy of the statement of Lekhpal dated 20th August 1979 is on record as Annexure-CA-1 to the counter affidavit. In para 14 of the counter affidavit it is again stated that in spite of possession of the respondents, their names could not be entered in revenue records because of the reason that Kesav Ram Singh son of Khajan Singh who was recorded over the plot at a relevant period was Lekhpal in the same Tehsil. Even after

retirement he remained influential. In para 15 of the counter affidavit it is stated that respondents has no knowledge about the proceeding u/s 143 of the Act nor made parties in the proceeding. In para 16 of the counter affidavit it is stated that that the respondents are contesting the suit No. 547 of 1986 and 548 of 1986 and the same are still pending. In para 17 of the counter affidavit, it is asserted that the provisions of the Act are fully applicable to the disputed land and respondents belong to scheduled castes and scheduled tribes and they are in lawful possession since 1971. It is further stated that proceeding u/s 123 of the Act as amended in 1986 by U.P. Act No. 24 of 1986 are initiated by Sub Divisional Officer to decide the claim of the contesting private respondents which was correct and in accordance with law. The provisions of the aforesaid section are fully applicable to the disputed land as the private respondents are in possession over the same since much before 15th June 1985. In para 18 of the counter affidavit it is also stated that the contesting respondents are very much covered by Section 122-C(3) of the Act and provisions of Section 123(2) of the Act are fully applicable to the respondents" case and ultimately submitted that in given facts and circumstances of the case the impugned order is perfectly justified and well in accordance with the provisions of law.

8. We have heard learned Counsels appearing for the parties and have also perused the records.

9. From perusal of various records and assertions made in the writ petition, it appears that notices issued twice under Rule 115-C of the Rules against Khajan Singh in respect of land in dispute had in dispute had been discharged and proceedings under the U.P. Public Premises (Eviction of Unauthorised occupants) Act-1972, had also been dropped against him. In our opinion, discharge of such notices under Rule 115-C of the Rules and dropping of proceeding under U.P. Public Premises (Eviction of Unauthorised occupants) Act-1972 issued against Late Khajan Singh in the years 1960, 1962 and 1965 respectively in respect of the land in dispute have no material bearing with the question in controversy involved in the case, therefore, they are of no legal consequence.

10. So far as the question with regards to the non-applicability of the provisions of the Act in respect of land in dispute on the allegation that it is situated in the Municipal area of Nagar Palika Parishad, Samli is concern, it is pointed out that the petitioner did not make any averments in the writ petition to the effect that on 7th day of July 1949 land in question was included in the Municipality or a notified area under the provisions of the U.P. Municipality Act-1916 or a Cantonment under the provisions of the Cantonment Act, 1924 or a Town area under the provisions of the U.P. Town Area Act-1914 as contemplated by Section 1(2) of the Act, so as to exclude the applicability of the provisions of the Act in respect of land in dispute. In absence of such averments in writ petition, in our considered opinion, the submission of learned Counsel for the petitioner in this regard cannot be countenanced. It is also because of the another reason that the petitioner themselves have sought benefits of the proceedings under the Act

culminated in favour of Khajan Singh and their favour and contrary to it in aforesaid proceedings every where it is mentioned that land in dispute is situated in Village Samli, Pargana-Samli, Tehsil Kairana, district Muzaffar Nagar. Besides other documents filed by petitioners in writ petition, viz in respect of the proceeding under Rule 115-C of Rules and Section 229-B of the Act, even the certificate of declaration dated 11.10.84 u/s 143 of the Act, contained in Annexure-7 of the writ petition and report of Tehsildar dated 24.5.89, clearly indicate that the plot in dispute is situated in village-Samli, Pargana-Samli, Tehsil Kairana and not in the area of Municipality Samli, Tehsil Kairana, District Muzaffar Nagar. Therefore, the submission of learned Counsel for the petitioners is not acceptable. In any view of the matter, it is not open for the petitioners to blow both hot and cold simultaneously and contend that the provisions of Act are applicable so far as proceedings under the Act culminated in their favour and on the other hand the provisions of the Act are not applicable in respect of proceedings, which have been culminated against them, thus, in our opinion, no such argument is available to them in given facts and circumstances of the case.

11. So far as applicability or non-applicability of the provisions of the Act, on declaration of land u/s 143 of the Act is concern, in this connection it pointed out that the private contesting respondents no. 3 to 45 were neither made party in aforesaid proceedings despite they were in possession of the land in dispute since before initiation of the aforesaid proceeding, as revealed from the averments made in para 11 and 12 of the writ petition and also from averments in plaints in suits filed by petitioners before the Civil Court against the contesting private respondents, nor they were afforded any opportunity of hearing in the aforesaid proceeding, therefore, the declaration made under Section-143(1) of the Act can not be binding upon them. And secondly on such declaration under Section-143(1) of the Act, only other provisions of the Chapter VIII (other than section-143) of the Act, by virtue of sub-Section-2 of said section, shall cease to apply with respect to such land and Bhumidhar with transferable rights shall thereupon be governed in the matter of devolution or succession of the land by personal law to which he is subject and there appears no restriction or legal embargo with regard to the applicability of other provisions of the Act in respect of such land.

12. For belter appreciation of the controversy. the provisions of Section-143 of the Act as stood at relevant time are extracted as under:

143. Use of a holding for industrial or residential purposes: (1) Where (bhumidhar with transferable rights), uses his holding or part thereof for a purpose not connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming, the Assistant Collector in charge of the sub-division may, suo motu or on an application, after making such enquiry as may be prescribed, make a declaration to that effect.

(1-A) Where a declaration under Sub-section (1) has to be made in respect of a part of the holding, the Assistant Collector in charge of the sub-division may in

the manner prescribed demarcate such part for the purposes of such declaration.

(2) Upon the grant, of the declaration mentioned in Sub-section (1) the provisions of this Chapter (other than this section) shall cease to apply to the (bhumidhar with transferable rights), with respect to such land and he shall thereupon be governed in the matter of devolution of the land by personal law to which he is subject.

(3) Where a bhumidhar with transferable rights has been granted, before or after the commencement of the Uttar Pradesh Land Laws (Amendment) Act, 1978, any loan by the Uttar Pradesh Financial Corporation or by any other Corporation owned or controlled by the State Government, on the security of any land held by such bhumidhar, the provisions of this chapter other than this Section shall cease to apply to such bhumidhar with respect to such land and he shall thereupon be governed in the matter of devolution of the land by personal law to which he is subject.

13. From a plain reading of the aforesaid provisions of the Act, it clearly indicates that on such declaration made under Section-143 of the Act, the provision of only Chapter VIII of the Act (other than Section 143) shall cease to apply in respect of the land which is subject matter of such declaration and thereupon Bhumidhar of the land with non-transferable rights, shall be governed by his personal law to which he is subject in the matter of devolution or succession of the land alone. It implies that only in the matter of devolution or succession of the land under such declaration the personal law of the Bhumidhar with transferable rights to which he is subject shall apply but so far as other purposes are concerned, the provisions of Chapter-VIII of the Act, in our opinion, shall continue to apply without any restriction or legal embargo thereon. The consequences ensuing due to such declaration u/s 143(1) of the Act are clearly emanating from the provisions of Sub-section (2) and (3) of the aforesaid section and do not admit any ambiguity, therefore, the same should be understood in the context of the provisions of Sub-sections(2) and (3) of Section 143 only and should not be dilated or widened to cover other provisions of the Act. In any event of the matter the provisions of other Chapters of the Act including the provisions of Chapter VII of the Act, which contains the provisions of Section-123 and to which we are concern, in our considered opinion, shall continue to apply with full force and declaration made under Section-143(I) would not affect the operation and applicability of the provisions of Chapter VII of the Act, which includes Section 123 in respect of such land and further on such declaration, the land which is subject matter of declaration is neither excluded from the definition of the "land" u/s 3(14) of the Act nor the Bhumidhar with transferable rights of land ceases to be Bhumidhar with transferable rights despite the use of the land is changed for the purposes, not connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming. In other words, in spite of such declaration and change in user, the land would remain as such within the meaning of land defined u/s 3(14) of the Act and Bhumidhar with

transferable rights would also remain intact with aforesaid status and rights. Thus, the submission of learned Counsel for the petitioner in this regard appears to be misconceived and has to be rejected.

14. Further submission of learned Counsel for the petitioners is that only those land could be settled with persons referred to in Section 122C(3), therefore, with respondents no. 3 to 45 which are enumerated u/s 122-C (2) of the Act and petitioners Bhumidhari land could not be settled with them, in our considered opinion appears to be misconceived for the simple reason that it is no doubt true that land referred to in Section 122-C(2) can be allotted to the persons referred to in Section 122-C(3) of the Act for the purpose of building houses, either on the resolution of Land Management Committee of Gaon Sabha by the Assistant Collector Incharge of sub-division concern or on his own motion on failure of Land Management Committee but the settlement of land for house site of the aforesaid categories of persons cannot be restricted as aforestated, rather the settlement in favour of aforesaid persons can also be made u/s 123(1) of the Act in respect land referred to in Section 122-C(2) not being land reserved for any public purposes and not being land, wells, house site etc. settled u/s 9 of the Act and so also such settlement of house site to aforesaid persons can also be made u/s 123(2) in respect of land mentioned therein on satisfaction of the conditions stipulated thereunder without any aid of Land Management Committee or without any such formal order of allotment by. Assistant Collector in charge of sub-division.

15. For better appreciation of the scope of the provisions of Sections 122-C and 123 of the Act as stood at relevant time, the same are extracted as under:

122-C. Allotment of land for housing site for members of Scheduled Castes, agricultural labourers etc. (1) The Assistant Collector in charge of the sub-division of his own motion or on the resolution of the Land Management Committee, may earmark any of the following qlasses of land for the provision of abadi sites for the members of the Scheduled Castes and the Scheduled Tribes and agricultural labourers and village artisans-

(a) lands referred to in Clause (i) of sub-section (1) of Section 117 and vested in the Gaon Sabha under that section;

(b) lands coming into possession of the Land Management Committee u/s 194 or under any other provisions of this Act;

(c) any other land which is deemed to be or becomes vacant under Section13, Section 14, Section 163, Section 185, or Section 211;

(d) where the land earmarked for the extension of abadi and reserved as abadi site for Harijans under the U.P. Consolidation of Holdings Act, 1953; is considered by him to be insufficient, and land earmarked for other public purposes under that Act is available, then any part of the land so available.

(2) Notwithstanding anything in Sections 122-A, 195, 196, 197 and 198 of this

Act, or in Sections 4, 15, 16, 28-B and 34 of the United Provinces Panchayat Raj Act, 1947, the Land Management Committee may with the previous approval of the Assistant Collector in charge of the sub-division allot for purposes of building of houses, to persons referred to in Sub-section (3)--

(a), any land earmarked under sub-section (1);

(b) any land earmarked for the extension of abadi sites for Harijans under the provisions of the U.P. Consolidation of Holdings Act, 1953;

(c) any abadi site referred to in Clause (iv) of Sub-section (1) of Section 117 and vested in the Gaon Sabha;

(d) any land acquired for the said purposes under the Land Acquisition Act, 1894.

(3) The following order of preference shall be observed in making allotments under Sub-section (2)--

(i) an agricultural labourer or village artisan residing in the village and belonging to a Scheduled Caste or Scheduled Tribe;

(ii) any other agricultural labourer or village artisan residing in the village;

(iii) any other person residing in the village and belonging to a Scheduled Caste or Scheduled Tribe.

Explanation I - The expression "agricultural labourer" shall have the same meaning as in Section 198.

[Explanation II:- The expression "village artisan" means a person who does not hold any agricultural land and whose main source of livelihood is manufacture or repair of traditional tools, implements and other articles or things used for agriculture purpose ancillary thereto and includes a carpenter, weaver, potter, blacksmith, silversmith, goldsmith, barber, washer man, cobbler or any other persons who normally earns his livelihood by practising a craft either by his own labour or by the labour of any member of his family in any rural area:

Provided that no person shall be deemed to be a village artisan whose total income (including income of his or her spouse and minor children) exceeds two thousand four hundred rupees in a year.]

Explanation III:- Preference shall be given to a person who either holds no house or has insufficient housing accommodation considering the requirements of his family.

(4) If the Assistant Collector in charge of the sub-division is satisfied that the Land Management committee has failed to discharge its duties or to perform its functions under Sub-section (2) or it is otherwise necessary or expedient so to do, he may himself allot such land in accordance with the provisions of Sub-section (3)

5. Any land allotted under this section shall be held by the allottee on such terms and conditions as may be prescribed.

(6) ...

(8) ...

(9) ...

122-D ...

123. Certain house sites to be settled with existing owner thereof.--(1) Without prejudice to the provisions of Section 9, where any person referred to in Sub-section (3) of Section 122-C has built a house on any land referred to in Sub-section (2) of that section, not being land reserved for any public purpose, and such house exists on the (30th day of June, 1985) the site of such house shall be held by the owner of the house on terms and conditions as may be prescribed.

(2) Where any person referred to in Sub-section (3) of Section 12-C has built a house on any land held by a tenure-holder (not being a Government lessee) and such house exists on the (30th day of June, 1985) the site of such house shall, notwithstanding anything contained in this Act, be deemed to be settled with the owner of such house by the tenure holder on such terms and conditions as may, be prescribed.

Explanation.-- For the purposes of Sub-section (2), a house existing on the (30th day of June, 1985) on any land held by a tenure-holder shall, unless the contrary is proved, be presumed to have been built by the occupant thereof and where the occupants are members of one family by the head of that family.)

16. Thus, from a plain reading of Sub-section (1) of Section 123 of the Act, it is clear that where any person referred in Section 122-C(3) has built a house on any land which is not subject matter of Section 9 of the Act or on any land referred to in Section 122-C (2) not being the land reserved for any public purpose and such house exists on 30th June 1985, the site of the house shall be held by the owner of the house on such terms and conditions as prescribed by the Rules. The aforesaid provisions does not require any formal allotment order by Assistant Collector in charge of the sub-division concerned, rather statute itself recognises such settlement on satisfaction of the conditions stipulated under the aforesaid provisions of the Act.

17. Similarly Sub-section (2) of Section 123 of the Act provides that where any person enumerated in sub-section (3) of Section 122-C has built a house on any land held by tenure holder (not being a Government lessee) and such house exists on 30th June, 1985, the site of such house shall notwithstanding anything contained in the Act, be deemed to be settled with the owner of such house by the tenure holder on such terms and conditions as may be prescribed under the Rules, therefore, the submission of learned Counsel for the petitioner that settlement of house site in favour of owners of the House belonging to the

schedule castes and schedule tribes and agricultural labourers are permissible only in respect of land referred to in Section 122-C(2) of the Act alone, in our considered opinion, appears to be wholly misconceived. We are of the considered opinion that the settlement of land can be made in favour of persons referred to in Sub-section (3) of Section 122-C if they have built their houses on any land held by tenure holder (not being Government lessees) and such house existed on 30th day of June, 1985. The restriction is only in respect of the land held by a Government lessee and such restriction is not applicable in respect of land held by tenure holders of other categories. In other words, if other conditions of Section 123(2) of the Act are satisfied, the land covered by house sites of the persons enumerated u/s 122-C(3) shall be deemed to be settled with the owner of such house by the tenure holders of the land except upon the land of Government lessee.

18. In this connection, it is also significant to notice that the provisions of Sub-section (2) of Section 123 are coached with deeming provisions and also with non-obstante clause having overriding effect upon the other provisions of the Act, therefore, full effect of the provisions has to be given by the courts. In *K. Kamaraja Nadar Vs. Kunju Thevar and Others*, , it has been held that a deeming provision creates a legal fiction. The effect of such a legal fiction is that a position which otherwise would not obtain is deemed to obtain under certain circumstances. For ready reference the pertinent observation made by Hon''ble Apex Court in para 28 of the decision is reproduced as under:

28. ...The provision is therefore made in Section 55-A(5) that any person who has given a notice of retirement u/s 55-A (2) is deemed not to be a contesting candidate for the purposes of Section 52. This is a deeming provision and creates a legal fiction. The effect of such a legal fiction however is that a position which otherwise would not obtain is deemed to obtain under those circumstances....

19. In *Commissioner of Income Tax, Delhi Vs. S. Teja Singh*, , it has been held that in construing the scope of legal fiction it would be proper and even necessary to assume all those facts on which alone the fiction can operate. Thus, where deeming provision is made in a statute the state of things will have to be assumed, though such things do not exist and the right of parties will have to be determined on such imaginary things. The pertinent observations made in para 6 of the decision the Hon''ble Apex Court are as under:

6 ...It is a rule of interpretation well settled that in construing the scope of a legal fiction it would be proper and even necessary to assume all those facts on which alone the fiction can operate. The following oft-quoted observations of Lord Asquith in *East End Dwellings Co. Ltd. v. Finsbury Borough Council* 1952 A C 109 may appropriately be referred to:

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably

have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

The fiction u/s 18A(9)(b) therefore that failure to send an estimate u/s 18A(3) is to be deemed to be a failure to send a return must mean that all those facts on which alone there could be a failure to send the return must be deemed to exist, and it must accordingly be taken that by reason of this fiction, the notices required to be given u/s 22 must be deemed to have been given, and in that view, Section 28 would apply on its own terms.

20 In *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, , it was observed that the legal fictions are created only for some definite purpose. They should be limited to the purpose for which they are created and should not be extended beyond that legitimate field. The pertinent observation made by Hon''ble Apex Court in para 107 of the decision is reproduced as under:

107. As to reason (5): the argument totally ignores the purpose and efficacy of a legal fiction. A legal fiction presupposes the correctness of the state of facts on which it is based and all the consequences which flow from that state of facts have got to be worked out to their logical extent. But due regard must be had in this behalf to the purpose for which the legal fiction has been created. If the purpose of this legal fiction contained in the Explanation to Article 286(1)(a) is solely for the purpose of Sub-clause (a) as expressly stated it would not be legitimate to travel beyond the scope of that purpose and read into the provision any other purpose howsoever attractive it may be.

The legal fiction which was created here was only for the purpose of determining whether a particular sale was an outside sale or one which could be deemed to have taken place inside the State and that was the only scope of the provision. It would tie an illegitimate extension of the purpose of the legal fiction to say that it was also created for the purpose of converting the inter-State character of the transaction into an intra-State one. This type of conversion could not have been in the contemplation of the Constitution-makers and is contrary to the express purpose for which the legal fiction was created as set out in the Explanation to Article 286(1)(a).

21. Similar observation has also been made by Hon''ble Apex Court in *K.S. Dharmadatan Vs. Central Government and Others*, The pertinent observations made in paras 11, 12 and 13 of the decision are extracted as under:

11. In the case of *C.I.T., Uttar Pradesh v. Modi Sugar Mills Ltd.* while laying down the principles on the basis of which a deeming provision should be construed this Court observed as follows:

A legal fiction must be limited to the purpose for which it has been created and

cannot be extended beyond its legitimate field.

12. Similarly in the case of *Braithwaite & Co. (India) Ltd. v. Employees' State Insurance Corporation* this Court further amplifying the principle of the construction of a deeming provision observed thus:

A legal fiction is adopted in law for a limited and definite purpose only and there is no justification for extending it beyond the purpose for which the legislature adopted.

In the *Bengal Immunity Co. Ltd. v. State of Bihar* this Court pointed out that "explanation should be limited to the purpose the Constitution-makers had and legal fictions are created only for some definite purpose

13. In the case of *C.I.T., Bombay City v. Elphinstone Spinning and Weaving Mills Co. Ltd.* this Court observed as follows:

As we have already stated, this fiction cannot be carried further than what it is intended for.

22. In *Chandrana and Co. Vs. State of Mysore*, It has been held that the only limit on the power of a legislature to create a fiction is that it should not transcend its power by its creation. The pertinent observation made in para 20 of the decision is as under:

20. The only limit on the power of a Legislature to create a fiction is that it should not transcend its power by its creation. The limitation on the power of the Legislature of Mysore in 1964, when it enacted Act No. 9 of 1964, was that on the sale of declared goods it could not have imposed sales-tax at a rate higher than that specified in Section 15 of the Central Sales Tax Act as it stood then. There was no limitation on its power to impose tax on the turnover of sales of textiles before April 1, 1958, when they were not declared goods.

23. It is also well settled that a deeming fiction cannot be introduced by construction and it is the exclusive privilege of the legislature to apply a deeming fiction in given case. A fiction cannot be resorted to for the purpose of interpreting statutory provisions. In this connection, a reference can be made to a decision of Bombay High Court rendered in *Shankarrao Ramchandrarao Phate and Another Vs. Chatrapal Anandrao Kedar and Others*, . The pertinent observation made by Bombay High Court in para 11 of the decision is extracted as under:

11 ...A deeming fiction cannot be introduced by construction and it is the exclusive privilege of the Legislature to apply a deeming fiction in a given case. We cannot, therefore, by construction hold that for whatever length during the period of office as a Councillor holds the office of President, he must be deemed to have held the office of President for the entire term as a Councillor...

24. In *Manorey @ Manohar v. Board of Revenue (U.P.) and Ors.* J.T. 2003 (3) S.C. 538, Hon"ble Apex Court has occasion to consider somewhat similar

controversy in context of the provisions of Section 122-B (4-F) of the Act. The pertinent observations made in paras 8, 9 and 10 of the decision are extracted as under:

8. First, the endeavour should be to analyse and identify the nature of the right or protection conferred by sub-section (4F) of Section 122B. Sub-sections (1) to (3) and the ancillary provisions upto sub-section (4E) deal, inter alia, with the procedure for eviction of unauthorised occupants of land vested in gaon sabha. Sub-section (4F) carves out an exception in favour of an agricultural labourer belonging to a scheduled caste or scheduled tribe having land below the ceiling of 3.125 acres. Irrespective of the circumstances in which such eligible person occupied the land vested in gaon sabha (other than the land mentioned in Section 132), no action to evict him shall be taken and moreover, he shall be deemed to have been admitted as a bhumidhar with non transferable rights over the land, provided he satisfies the conditions specified in the sub-section. According to the findings of the sub-divisional officer as well as the appellate authority, the appellant does satisfy the conditions. If so, two legal consequences follow. Such occupant of the land shall not be evicted by taking recourse to Sub-section (1) to (3) of Section 122B. It means that the occupant of the land who satisfies the conditions under Sub-section (4F) is entitled to safeguard his possession as against the gaon sabha. The second and more important right which Sub-section (4F) confers on him is that he is endowed with the rights of a bhumidhar with non transferable rights. The deeming provision has been specifically enacted as a measure of agrarian reform, with a thrust on socio-economic justice. The statutorily conferred right of bhumidhar with non transferable rights finds its echo of Clause (b) of Section 131. Any person, who acquires the rights of bhumidhar under or in accordance with the provisions of the Act is recognised u/s 131 as falling within the class of bhumidhar. The right acquired or accrued under Sub-section (4F) is one such right that falls within the purview of Section 131(b).

9. Thus, Sub-section (4F) of Section 122B not merely provides a shield to protect the possession as opined by the High Court, but it also confers a positive right of bhumidhar on the occupant of the land satisfying the criteria laid down in that sub-section. Notwithstanding the clear language in which the deeming provision is couched and the ameliorative purpose of the legislation, the learned single judge of the High Court had taken the view on *Ramdin v. Board of Revenue* (supra) (followed by the same learned judge in the instant case) that the bhumidhari rights of the occupant contemplated by Sub-section (4F) can only blossom out when there is a specific allotment order by the land management committee u/s 198. According to the High Court, the deeming provision contained in Sub-section (4F) cannot be overstretched to supersede the other provisions in the Act dealing specifically with the creation of the right of bhumidhar. In other words, the view of the High Court was that a person covered by the beneficial provision contained in Sub-section (4F) will have to still go through the process of allotment u/s 198 even though he is not liable for

eviction. As a corollary to this view, it was held that the occupant was not entitled to seek correction of revenue records, even if his case falls under Sub-section (4F) of Section 122B. We hold that the view of the High Court is clearly unsustainable. It amounts to ignoring the effect of a, deeming provision enacted with a definite social purpose. When once the deeming provision unequivocally, provides for the admission of the person satisfying the requisite criteria laid down in the provision as bhumidhar with non-transferable rights u/s 195, full effect must be given to it. Section 195 lays down that the Land Management Committee, with the previous approval of the assistant collector in-charge of the sub division, shall have the right to admit any person as bhumidhar with non-transferable rights to any vacant land (other than the land falling u/s 132) vested in the gaon sabha. Section 198 prescribes "the order of preference in admitting persons to land under Sections 195 and 197" The last part of Sub-section (4F) of Section 122B confers by a statutory fiction the status of bhumidhar with non transferable rights on the eligible occupant of the land as if he has been admitted as such u/s 195. In substance and in effect the deeming provision declares that the statutorily recognised bhumidhar should be as good as a person admitted to bhumidhari rights u/s 195 read with other provisions. In a way, Sub-section (4F) supplements Section 195 by specifically granting the same benefit to a person coming within the protective umbrella of that Sub-section. The need to approach the gaon sabha u/s 195 read with Section 198 is obviated by the deeming provision contained in Sub-section (4F). We find no warrant to constrict the scope of deeming provision.

10. That being the legal position, there is no bar against an application being made by the eligible person coming within the four corners of Sub-section (4F) to effect necessary changes in the revenue record. When once the claim of the applicant is accepted, it is the bounden duty of the concerned revenue authorities to make necessary entries in the revenue records to give effect to the statutory mandate. The obligation to do so arises by necessary implication by reason of the statutory right vested in the person coming within the ambit of Sub-section (4F). The lack of specific provision for making an application under the Act is no ground to dismiss the application as not maintainable. The revenue records should naturally fall in line with the rights statutorily recognized. The sub-divisional officer was therefore within his rights to allow the application and direct the correction of the records. The Board of Revenue and the High Court should not have set aside the order. The fact that the Land Management Committee of gaon sabha had created lease hold rights in favour of the respondents herein is of no consequence. Such lease, in the face of the statutory right of the appellant, is nonest in the eye of law and is liable to be ignored.

25. Now applying the aforesaid principle in facts and circumstances of the case we find that it is not in dispute that the respondents are members of Scheduled caste and Scheduled tribes and agricultural labourers falling within the category of persons enumerated in Sub-section (3) of Section 122-C of the Act. The report dated 24.5.1989 submitted by Tehsildar, Kairana, District Muzaffarnagar to the

Sub-Divisional Officer, contained in Annexure -14 of the writ petition, clearly demonstrates that the respondents' name have been entered in Form no. PA-24 and that they have built their houses over the land in dispute from before 30th June 1985, and houses were existing on the said land on 30th June 1985. The aforesaid fact regarding the existence of houses of the respondents from before and on 30th June 1985 has not been disputed by the petitioners rather they have also admitted that since 1976-77 the respondents no. 3 to 45 are in forceful possession of the land in dispute and they have also built their houses in the disputed plot as revealed from para 11 and 12 of the writ petition. The allegations made in the plaints of the suits instituted by the petitioners in Civil court referred hereinbefore are also demonstrate that the houses of the respondents No. 3 to 45 were existing on the land in dispute on the date of institution of suits that would mean to include 30th June 1985 and the suits too are for recovery of possession. What the petitioners have, if fact, disputed is the lawful possession or occupation of respondents No. 3 to 45 over land in dispute. Therefore, the question which arises for our consideration is that as to whether in given facts and circumstances of the case by virtue of the provisions of Section 123(2) of the Act, the site of such houses shall be deemed to be settled with the owners of such houses by the tenure holder or not?

26. In this connection it is necessary to point out that the deeming provision u/s 123(2) of the Act has been enacted with non-obstante clause, therefore, the same has to be given effect by the Court despite any other provision contrary contained in the Act itself. In our opinion, in order to effectuate the deeming provision under the statute the court would assume all those facts on which the legal fiction created by the statute can operate, even it those facts do not exist in reality and the right of the parties will have to be determined on such imaginary things to achieve the purpose for which such legal fiction has been created by the statute. Therefore, we have to examine that for which purpose the aforesaid legal fiction has been created by the statute and which facts we have to assume to put in the said legal fiction in operation/ In this connection it is to be pointed out that on satisfaction of the certain conditions laid down in Section 123(2) of the Act, the legal fiction has been created for the purpose of settlement of house site with owner of house by the tenure holder. Those conditions are that the house must have been built by a person referred to in Section 122-C(3) on the land of tenure holder not being Government lessee from before 30th June 1985, and such house exists on 30th June 1985. On satisfaction of the aforesaid conditions we have to assume the necessary facts on which the tenure holder of the land could settle the house site with the owner of the house even if in reality all necessary facts pertaining to such settlement were not existing, therefore in given facts and circumstances of the case, we do not find any difficulty to hold that since the respondents no. 3 to 45 have built their houses from before 1976-77 and Revenue authorities have found their houses existing on 30th June 1985, therefore, land covered by their house sites shall be deemed to be settled with them by the tenure holder of the land in question, irrespective

of the circumstances in which such eligible persons have built their houses over the land in dispute. It is immaterial whether they have built their houses with the consent or permission of the tenure holder of the land in question or otherwise by taking forceful possession of the land or their such possession is unauthorised or as of trespasser. In case the legislature would have intended otherwise contrary to our views, the phrase "where any person referred to in Sub-section (3) of the Section 122-C has built a house on any land held by a tenure holder not being a Government lessee," would not have been used in the terms expressed therein, rather it would have been worded differently so as to exclude unauthorised occupants who have built such houses but neither such terms have been used expressly nor can it be inferred impliedly by necessary implication. Besides that, it is significant to notice that the aforesaid provisions have been enacted to ameliorate the conditions of members belonging to the schedule castes schedule tribes and other agricultural labourers to ensure the socio-economic justice to them as a measure of agrarian reform, therefore, the interpretation, which advance the object of the statute has to be given by the Court. Thus, in our opinion, any other view contrary to the view taken by us in this regard, would completely distort and defeat the very purpose of deeming provisions which are coupled with non-obstante clause.

27. The view taken by us hereinbefore also finds support from the view taken by Hon"ble Apex Court in case of Manohar v. Board of Revenue U. P. (supra) wherein the Hon"ble Apex. Court has accorded the benefit of Section 122-B(4-F) of the Act to the person found eligible whose initial possession was also not authorised. In para 8 of the said decision as reproduced hereinbefore, the Hon"ble Apex Court went on saying that Sub-section (4-F) carves out an exception in favour of an agricultural labourer belonging to a scheduled caste or scheduled tribe having land below the ceiling of 3.125 acres, irrespective of the circumstances in which such eligible person occupied the land vested in Gaon Sabha (other than the land mentioned in Section 132) no action to evict him shall be taken and moreover, he shall be deemed to have been admitted Bhumidhar with non transferable rights over the land, provided he satisfies the conditions specified in Sub-section. In view of aforesaid dictum of the Hon"ble Apex Court, there can be no scope for doubt to hold that even if the initial entry of the respondents no. 3 to 45 into the land of the petitioners, is found to be forceful or unauthorised and rank of trespasser, even then, since they have admittedly built their houses from before 30th June 1985 and such houses were admittedly found existing on 30th June 1985 over the land of the petitioners who were Bhumidhar with transferable rights on the said date, therefore, the house site of respondents no. 3 to 45 shall be deemed to be settled with them by the petitioners u/s 123(2) of the Act. And it was bounden duty of the revenue authorities to give effect to aforesaid right of respondents No. 3 to 45 which has been conferred by the statute by making necessary changes in the revenue records, irrespective of any forum and procedure provided expressly either under the Act or Rules framed thereunder for effectuating aforesaid statutory right of

socio-economically weaker Sections of the society.

28. Before parting with the issue we would make it further clear that although the provisions of Sub-sections (1) and (2) of Section 123 have been enacted to ameliorate the conditions of persons enumerated under Sub-section (3) of Section 122-C of the Act who are members of weaker sections of society as a measure of agrarian reform to effectuate socio-economic justice to them but in absence of express provision under the Act and/or rules framed thereunder creating forum and providing procedure to effectuate the aforesaid mandate of the Legislature, we are of the considered opinion that the said mandate of Legislature cannot be effectuated in the words and spirit both. We are also conscious about the ambit of scope of the power and jurisdiction of this Court under Article 226 of the Constitution and this Court can not ask the Legislature or rule making body, directly or indirectly to legislate in a particular manner by issuing a writ of mandamus. In other words, no such writ can be issued which necessarily involves the legislation. But here we are confronted with a slightly different situation, where in fact, the Legislature has already recognised the rights of eligible persons by enacting aforesaid provisions of law, consequently, as held by Hon'ble Apex Court in Manohar's case (supra), corresponding duties have been cast upon the revenue authorities impliedly by necessary implication to effectuate the aforesaid rights of individuals. Therefore, in absence of express provisions for providing forum and procedure to effectuate the aforesaid rights of individuals, we do not find any difficulty to issue any writ or direction of general nature in the shape of mandamus to effectuate the provisions of Section 123 of the Act. We are also alive of the situation that Assistant Collector, in charge of the sub division is competent officer to perform the functions and discharge the duties assigned u/s 122-C of the Act, therefore, it would be expedient to direct that so long as the express provisions under the Act and Rules are not enacted by competent Legislature, the Officer not below the rank of Assistant Collector in charge of the sub division concerned shall under take to effectuate the provisions of Section 123 of the Act in a summary manner after hearing the necessary parties and persons interested in such summary proceedings.

29. In view of the foregoing discussion, we are of considered opinion that the impugned order passed by Sub Divisional Officer on the basis of recommendation of Tehsildar, Kairana cannot be faulted with. The aforesaid recommendation appears to have been made by the considered opinion hearing the parties and discussing the evidence adduced by the parties and other relevant materials available on record. Learned Counsel for the petitioners could not point out any procedural fault in the report, submitted by the Tehsildar, Kairana, contained in Annexure-14 of the writ petition inasmuch as the statement of facts made in the aforesaid report also finds support from averments made in paras 11 and 12 of the writ petition and allegations in the complaints of suit No. 547/86 and 548/86, contained in Annexures-8 and 9 respectively to the writ petition, which have been instituted by the petitioner in the Civil Court, Muzaffarnagar against the private respondents No. 3 to 45. However, the pendency of aforesaid civil suits

filed by the petitioners, in our opinion, does not preclude revenue authorities to pass appropriate order under the provisions of law in absence of any restrained order passed by Civil court or any other competent court of law. That being the legal position, when once the claim of respondents no. 3 to 45 is accepted, it is bounden duty of the concerned revenue authorities to make necessary entries in revenue records to give effect to the statutory mandate. The obligation to do so arises by necessary implication by reason of the statutory right vested in the persons coming within the ambit of Section 123(2) of the Act. In such facts and circumstances of the case, we do not find any illegality in the impugned order passed by respondents directing the mutation of names of respondents No. 3 to 45 over the plot in question in the revenue record calling for any interference by this Court under Article 226 of the Constitution of India.

30. However, with regard to the pendency of the aforesaid civil suits in the Civil court, we are constrained to hold that since the petitioners' suits against the respondents No. 3 to 45 are for relief of recovery of possession and such relief cannot be granted in the aforesaid civil suits against true owners of land in question, in whose favour the land in dispute is deemed to have been settled from 30th June 1985 by virtue of Section 123(2) of the Act, therefore keeping the aforesaid civil suits of the petitioners pending in civil court, which have been rendered infructuous, in our considered opinion, would be sheer abuse of the process of the court, accordingly they must be ended to logical end and as such the proceedings of the aforesaid suits are hereby quashed in exercise of suo motu power under Article 227 of the Constitution of India.

31 The Registrar General of this Court is directed to send the copy of the order to be placed in suit No. 547 of 1986 Sri Ram Narain and Ors. v. Dal Chand and Ors. and suit No. 548 of 1986, Sri Ram Narain and Ors. v. Sri Heera Lal and Ors. pending in the court of Civil Judge, Mujaffarnagar contained in Annexure-8 and 9 respectively to the writ petition for necessary follow up action in this regard.

32. The Registrar General is further directed to supply a copy of this order to the Chairman, Uttar Pradesh, Board of Revenue forthwith who shall communicate to all the Assistant Collectors in charge of sub divisions throughout the State of Uttar Pradesh for perusal and necessary action in the cases u/s 123 of the Act. The Registrar General shall also supply a copy of this order to the Principal Secretary of Law Department and Revenue Department of Government of Uttar Pradesh for perusal and necessary action in this regard.

33. Thus, subject to the aforesaid observations and direction, we are not inclined to interfere in the impugned order under Article 226 of the Constitution of India. Writ petition is devoid of merits, accordingly, the same is hereby dismissed.

34. There shall be no order as to costs.