
(2015) 03 AHC CK 0072

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 39423 of 2006

Satya Veer and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117, 122-B, 122-B(4A), 122-B(4F), 122-B(4-F)

Citation : (2015) 4 ADJ 676 : (2015) 5 ALJ 267 : (2015) 4 AWC 3557 : (2015) 128 RD 176

Hon'ble Judges : Sunita Agarwal, J

Bench : Single Bench

Advocate : S.K. Tyagi, Ambrish Kumar Tiwari and S. Farzana, for the Appellant; M.N. Singh and V.K. Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sunita Agarwal, J.—Heard Sri Ambrish Kumar Tiwari holding brief of Sri S.K. Tyagi, learned counsel for the petitioners and learned Standing Counsel. The present writ petition is directed against the order dated 15.2.2006 passed by respondent No. 3, the Assistant Collector, Hapur, Ghaziabad in Case No. 8/51/05-06 under Section 122-B of U.P. Zamindari Abolition and Land Reforms Act (in short, the Act) and the order dated 19.5.2006 in revision No. 29/05-06 under Section 122-B(4A) of the Act. It appears that on the report submitted by Halka Lekhpal dated 13.3.2004, the case was instituted against the petitioner for unauthorised occupation of Khasra No. 228 area 200 square yard. Notice 49-Ka was served upon the petitioner. In reply to the said notice., the petitioners raised objection that they were landless labourers of scheduled caste category and they were in occupation of the disputed plot since prior to the year 2002. They have raised their "Abadi" over the plot in question and therefore, were entitled to the benefit of Section 123(1) of the Act. The notice 49-Ka, therefore, was liable to be cancelled.

2. Halka Lekhpal in his report submitted that the petitioners had illegally occupied Khasra No. 228 area 2000 sq. yard and had raised construction in 1411 fasli. The statement of Satya Veer, petitioner No. 1 was recorded on 9.11.2004 wherein he has submitted that they were in possession of the disputed plot for the last three years as "Abadi". The statement of witness Rampal was recorded on 25.11.2014 wherein he has also stated that the land in question is in possession of the petitioners as "Abadi" for the last three years. Initially, on the basis of these evidences, benefit of Section 123(1) of the Act was given by the Additional District Magistrate, Hapur vide order dated 29.11.2004 and the notice 49-Ka was cancelled. Against the order dated 29.11.2004, the Land Management Committee, Meerpur, Majra, District Hapur, filed a writ petition which was allowed on 15.6.2005. The order dated 29.11.2004 passed by the Additional District Magistrate, Hapur was set aside and the matter was remanded back to decide afresh on merits.

3. The Assistant Collector, Hapur examined the matter afresh and in its order dated 15.2.2006 has recorded that the petitioners have failed to establish that they were in occupation of the land in question prior to 1.5.2002 and as such benefit of Section 123(1) could not be given to them. Accordingly, a direction was given for eviction of the petitioner and damage was imposed. The revision filed challenging the order dated 15.2.2006 was dismissed on 19.5.2006 wherein it was found that there was nothing on record to indicate that the petitioner's Abadi was existing prior to the cut-off date i.e. 1.5.2002 and hence the benefit of Section 123(1) could not be given to the petitioner. Further, it was recorded by the revisional Court that the earlier order dated 29.11.2004, giving benefit of Section 123(1) passed by the Additional District Magistrate was wholly without jurisdiction. It was held that the Additional District Magistrate had no jurisdiction to provide benefit of Section 123(1) of the Act as it is a substantive provision and requires appreciation of evidence. As the petitioners/revisionists had failed to establish their possession over the plot in question prior to the cut of date, it was found that no relief could be granted to them.

4. Challenging the orders impugned, learned counsel for the petitioners submits that there is no dispute about the fact of the petitioners being landless agricultural labourers belonging to scheduled castes category. There was ample evidence to prove that the petitioners were in possession of the plot in question prior to "May, 1 2002" the cut off date. The fact of possession of the petitioner over the plot in question and the fact of constructions "Abadi" raised by them, was not disputed. The land in question is not a land mentioned in Section 132 i.e. earmarked for public purpose. Moreover, during pendency of the present writ petition, amendments have been made in Section 122-B(4-F) and Section 123(1) of U.P. Act No. 38 of 2007 and the date "May, 1 2002" has been substituted as "May, 13 2007".

5. In view thereof, the petitioners are entitled for declaration of "Abadi" under Section 123(1) and further in view of Section 122-B(4-F), they cannot be

relegated to institute a suit for declaration of their rights rather they are entitled for admission as "Bhumidhar with non-transferable rights" in that land. Accordingly, they cannot be evicted from the land in question and the benefit of Section 122-B(4-F) is to be accorded to the petitioners. The provisions as contained in Section 123(1) and 122-B(4-F) are beneficiary in nature and the amendment by U.P. act No. 38 of 2007 would apply; retrospectively. The effect of the amendment is to legalise occupation of the land possessed by the land-less labourers of scheduled castes category with retrospective effect.

6. In support of his submission, learned counsel for the petitioners has relied upon the judgement of this Court in Phool Das v. Additional Collector, Saharanpur, 2013 (2) ADJ 2 (NOC). He further placed reliance upon a Division Bench judgement of this Court in Ram Narain and others v. Sub-Divisional Officer, Kairana, Muzaffaranagar and others, 2007 (8) ADJ 530 (DB), to submit that the provisions of Section 123(1) are deeming provisions and also have non-obstante clause thus having overriding effect upon other provisions of the Act, therefore, the same effect has to be given by the Court and in order to effectuate the provision under the statute only this much is to be examined by the Court as to whether the rights of the parties will have to be determined on such imaginary thing, on which the legal fiction created by the statute can operate, to achieve the purpose for which such legal fiction has been created by the statute. It was held therein that on satisfaction of certain conditions laid-down in Section 123(2) of the Act, the legal fiction has been created for the purpose of settlement of the house site with the owner of the house on the land of a tenure-holder. If the owner of the house who built a house on the land of the tenure-holder, has been able to fulfil the conditions mentioned in Section 123(2), he is entitled for settlement.

7. In view of deeming provisions of Section 123(2), the house site of the tenure-holder shall be deemed to be settled with the person who is in unauthorised possession of the land in question and has built his house, under Section 123(2) of the Act. It was bounden duty of the revenue authorities to give effect to the rights of that person 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. It was held that the officer not below the rank of Assistant Collector in charge of the Sub Division concerned shall undertake 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.

8. Further reliance has been placed on the case of Ram Preet Vs. Addl. Commissioner, Gorakhpur Division and Others, (2011) 7 ADJ 791 : (2011) 5 AWC 5181 : (2011) 113 RD 636 , decided on 30.5.2011, to submit that the land reserved for public purpose can be settled in favour of a person who is in possession of the same and has constructed his house.

9. It is further submitted that in the alternative, the petitioners can be saddled with the damages/compensation for the land to be settled in their favour and they may not be evicted.

10. Learned Standing Counsel on the other hand submits that a finding of fact has been recorded by the authorities below that the petitioners have not been able to establish that they have built their house over the land in question prior to the cut-off date as indicated in Section 123 and 122-B(4-F) for grant of benefit as provided therein. The said finding of fact cannot be interfered by this Court in exercise of Article 226 of the Constitution of India. There is no infirmity in the order impugned.

11. Having heard learned counsel for the parties and perused the record, the question which arose for adjudication in the instant case is as to whether the benefit of 122-B(4-F) can be given to the petitioners or the land can be settled in their favour under Section 123(1) of the Act.

12. To examine this question, it would be apt to go through the relevant provisions under the Act:

"Section 122-B reads as under:

"122-B. Powers of the Land Management Committee and the Collector.--

(1) Where any property vested under the provisions of this Act in a Gaon Sabha or a local authority is damaged or misappropriated or where any Gaon Sabha or local authority is entitled to take or retain possession of any land under the provisions of this Act and such land is occupied otherwise than in accordance with the provisions of this Act, the Land Management Committee or Local Authority, as the case may be, shall inform the Assistant Collector concerned in the manner prescribed.

(2) Where from the information received under sub-section (1) or otherwise, the Assistant Collector is satisfied that any property referred to in sub-section (1) has been damaged or misappropriated or any person is in occupation of any land, referred to in that sub-section, in contravention of the provisions of this Act, he shall issue notice to the person concerned to show-cause why compensation for damage, misappropriation or wrongful occupation as mentioned in such notice be not recovered from him or, as the case may be, why he should not be evicted from such land.

(3) If the person to whom a notice has been issued under sub-section (2) fails to show-cause within the time specified in the notice or within such extended time not exceeding three months from the date of service of such notice on such person, as the Assistant Collector may allow in this behalf, or if the cause shown is found to be insufficient, the Assistant Collector may direct that such person may be evicted from the land and may for that purpose, use, or cause to be used such force as may be necessary and may direct that the amount of compensation for damage, misappropriation or wrongful occupation be recovered from such

person as arrears of land revenue.

(4) If the Assistant Collector is of opinion that the person showing cause is not guilty of causing the damage or misappropriation or wrongful occupation referred to in the notice under sub-section (2) he shall discharge the notice.

(4-A). Any person aggrieved by the order of the Assistant Collector under sub-section (3) or sub-section (4) may, within thirty days from the date of such order prefer, a revision before the Collector on the grounds mentioned in clauses (a) to (e) of Section 333.

(4-B). The procedure to be followed in any action taken under this section shall be such as may be prescribed.

(4-C). Notwithstanding anything contained in Section 333 or Section 333-A, but subject to the provisions of this Section-

(i) every order of the Assistant Collector under this section shall, subject to the provisions of sub-sections (4-A) and (4-D), be final.

(ii) every order of the Collector under this Section shall, subject to the provisions of sub-section (4-D), be final.

(4-D). Any person aggrieved by the order of the Assistant Collector or Collector in respect of any property under this section may file a suit in a Court of competent jurisdiction to establish the right claimed by him in such property.

(4-E). No such suit as is referred to in sub-section (4-D) shall lie against an order of the Assistant Collector if a revision is preferred to the Collector under sub-section (4-A).

Explanation.--For the purposes of this section, the expression "Collector" means the officer appointed as Collector under the provisions of the U.P. Land Revenue Act, 1901 and includes an Additional Collector].

Section 122-B(4-F)- Notwithstanding anything in the foregoing sub-section, where any agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe is in occupation of any land vested in a Gaon Sabha under Section 117 (not being land mentioned in Section 132) having occupied it from before [May 13, 2007], and the land so occupied together with land, if any, held by him from before the said date as bhumidhar, sirdar or asami, does not exceed 1.26 hectares (3.125 acres), then no action under this section shall be taken by the Land Management Committee or the Collector against such labourer, and it shall be deemed that he has been admitted as bhumidhar with non-transferable rights of that land under Section 195 and it shall not be necessary for him to institute a suit for declaration of his rights as bhumidhar with non-transferable rights in that land.

Explanation.--The expression "agricultural labourer" shall have the meaning assigned to it in Section 198."

Section 123 further reads as under:

Section 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 122-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.)"

13. These are the two provisions which provides for settlement of land in favour of the scheduled castes or scheduled tribes agricultural labourers who have built their house or have occupied the land prior to the cut-off date i.e. 1.5.2002 (in the instant case).

14. Only rider is that the land in question should not be a land reserved for public purpose or the land mentioned in Section 132 of the Act. In so far as according benefit of Section 122-B(4-F) is concerned, the petitioners who allege their possession have to fulfil certain conditions.

15. Section 122-B under the scheme of the Act provides for a complete mechanism to save Gaon Sabha land from encroachment and unauthorised possession.

16. Sub-Section (1) provides that information has to be sent by the Land Management Committee to Gaon Sabha or local authority in case of any encroachment over the land of Gaon Sabha or the local authority and the Assistant Collector concerned shall proceed in the manner prescribed therein.

17. Sub-sections (2), (3) and (4) provide for the manner in which a report of encroachment is to be dealt with by the Assistant Collector.

18. Sub-section (4A) further provides that if any person is aggrieved by the order of Assistant Collector under Sub-section (3) or Sub-section (4) of Section 122-B, he may prefer revision before the Collector.

19. Sub-section (4C) further provides that the order of Assistant Collector or the Collector as the case may be, is final.

20. Sub-section (4D) further provides that any person, aggrieved by the orders of the Assistant Collector or Collector, may file a suit before the competent Court to establish his rights.

21. These provisions imposed a responsibility upon the Land Management Committee to keep a vigil on the encroachment or unauthorised occupation of the Gaon-Sabha land. In case of any such situation, immediate action is to be taken by making a report to the Assistant Collector concerned who shall issue a notice and take appropriate action and shall pass necessary orders accordingly.

22. However, sub-section (4F) of Section 122-B of the Act carves out an exception which permits the occupation over the Gaon-Sabha land by a certain class of persons namely Scheduled Castes/Scheduled Tribes who is an agricultural landless labourer and has been in possession over the said land before 1st May, 2002. Subsection (4F) which was substituted by U.P. Act No. 24 of 1986 is an enabling provision to protect the agricultural labourers belonging to Scheduled Castes and Scheduled Tribes from being evicted from the Gaon-Sabha land if he/she fulfils the conditions enumerated therein.

23. Section 195 confers power upon the Land Management Committee to admit any persons as "Bhumidhar with nontransferable rights" to any land which does not fall in any of the clauses mentioned in Section 132 with the previous approval of the Assistant Collector incharge of the sub Divisions with respect to the lands as follows:

"(a) the land is vacant land,

(b) the land is vested in the (Gaon Sabha) under Section 117, or

(c) the land has come into the possession of [Land Management Committee] under Section 194 or under any other provisions of this Act."

24. Section 197 of the Act, however, gives power to the Land Management Committee to admit any person as "Aasami" to any land falling in any of the clauses mentioned in Section 132. Thus, under the Scheme of "U.P. Zamindari, Abolition and Land Reforms Act" but for the aforesaid provisions of Sub-section (4F), the rights of any person as Bhumidhar with transferable or non-transferable rights, as the case may, unless his name is duly recorded in the revenue records has not been recognised except where such person seeks declaration by filing a suit under Section 229-B of the Act. It is only by virtue of sub-section (4F) of Section 122-B that the agricultural labourer who fulfils the conditions given therein is not required to seek a declaration by filing a suit and can be admitted as "Bhumidhar with non-transferable rights" under Section 195.

25. Thus, from a reading of the provisions of Section 122-B in its entirety, it is clear that sub-section (4F) is not a provision for seeking declaration of the rights of a person who is in occupation of the Gaon-Sabha land for declaring him as "Bhumidhar with non-transferable rights". In fact, it is a right to defend, if such a person is to be evicted or dispossessed from the land of Gaon-Sabha in an

appropriate provision under the Act. Thus, the occupant as described in Sub-section (4F), who is sought to be evicted from the Gaon-Sabha land, would have a right to plead and establish that since his possession has continued since before the cut-off date, rights had precipitated in his favour and he is a Bhumidhar of the land with non-transferable rights, if such plea is raised the same would be considered by the authority concerned before evicting that person.

26. The right of defence given under the said provision to an Agricultural labourer belonging to Scheduled Caste/Scheduled Tribe cannot be taken as a right of seeking declaration under the aforesaid provisions. Meaning thereby, Section 122-B(4F) cannot be taken recourse for recording entry in the "Khatauni".

27. Now applying the legal position as discussed above in the instant case, it may be seen that the defence taken by the petitioners is that they belong to Scheduled Castes and the land in question was allotted to them by a proposal of the Land Management Committee dated 28.11.2002 which was approved by the Assistant Collector by his order dated 29.11.2002. Thereafter, the petitioners had occupied the land and therefore, the notice under Section (4F) issued to the petitioners is bad. They have not encroached upon any area of Gaon-Sabha land of Khasra No. 228. They had legally constructed their "Abadi" over the land in question.

28. To establish the said assertion, reliance has been placed upon an extract of Khatauni for the year 1409-1415 Fasli and the report of Lekhpal dated 13.8.2004 which are appended as Annexure "1", "2" and "3" of the writ petition.

29. A perusal of the entries in "Khatauni" for 1409-1415 Fasli clearly indicates that the order of approval dated 29.11.2002 passed by the Tehsildar, Hapur pursuant to the resolution of the Land Management Committee dated 28.11.2002 was declared void in a proceeding by the Pargana Adhikari (Sub-Division Officer), Hapur in Case No. 31 under Section 115 of the Act by an order dated 20.8.2003. However, it appears that by an order 24.7.2004 the Sub-Divisional Officer gave benefit of Section 123(1) of the Act to the petitioners for an area of 240 square yards of Khasra No. 228 M. It appears that the report was given by the Lekhpal on 13.8.2004 in view of the aforesaid entry in the "Khatauni". It is further apparent from the record that by another order dated 29.11.2004, the Assistant Collector (I), Hapur withdrew the notice 49-Ka on the ground that benefit of Section 123(1) has already been given to the petitioners by the Sub-Divisional Officer by order dated 24.7.2004.

30. A revision appears to have been filed by Land Management Committee against the order dated 29.11.2004 which was allowed on 15.6.2005 with the categorical finding that the benefit of Section 123(1) could not have been given by the Sub-Divisional Officer as it was beyond his jurisdiction. It was further found that so far as the order dated 24.7.2007, its authenticity has not been

examined by the Assistant Collector before passing the order dated 29.11.2004. The order dated 29.11.2004 passed by the Assistant Collector (I) was set aside and the matter was remanded back to the Authorities below to decide afresh on merits after granting opportunity of hearing to the concerned parties. Thereafter, the Assistant Collector, Hapur decided the matter afresh and by order dated 15.2.2006 held that the petitioners were in unauthorised possession of the land in question and had imposed penalty of Rs. 125/- upon the petitioners.

31. Against the order dated 15.2.2006 passed by the Assistant Collector in Case No. 8/51/05-06 under Section 122-B U.P.Z.A. and L.R. Act, Revision No. 29/05-06 was filed by the petitioners which was dismissed on 19.5.2006. It was found that the alleged order dated 24.7.2004 passed by the Assistant Collector, Hapur under Section 123(1) was not placed by the revisionist before the Assistant Collector. The original record of Sub-Divisional Officer, Hapur was, therefore, called for to ascertain as to whether there existed any such order stated to have been passed on 24.7.2004 under Section 123(1). It was found that no such order alleged to have been passed by the sub-Divisional Officer dated 24.7.2004 exist on record. It was, therefore, found that the Assistant Collector had passed an illegal order causing grave loss to the public land.

32. As the order was found beyond jurisdiction and hence was rightly cancelled. It was further recorded that so far as the question of granting of benefit under Section 123 is concerned, the Assistant Collector has no jurisdiction and as such the order dated 29.11.2004 is illegal.

33. Admittedly, the plea before the Court below was to grant benefit of Section 123(1) pursuant to the alleged order passed by the Assistant Teacher dated 24.7.2004.

34. In view of the categorical findings on record that no such order exist on records, the plea taken by the petitioners before the revisional authority was found devoid of force.

35. In so far as the order dated 29.11.2004 is concerned, it may be seen that it was based upon the earlier entries in the "Khatauni" regarding the alleged order dated 24.7.2004 passed by the Sub-Divisional Officer, Hapur under Section 123(1) and the Notice 49-Ka was withdrawn only on that basis. As the order dated 29.7.2004 was not found in existence, the order dated 29.11.2004 was rightly set aside by the Sub-Divisional Officer in his order dated 15.2.2006 and the revisional authority in its order dated 19.5.2006.

36. Now the question remains as to whether the Sub-Divisional Officer has jurisdiction to give benefit of Section 123 of the Act. To answer this question, it may be seen that Section 123 is a provision relating to certain qualifying persons in possession of the land on certain conditions in which the land can be settled in favour of those persons. Thus the section provides a definition of approval of legal rights on satisfaction of certain conditions. No proceeding under Section 123 of the U.P.Z.A. and L.R. Act is sustainable because this provision is not

procedural. The rights can only be settled under a proceeding in substantive law.

37. Under the scheme of the Act, no declaration can be made in favour of a person other than a tenure-holder. Section 143 of the Act only contemplates declaration in favour of a tenure-holder. As the petitioners, admittedly are not tenure-holders of the land, no declaration under the Act can be made in the facts of the present case. Hence, no declaration of rights as conceived under Section 123(1) of the Act is possible. Only course open before the petitioners was to file a regular suit for declaration of their rights, if any.

38. The same view has been taken by me in the Judgment and order dated 8.8.2014 passed in Writ Petition No. 22279 of 2008 (Madhusoodan Govind Rao v. State of U.P. and others).

39. In so far as the contention of the petitioner for grant of the benefit of Section 122-B(4F) is concerned, it is apparent from the admission of the petitioner that the land in question for the first time was sought to be settled in their favour by a resolution of the Land Management Committee on 28.11.2002. From the extract of "Khatauni" for 1409-1414 Fasli and the averments in the writ petition, it is clear that the said resolution of the Land Management Committee which was approved by the Tehsildar, Hapur was declared void by an order of the competent Court on 20.8.2003. The categorical assertions of the petitioners in paragraphs "6", "7", "8" and "10" of the writ petition are as under:

"6. That the petitioners belong to scheduled caste (Khatik) and permanent resident of the village in question.

7. That the petitioners were allotted 100 Sq. Yard land from Khasra No. 228-M by the proposal of Land Management Committee of the village in question on 28.11.2002.

8. That subsequently, the approval was given by the Assistant Collector by his order dated 29.11.2002 that the aforesaid land was made to the petitioner by the Land Management Committee, to construct their Abadi.

10. The name of the petitioners were also recorded in the revenue records accordingly. For kind perusal of this Hon"ble Court copy of Fasli year, 1409-1414 are being filed herewith and marks as Annexure Nos. 1 and 2 to this Writ petition."

40. Thus, the occupation of the petitioners, if any, over the land in question could only be after the date of allotment i.e. 28.11.2002 as asserted by them in the above mentioned paragraphs of the writ petition.

41. In view thereof, this Court comes to an irresistible conclusion that the petitioner were not in occupation of the land in question prior to the cut-off date i.e. May, 2002. As such benefit of Section 123(1) or the benefit of Section 122-B(4F), as pleaded by the petitioners cannot be given.

42. However, looking to the facts and circumstances emerging from the above

discussion, it appears that an effort has been made to settle the Gaon Sabha land in favour of the petitioners by the Sub-Divisional Officer by the order dated 29.11.2004 in order to extend illegal benefit to the petitioners, the said order is based upon an earlier order dated 24.7.2004 which has been found to be no order in the eye of law. It was rightly not relied upon by the Revenue Authorities while passing the orders dated 15.2.2006 and 19.5.2006.

43. It appears that after the allotment in favour of the petitioners was cancelled by the order dated 20.8.2003, and the entries to this effect was made in the "Khatauni" on 4.11.2003, the petitioners had somehow managed to get another entry dated 24.8.2004 regarding the alleged order dated 24.7.2004 that the petitioners had constructed their house over the land in question in order to provide them illegal benefit on some extraneous consideration.

44. In almost similar facts and situations, this Court in the case of Sanjai Kumar v. Collector/District Magistrate, Kanpur Dehat, 2005 (98) RD 454, has observed that the provisions of Section 122-B(4F) which regularise unauthorised occupation of Scheduled Caste agricultural landless labourers over the Gaon Sabha land is being utterly mis-used. It was observed in paragraph "7" as under:

"The experience of the Court is that provision of Section 122-B(4-F) of the Act are utterly mis-used. The real benefit of the said section does not go to the weakest and meekest among scheduled caste. Firstly, really weak and poor people of scheduled caste do not encroach upon the Gaon Sabha land and only strong and influential persons of scheduled cast (which may be described as creamy layer) can forcibly occupy Gaon Sabha land. Secondly, whenever a new cut off date is provided (the latest being 1.5.2002), unscrupulous and influential persons of scheduled caste manufacture evidence of their prior possession and in this regard Lekhpals and Pradhans some time provide full support to them. This utter misuse can sufficiently be checked if benefit of the said sub-section (4-F) is given only and only to those members of scheduled caste whose possession is entered in the revenue records prior to cut off date or eviction proceedings are pending against them since before the said date. It appears that after May, 2002 huge tracts of land of Gaon Sabha have been settled in favour of those scheduled caste persons who were not really in occupation before May, 2002 but somehow managed to get favourable reports of their prior possession either by Pradhan, Lakhpal or other revenue officials. Collectors of all the Districts of Uttar Pradesh shall call the reports of all such cases in which benefit of the aforesaid sub-section (4-F) has been conferred without there being any entry of possession of the claimant in the revenue record prior to 1.5.2002 or pendency of eviction proceedings prior to that date. All such entries must be reversed but only after issuing notice and hearing the persons whose names have been so entered. Gaon Sabha is also entitled to apply for such correction of entry either before Deputy Collector or Collector. These case must also be decided on top priority basis but only after issuing notice and hearing affected persons. The Court may in some future case require the Collectors to submit compliance report in

pursuance to this Order."

45. Further in another case of Ghanshyam Singh Vs. State of U.P. and Gaon Sabha, (2005) 2 AWC 1040 : (2005) 1 RD 489 , it was held that the petitioner therein was entitled to get benefit of Section 122-B(4F) of U.P.Z.A. and L.R. Act only if he can show that his name was entered in the revenue records as occupant before 1.5.2002 and not otherwise.

46. Admittedly, the names of the petitioners in the instant case, were recorded in the revenue records only after the proposal of the Land Management Committee dated 28.11.2002 which is much after the cut-off date i.e. 1.5.2002. The entries which were made earlier on the basis of order dated 29.11.2002 were expunged on 4.11.2003 on the basis of order of the competent Court dated 20.8.2003. Though an effort has been made to restore the entries of the names of the petitioners on 24.8.2004 on the basis of alleged order dated 24.7.2004 but the same was found not in existence.

47. In the case of Sanjai Kumar (supra) and Ghanshyam Singh (supra) a word of caution has been put by this Court to the Revenue Authorities not to repeat such action and further a direction was given to the Collector incharge of the concerned district to take action against Lekhpal and other authorities for giving false reports.

48. However, in the instant case as it is found that the report was given on the basis of entry in the "Khatauni" of the order dated 24.7.2004, no direction is being given to the Collector, Ghaziabad to proceed against the erring officials though the Court is of the firm view that the officers who had passed the orders dated 24.7.2004 and 29.11.2004 are at fault.

49. In view of the above discussion, this Court finds that the petitioners are not entitled for protection of Section 122-B(4-F) as they have failed to establish that their names have been recorded in the revenue records prior to 1.5.2002. This apart they are also not entitled for benefit of Section 123(1) as it is clearly emerged that they have not built their house prior to 1.5.2002.

50. The orders passed by the Assistant Collector, Hapur, Ghaziabad dated 15.2.2006 and the order dated 19.5.2006 passed by the Collector, Ghaziabad are hereby affirmed.

51. The revenue record shall be corrected and the names of the petitioners shall be deleted therefrom forthwith. With the above directions, the writ petition is dismissed.