
(2015) 08 AHC CK 0064
In the Allahabad High Court
Case No : Misc. Single No. 4794 of 2015

Sushila and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 25-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, 100, 104, 47
Constitution of India, 1950 — Article 226
Forest Act, 1927 — Section 20
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 26-A, 27
Uttar Pradesh Land Revenue Act, 1901 — Section 33, 39
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117, 117-A, 119, 122-A, 122B

Citation : (2015) 9 ADJ 460 : (2015) 6 AWC 5763 : (2015) 129 RD 253

Hon'ble Judges : Ritu Raj Awasthi, J

Bench : Single Bench

Advocate : Rajeiu Kumar Tripathi, for the Appellant; Azad Khan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ritu Raj Awasthi, J—Heard Mr. Rajeiu Kumar Tripathi, learned counsel for the petitioners, Mr. M.E. Khan, learned Additional Chief Standing Counsel as well as Mr. Azad Khan, learned counsel for Gaon Sabha and perused the records. Mr. Ashok Kumar Verma, Advocate, with the leave of the Court has also made his submissions in order to assist the Court.

2. Since the writ petition involves purely legal questions of law, as such, with the consent of parties' counsel, it is being decided at the admission stage without calling for counter affidavit.

3. The instant writ petition has been filed challenging the orders dated 26.02.2014 and 13.01.2015, contained in Annexures-2 and 3 to the writ petition, whereby the operation of order dated 29.01.2013 granting benefits of Section 122-B(4-F) of the Act¹ in favour of the petitioners was kept in abeyance and

thereafter was cancelled and lands in question was directed to be recorded as banjar land etc. in favour of Gaon Sabha.

4. A preliminary objection regarding maintainability of writ petition has been taken by learned Standing Counsel on the ground that petitioners have statutory alternative remedy of filing revision under Section 122-B(4-A) of the Act against the impugned order, as such, writ petition directly in the High Court without exhausting the statutory alternative remedy is not maintainable.

5. The facts of the case as narrated in the writ petition are that petitioners are said to be agricultural labourers belonging to scheduled caste, they are in cultivatory possession over Gata No. 1199 measuring area 0.50 hectare and Gata No. 1088 measuring area 0.152 hectare (with regard to petitioner No. 1) whereas Gata No. 1102-J measuring area 0.083 hectare and Gata No. 1175 measuring area 0.033 hectare (with regard to petitioner No. 2) in Village Sithauli, Pargana & Tehsil Rudauli, District Faizabad. The lands held by them are in their possession prior to 13th May, 2007, i.e. the cut-off date mentioned in Section 122-B(4-B), as such, petitioners are entitle to get benefit of Section 122-B(4-F) of the Act. The opposite party No. 2/Sub-Divisional Magistrate, Rudauli, District Faizabad after calling the report and recommendation of the revenue authorities vide order dated 29.1.2013 had passed the orders in favour of petitioners, giving them benefit of Section 122-B(4-F) of the Act and the revenue authorities were directed to make necessary entries in the revenue records. Subsequently, the names of petitioners were entered in the revenue records as "Bhumidhar with non-transferable rights" over the lands in question.

6. It is submitted by learned counsel for the petitioners that the lands in question were not recorded as land reserved for public purposes or the land mentioned in Section 132 of the Act; rather the land was vested in Gaon Sabha under Section 117 of the Act. It is alleged that the panel Advocate of Gaon Sabha, on the instigation of persons enmical to the petitioners, had filed application for recall of order dated 29.1.2013. The petitioners had filed their objections to the said application. The opposite party No. 2, in most arbitrary and illegal manner without condoning the delay, vide order dated 26.02.2014 had put the order dated 29.1.2013 in abeyance and thereafter vide final order dated 13.1.2015 has set aside the order dated 29.1.2013 and has directed the lands in question to be recorded as "banjar" lands in favour of Gaon Sabha.

7. Learned counsel for petitioners submitted that in Writ Petition No. 6691 (MS) of 2014 the High Court vide order dated 17.10.2014 had stayed the operation of the impugned order dated 26.2.2014. However, the said writ petition was subsequently dismissed as withdrawn with liberty to file separate cases on behalf of petitioners of that writ petition.

8. Mr. Rajeu Kumar Tripathi, learned counsel for petitioners, in reply to the preliminary objection raised by learned Standing Counsel, submitted that the order impugned is not amenable to revisional jurisdiction as it has been passed

under Section 122-B(4-F) of the Act which lies in administrative domain of the concerning competent authority and such orders are not revisable.

9. Submission is that order giving benefit of Section 122-B(4-F) of the Act is not a judicial order; rather it is administrative order against which neither restoration nor the review is entertainable nor maintainable. Hence, both the orders dated 26.2.2014 and 13.1.2015 are without jurisdiction and void ab initio. It is also submitted by learned counsel for the petitioners that the revision provided under Section 122-B(4-A) of the Act would not be applicable to any order passed giving benefit of Section 122-B(4-F) of the Act to any person.

10. It is also submitted that under the Act the statutory remedy available to a person is under Section 331 of the Act. Order passed in exercise of powers under various provisions as mentioned in Schedule II can be challenged by filing first appeal/second appeal before an authority as given in the said Schedule. Since Schedule-II which is to be read with reference to Section 331 of the Act does not entail Section 122-B of the Act, as such, no remedy is available to the petitioners against the order cancelling the benefit conferred on them under Section 122-B(4-F) of the Act.

11. Submission is that revisional order under Section 122-B(4-A) of the Act is with respect to the orders passed under Section 122-B Sub-section (3) and it is not applicable to the orders passed giving benefit of Section 122-B(4F) of the Act which is purely administrative order.

12. It is further submitted that the rights under Sub-section (4-F) of the Act is independent right which can be claimed even when there is no pendency of proceedings under Section 122-B of the Act and the person can be treated as Bhumidhar with non-transferable rights under Section 131 (b) of the Act.

13. Mr. Rajeiu Kumar Tripathi, learned counsel for petitioners in support of his submission has relied on the judgment of Hon"ble Apex Court in the case of Manorey @ Manohar Vs. Board of Revenue (U.P.) and Others, AIR 2003 SC 4102 : (2003) 3 JT 538 : (2003) 3 SCALE 584 : (2003) 5 SCC 521 : (2003) 3 SCR 274 : (2003) AIRSCW 2083 : (2003) 3 Supreme 237 . It is submitted that in view of law laid down by the Apex Court the legal position would be summarized as under:--

"i. The rights under sub-section (4-F) of the Act is independent "statutorily fiction" even when there is no pendency of proceedings under sub-section (1) and (3) of section 122-B of the Act and he is bhumidhar under section 131 (b) of the Act.

ii. Revenue authorities are under mandate to keep the revenue records in the line of rights recognized under deeming provisions of sub-section (4-F) which is one such right that false within the per view of section 131 (b) of the Act.

iii. Since such a mandate casts upon the revenue authorities does not find any specific procedure either in the Act or Rules framed thereunder and in last line of

sub-section, it has specifically being provided that there is no necessity to file a suit for declaration of such rights. On the basis of it, inference regarding the intention of legislature can easily be drawn that beneficiary of such "statutorily fiction" is not required to go through rigorous process of court and law and should not be subjected to long drawn litigation in the name of "Recall/Review" or "Appeal" and "Revision".

iv. Since Section 333 of the Act provide revision against any order passed in any suit or proceedings under the Act and in view of provisions of section 331 of the Act, read with Schedule-II, and Rules 338/338-A read with Appendix-III, the provisions of sub-section (4-F) of Section 122-B of the Act, does not find place therein, as such the duty/mandate cast upon the revenue authority is not a judicial proceedings hence any order passed therein to keep the revenue records updated, is an administrative discharge of duties by such revenue official therefore, it may be concluded that no revision is maintainable against any order under sub-section (4-F) of the Act.

v. That nature of any order making entries in the records of rights, in discharge of administrative duties by a revenue official in consonance with the provisions of the sub-section (4-F) of the Act may easily be gathered from the judgment and order dated 02.05.2012 passed by this Hon"ble Court at Allahabad in case Writ-C No. 11431 of 2012 "Lal Ji Harijan v. State of U.P. & others" and also from Board Order No. 6074/G-5-46A/86, dated 21 May of 1987 issued by Board of Revenue Uttar Pradesh and Apex statutory body of the State (Copies annexed herewith).

vi. Since the view of this Hon"ble Court taken in case of "Ramdev v. Board of Revenue, 1994, R.D. Page 395", has been overruled by Hon"ble the Apex Court in case of Manorey @ Manohar (Supra) and the case laws relied upon by the learned counsel for the State are in the same footings as that of judgment rendered in case of Ramdeen (Supra) and that too without having any consideration of law laid down by Hon"ble the Apex Court in Manorey @ Manohar, are of no avail to the submission advanced on behalf of the State and same may kindly be treated as "Per-incuriam".

vii. Since the orders impugned in the Writ Petitions are "without jurisdiction" in view of the facts that opposite party No. 2 is not vested with any power to recall or review its own order dated 29.01.2013 passed in discharge of mandate or discharge of duties on administrative side and further in view of the facts that the applications before him was not supported with any affidavit so as to condone the delay, though the opposite party No. 2 was not dealing with any judicial proceedings as such there was no question of condonation of delay but if same is being sought for, then for the sake of argument without condoning the delay opposite party No. 2 lacks inherent jurisdiction to enter in to the merits of the application for recall/review. In view of law laid down by Hon"ble Ape Court and this Hon"ble Court in following cases, impugned orders being "without jurisdiction" are amenable to extra ordinary jurisdiction under Article 226 of the Constitution of India irrespective of any alternative remedy (though as

respectfully submitted herein above there is no legal remedy before the petitioners against the orders impugned in the Writ Petition":--

a. Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, AIR 1999 SC 22 : (1998) 7 JT 243 : (1998) 5 SCALE 655 : (1998) 8 SCC 1 : (1998) 2 SCR 359 Supp : (1998) AIRSCW 3345 : (1998) 8 Supreme 176

b. Satwati Deswal Vs. State of Haryana and Others, (2009) 123 FLR 1092 : (2009) 14 JT 1 : (2010) 157 PLR 387 : (2009) 13 SCALE 599 : (2010) 1 SCC 126 : (2010) 1 SCC(L&S) 12 : (2009) 15 SCR 697 : (2009) 6 SLR 441 .

c. Lipton India Limited Vs. State of U.P. and Others, (2009) 22 VST 230 .

14. It is submitted by learned counsel for the petitioner that the Board of Revenue vide circular dated 21st May, 1987 has laid down the procedure for extending benefits of Section 122-B(4-F) of the Act to the eligible persons. In this regard the Lekhpal is required to give his report on the prescribed proforma and the competent authority is required to extend the benefit of Section 122-B(4-F) of the Act by passing appropriate orders. It is submitted that the entire exercise is in the administrative capacity of the authority concerned and, as such, no appeal or revision would lie in such proceedings. The circular dated 21.5.1987, which has been placed before the Court during arguments, has been taken on record.

15. Mr. Ashok Kumar Verma, Advocate, with the leave of the Court has made his submissions that the procedure as envisaged under Section 122-B of the Act is complete in itself, it provides in detail the procedure which is required to be followed, the order which is to be passed and the remedy available against the said order. It also provides the right of defence to the person aggrieved. Mr. Ashok Kumar Verma submitted that provisions of Section 122-B(4-F) of the Act cannot be read independently. It has to be read with respect to other provisions as contained in Section 122-B(1) to Sub-section (4-D) of the Act. It is further submitted by him that so far as the provisions under Section 122-B(4-F) of the Act conferring right of defence to an aggrieved person is concerned, in fact, the said provision provides positive right to the aggrieved person and it clearly means that the said person claiming the benefit of Section 122-B(4-F) of the Act can move an application for correction of revenue records under Section 39 of U.P. Land Revenue Act and the concerning revenue authority on moving of such application can pass necessary orders for correction of revenue records after holding enquiry etc., as may be required.

16. Learned Additional Chief Standing Counsel, on the other hand, submitted that the order extending the benefits of Section 122-B(4-F) of the Act cannot be treated to be an order passed in independent proceedings; rather the same is in continuation of the proceedings under Section 122-B of the Act which are judicial in nature. It is submitted that such orders are revisable and revision filed in this regard are maintainable. The Board of Revenue in the case of Basanti v. State of U.P. 1991 RD Page 397 has observed that "it cannot be said by any stretch of

imagination that an order passed under Section 122-B(4F) of the U.P.Z.A. & L.R. Act are executive in nature..... "

17. It is submitted that the provisions under Section 122-B(4-F) of the Act is an exception to the general provisions contained under Section 122-B of the Act.

18. Learned Additional Chief Standing Counsel has emphasised that the word "notwithstanding" mentioned in Section 122-B(4-F) of the Act itself denotes that it cannot be treated to be an independent provision and it has to be read with other provisions as contained in Section 122-B of the Act. It is further contended that if the intention of the legislature was to the effect that the order passed under Section 122-B(4-F) of the Act shall be final and no appeal or revision shall lie against the same, it would have been specifically mentioned in the said Section itself as it has been done in Rule 115-P (5) of the Rules² which categorically provides that the order passed by Collector under sub-Rule shall be final. It is submitted that rights conferred Section 122-B(4-F) of the Act is a right of defence, when a person is sought to be evicted or dispossessed from the land of Gaon Sabha and it is not a weapon of offence. Learned Additional Chief Standing Counsel further submitted that Schedule II of the Act provides proceedings and forum in which the first appeal and second appeal will lie under Section 331 of the Act, however, the same does not include the entire proceedings which can be initiated under the Act.

19. It is submitted that since the provisions contained under Section 122-B(4-F) of the Act are deeming provisions and it provides for conferring rights of a Bhumidhar with non-transferable rights who is in possession over the land under Section 195 of the Act, if he is found in possession prior to 13th May, 2007 and no separate proceedings are required to be initiated for claiming such rights. In this regard he has relied on the judgment of this Court in the case of Shambhu Nath and others v. Commissioner Vindhyachal Region, Mirzapur and another 2007 (102) RD 136.

20. Learned Additional Chief Standing Counsel also submitted that if a person is in possession over any land vested in Gaon Sabha under Section 117 of the Act since or before 13th May, 2007, he can apply for correction of revenue records under Section 33/39 of U.P. Land Revenue Act and the revenue records may be corrected on the said application by recording the name of persons claiming benefit of Section 122-B(4-F) of the Act after due enquiry by the Collector. The order passed under Section 39 of U.P. Land Revenue Act shall also be amenable to revision under Section 219 of the Act. In support of his arguments, learned Additional Chief Standing Counsel also relies on the judgment of Hon'ble Apex Court in the case of Manorey @ Manohar (supra).

21. It is submitted that writ petition has been filed directly against the order which have been passed in exercise of power under Section 122-B(4-F) of the Act, the petitioners have remedy of filing revision against the said order, as such, the writ petition directly in the High Court without exhausting the statutory

remedy of filing revision is not maintainable.

22. Mr. Rajeu Kumar Tripathi, learned counsel for petitioners, in rebuttal, submitted that there are no proceedings as such under Section 122-B(4-F) of the Act. It is in fact a deeming provision which is on the basis of fiction in the provisions under Section 122-B of the Act, as such, the benefits conferred on a person under Section 122-B(4-F) of the Act is by way of administrative order which is not amenable to any proceedings under Section 333 (1) of the Act or revision if any in other provisions of the Act.

23. I have considered the submissions made by learned counsel for the parties and gone through the records.

24. The question which has cropped up for this Court to consider is whether the order giving benefits of Section 122-B(4-F) of the Act is an administrative order against which there is no statutory remedy of filing appeal or revision.

25. In order to consider the said question, it would be appropriate to first examine the relevant provisions under the Act.

26. Section 122-B of the Act as amended from time to time on reproduction 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 [thirty days] 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].

[(4-F). Notwithstanding anything in the foregoing sub-sections, 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 [he shall be 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.

[(5) Rules 115-C to 115-H of the U.P. Zamindari Abolition and Land Reforms

Rules, 1952, shall be and be always deemed to have been made under the U.P. Zamindari Abolition and Land Reforms Act, 1950 as amended by the Uttar Pradesh Land Laws (Second Amendment) Act, 1961, as if this section has been in force on all material dates and shall accordingly continue to force until altered or repealed or amended in accordance with the provisions of this Act.]"

27. Section 131 of the Act relates to bhumidhars with non-transferable rights, whereas Section 131-A of the Act provides bhumidhari rights in Gaon Sabha or State Government land in certain circumstances and Section 131-B of the Act provides bhumidhar with non-transferable rights to become bhumidhar with transferable rights after ten years. The relevant provisions on reproduction reads as under:--

"131. Bhumidhar with non-transferable rights.--Every person belonging to any of the following classes shall be called a bhumidhar with non-transferable rights and shall have all the rights and be subject to all the liabilities conferred or imposed upon such bhumidhars by or under this Act, namely-

(a) every person admitted as a sirdar of any land under Section 195 before the date of commencement of the Uttar Pradesh Land Laws (Amendment) Act, 1977 or as the bhumidhar with non-transferable rights under the said section on or after the said date;

(b) every person who in any other manner acquires on or after the said date, the rights of such bhumidhar under or in accordance with the provisions of this Act;

(c) every person who is, or has been allotted any land under the provision of the Uttar Pradesh Bhoodan Yagna Act, 1952.

(d) with effect from July 1, 1981 every person with whom surplus land is or has been settled under Section 26-A or sub-section (3) of Section 27 of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960.

[131-A. Bhumidhari rights in Gaon Sabha or State Government land in certain circumstances.--Subject to the provisions of section 132 and section 133-A, every person in cultivatory possession of any land, vested in a Gaon Sabha under section 117 or belonging to the State Government, in the portion of district Mirzapur south of Kaimur range, other than the land notified under section 20 of the Indian Forest Act, 1927, before the 30th day of June, 1978, shall be deemed to have become a Bhumidhar with non-transferable rights of such land:

Provided that where the land in cultivatory possession of a person, together with any other land held by him in Uttar Pradesh exceeds the ceiling area determined under the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960, the rights of a Bhumidhar with non-transferable rights shall accrue in favour of such person in respect of so much area of the first-mentioned land, as together with such other land held by him, does not exceed the ceiling area applicable to him, and the said area shall be demarcated in the prescribed manner in accordance with the principles laid down in the aforesaid Act.

[131-B. Bhumidhar with non-transferable rights to become bhumidhar with transferable rights after ten years.--(1) Every person who was a bhumidhar with nontransferable rights immediately before the commencement of the Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 1995 and had been such bhumidhar for a period of ten years or more, shall become a bhumidhar with transferable rights on such commencement.

(2) Every person who is bhumidhar with non-transferable rights on the commencement referred to in sub-section (1) or becomes a bhumidhar with non-transferable rights after such commencement, shall become bhumidhar with transferable rights on the expiry of period of ten years from his becoming a bhumidhar with non-transferable rights.

(3) Notwithstanding anything contained in any other provision of this Act, if a person, after becoming a bhumidhar with transferable rights under sub-section (1) or sub-section (2). Transfers the land by way of sale, he shall become ineligible for a lease of any land vested in Gaon Sabha or the State Government or of surplus land as defined in the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960.]"

28. Section 195 of the Act empowers the Land Management Committee with the previous approval of the Assistant Collector-in-charge of the Sub Division to admit any person as bhumidhar with non-transferable rights to any land other than land being in any of the classes mentioned in Section 132 of the Act. Section 195 of the Act on reproduction reads as under:--

"195. Admission to land.--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 land (other than land being in any of the classes mentioned in Section 132) where-

(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."

29. Section 331 of the Act puts an embargo that no Court other than a Court mentioned in Column 4 of Schedule II shall, notwithstanding anything contained in Civil Procedure Code take cognizance of any suit, application or proceedings mentioned in Column 3 thereof. Section 331 of the Act on reproduction reads as under:--

"331. Cognizance of suits, etc. under this Act.--(1) Except as provided by or under this Act no court other than a court mentioned in Column 4 of Schedule II shall, notwithstanding anything contained in the Civil Procedure Code, 1908 (V of 1908), take cognizance of any suit, application, or proceedings mentioned in

Column 3 thereof or of a suit application or proceedings based on a cause of action in respect of which any relief could be obtained by means of any such suit or application;

Provided that where a declaration has been made under Section 143 in respect of any holding or part thereof, the provisions of Schedule II insofar as they relate to suits, applications or proceedings under Chapter VIII shall not apply to such holding or part thereof.

Explanation.--If the cause of action is one in respect of which relief may be granted by the revenue court, it is immaterial that the relief asked for from the civil court may not be identical to that which the revenue court would have granted.

[(1-A) Notwithstanding anything in Sub-section (I), an objection that a court mentioned in Column 4 of Schedule II, or, as the case may be, a civil court, which had no jurisdiction with respect to the suit, application or, proceeding, exercised jurisdiction with respect thereto shall not be entertained by any appellate or revisional court unless the objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(2) Except as hereinafter provided no appeal shall lie from an order or decree passed under any of the proceedings mentioned in column 3 of the Schedule aforesaid:

[(3) An appeal shall lie from any decree or from an order passed under Section 47 or an order of the nature mentioned in Section 104 of the Code of Civil Procedure, 1908 (V of 1908) or in Order 43, Rule 1 of the First Schedule to that Code passed by a court mentioned in column No. 4 of Schedule II to this Act in proceedings mentioned in column No. 3 thereof to the court or authority mentioned in column No. 5 thereof.

(4) A second appeal shall lie on any of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (V of 1908) from the final order or decree, passed in an appeal under sub-section (3), to the authority, if any, mentioned against it in column 6 of the Schedule aforesaid.]"

30. Section 333 of the Act gives power to the revenue authorities to exercise the revisional power in certain cases. Section 333 of the Act on reproduction reads as under:--

"333.(1) Power to call for cases. (1) The Board or the commissioner or the Additional Commissioner may call for the record of any suit or proceeding [other than proceedings under sub-section (4-A) of Section 198] decided by any court subordinate to him in which no appeal lies, or, where an appeal lies but has not been preferred, for the purpose of satisfying himself as to the legality or propriety of any order passed in such suit or proceeding and if such subordinate

court appears to have;

(a) exercised a jurisdiction not vested in it in law; Or

(b) failed to exercise a jurisdiction so vested; or

(c) acted in the exercise of jurisdiction illegally or with material irregularity;

the Board or the Commissioner or the Additional Commissioner, as the case may be, may pass such order in the case as it thinks fit.

(2) If an application under his section has been moved by any person either to the Board or to the Commissioner or to the Additional Commissioner, no further application by the same person shall be entertained by any other of them.]"

31. Section 122-B of the Act is the provision relating to the power of Land Management Committee and the Collector to be exercised in such matters where the land of Gaon Sabha has been unauthorizedly occupied and is in the use of individual person. The provision gives the procedure in detail which is to be followed in such matters.

32. In the case of Shambhu Nath and others (supra) this Court has examined in detail the procedures prescribed under Section 122-B(4-F) of the Act which does not need to be re-examined. The relevant paragraphs of the judgment on reproduction reads as under:--

"11. Section 122-B(4-F) is placed in part II Chapter VII which has the heading "Gaon Sabha". In this very Chapter the provisions of Section 117, 117-A and 119 regarding vesting of certain land etc. in Gaon Sabha and other local authority only with the provision for exercise of further extra territorial jurisdiction by Gaon Sabha or other local authority and vesting of certain hats, bazars, melas and private ferries etc. in the Zila Parishad or other authority also find their place. Section 122-A speaks about superintendence, management and control of land etc. by the Land Management Committee.

12. Section 122-B under the scheme of which Subsection (4-F) has also been inserted with a non-obstante clause, in fact, obligates the Land Management Committee and provides a mechanism to save Gaon Sabha land from encroachment or unauthorized possession and for that matter information has to be sent by the Committee to the Assistant Collector concerned in the manner prescribed. A detailed procedure has been provided under sub Clause 2,3, and 4 regarding the manner in which such a report is to be dealt with by the Assistant Collector and if any person is aggrieved by the order of Collector he has been given right of revision before the Collector under Sub-section (4-A). The said provision of Section 122-B enjoins responsibility upon the Land Management Committee to keep a vigil upon unauthorized occupation of Gaon Sabha land and if it finds that the said land has been occupied or is in possession otherwise than in accordance with the provisions of the Act, immediate action is to be taken by making a report to the Assistant Collector concerned who would issue notice and

take appropriate action and shall pass orders accordingly. This has been done with a view to protect the Gaon Sabha land from encroachers and from misuse and mis-utilization of the Gaon Sabha land.

13. Sub-section (4-F) of Section 122-B of the Act carves out an exception which permits the occupation over the Gaon Sabha land by certain class of persons namely Scheduled Caste/Scheduled tribe, if he/she is an agricultural labourer and has been in possession over the said land since before May 1, 2002. This provision appears to have been made looking to the interest of the scheduled caste or scheduled tribe persons, who are agricultural labourer.

14. The occupation or unauthorized possession even of an agricultural labourer belonging to Scheduled caste/Scheduled tribe would not have been legal nor such land could be settled with him/her in the absence of the aforesaid exceptional provision of Sub-section (4-F) which was substituted by U.P. Act No. 24 of 1986. Thus, it is an enabling provision to protect the agricultural labourer belonging to Scheduled Caste/Scheduled tribe from being evicted from the Gaon Sabha land, if he/she fulfills the conditions enumerated therein. Under the given circumstances, the said agricultural labourer would be 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.

15. U.P. Zamindari Abolition and Land Reforms Act, but for the aforesaid provision of Sub-section (4-F), nowhere recognizes the rights of any person as bhumidhar with transferable or non-transferable rights, as the case may be, unless of course his name is duly recorded in the revenue records and in the absence of which, he/she seeks declaration by filing a suit under Section 229-B of the Act. It is only by virtue of Sub-section (4-F) of Section 122-B that the Agricultural labourer who fulfills the conditions given therein is not required to seek declaration by filing a suit but can be admitted as bhumidhar with non-transferable rights under Section 195.

16. In the case of co-tenure holder may be a suit, under Section 176 could also be filed either with a declaratory relief or without seeking it as the law may permit.

17. On a reading of aforesaid provision of Section 122-B in its entirety with the exception carved out in Sub-section (4-F), it is clear that the aforesaid Sub-section (4-F) is not a provision for seeking declaration of the rights of the 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 sought to be evicted or dispossessed from the land of Gaon Sabha, may be, under the proceedings initiated under Sub-section (1) of Section 122-B read with Rule 115 of the U.P. Zamindari Abolition and Land Reforms Rules or by adopting any other proceedings where such power of eviction is given to the Collector or to any other authority concerned.

18. In case an occupant of the like description as given in Sub-section (4-F), is sought to be evicted from the Gaon Sabha land he would have a right to plead and establish that since his possession continued since before the cut of date, rights have precipitated in his favour and that he is a bhumidhar of the land with non-transferable rights. If such a plea is raised the same would be considered by the authority concerned before evicting that person.

19. The aforesaid Sub-section says that no action under this section viz; Section 122-B shall be taken by the Committee or under the Act against such labourer namely; who fulfills the conditions enumerated therein and further he shall be admitted as bhumidhar with non-transferable rights under Section 195 of the Act and that it shall not be necessary for him to seek declaration by filing a suit for declaration. The provision is specific and clear. The Collector would have no power to evict such person and that he would also be entitled to be admitted as bhumidhar with non-transferable rights by the Land Management Committee in accordance with the provisions of Section 195 of the Act for which no declaration need be taken by filing the suit.

20. The right of defence given under the said provision to the agricultural labourer belonging to scheduled caste/Scheduled tribe cannot be taken as a right of seeking declaration under the aforesaid provision."

33. Section 331 of the Act when read with Schedule II clearly indicates that the procedure has been prescribed to challenge the order passed in various proceedings under various Sections of the Act by filing first appeal and second appeal before the appellate authority as mentioned in Schedule II. The said provision relates to the remedy of filing appeal before the appellate authority as mentioned in said Schedule. The provision does not relate to the revisional power as conferred on the revenue authorities under the Act.

34. Section 333 of the Act is the provision relating to power conferred on various authorities such as, Board of Revenue or the Commissioner or the Additional Commissioner which can call for record of any suit or proceeding other than the proceedings under Sub-section (4-A) of Section 198 of the Act decided by any Court subordinate to them in which no appeal lies or where an appeal lies but has not been preferred. The reading of Section 331 and 333 of the Act clearly indicates that the separate statutory provisions have been made for availing the remedy of appeal and remedy of revision under the Act.

35. It is also to be noted that in certain provision the power of revision itself has been mentioned under the same provision as is the case under Section 122-B of the Act. Section 122-B of the Act indicates that any person aggrieved under any order passed under Sub-Section (3) of Section 122-B of the Act may file a revision under Section 122-B(4-A) of the Act. The revision filed under Section 122-B(4-A) of the Act can be preferred before the Collector on the same grounds as mentioned in Clauses (a) and (b) of Section 333 of the Act.

36. It is also to be noted that Sub-section (4-F) of Section 122-B of the Act is an

exception to Section 122-B of the Act. The language of Section 122-B(4-F) of the Act starts with the words "notwithstanding anything in the foregoing sub-sections" clearly indicates that it has to be read with respect to other provisions as mentioned in Sub-section (1), (2), (3) & (4) of Section 122-B of the Act.

37. In fact, Sub-section (4-F) of the Act is the provision which extends a positive right on an agricultural labourer belonging to scheduled castes and scheduled tribes having total land not exceeding 1.26 hectare to take a defence in the proceedings under Section 122-B of the Act and may move an application for correction of revenue records on that basis.

38. The words "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" clearly means that the said person would not be required to get his rights declared by filing any suit, may be under Section 229-B of the Act or any other suit and can claim his rights to get the revenue records corrected in his favour by moving an application under Section 33/39 of the Act.

39. In the case of Manorey @ Manohar (supra) the Apex Court has categorically held that Sub-section (4-F) of Section 122-B of the Act not merely provides a shield to protect the possession as opined by the High Court, but it also confers a positive right of Bhumidhar or the occupant of the land satisfying the criteria laid down in that Sub-section. The Apex Court has observed that 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 under Section 195, full effect must be given to it. It has also observed that last para of Sub-section (4-F) of Section 122-B of the Act 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 under Section 195. The deeming provision declares that the statutorily recognized Bhumidhar should be as good as a person admitted to Bhumidhar rights under Section 195 read with other provisions of the Act. It has also been held that there is no bar against an application being made by the eligible person coming within the four corners of Sub-section (4-F) of the Act to effect necessary changes in the revenue records. The relevant paragraphs 8, 9, and 10 of the judgment on reproduction reads as under:--

"8. First, the endeavour should be to analyze and identify the nature of the right or protection conferred by Sub-section (4-F) 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 unauthorized occupants of land vested in Gaon Sabha. 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 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 (4-F) is entitled to safeguard his possession as against the Gaon Sabha. The second and more important right which Sub-section (4-F) 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 in clause (b) of Section 131. Any person who acquires the rights of Bhumidhar under or in accordance with the provisions of the Act is recognized under Section 131 as falling within the class of Bhumidhar. The right acquired or accrued under Sub-section (4-F) is one such right that falls within the purview of Section 131(b).

9. Thus, Sub-section (4-F) 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 in *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 (4-F) can only blossom out when there is a specific allotment order by the Land Management Committee under Section 198. According to the High Court, the deeming provision contained in Sub-section (4-F) 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 (4-F) will have to still go through the process of allotment under Section 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 subSection (4-F) 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 under Section 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 under Section 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 (4-F) 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 under Section 195. In substance and in effect, the deeming provision declares that the statutorily recognized Bhumidhar should be as good as a person admitted to Bhumidhari rights under Section 195 read with other provisions. In a way, Sub-section (4-F) 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 under Section 195 read with Section 198 is obviated by the deeming provision contained in Sub-section (4-F). 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 (4-F) 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 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 (4-F). 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 that 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 non est in the eye of law and is liable to be ignored."

40. It is needless to observe that in view of law laid down by the Apex Court in the case of Manorey @ Manohar (supra) a landless agricultural labourer belonging to scheduled castes and scheduled tribes who is in occupation of Gaon Sabha land prior to cut-off date and fulfil the prescribe criteria is entitled to claim the benefit of Section 122-B(4-F) of the Act; and Section 122-B(4-F) of the Act clearly confers a positive right on such person to claim the right of Bhumidhar with non-transferable right. It is also to be observed that in this regard the person concerned can move an application under Section 33/39 of U.P. Land Revenue Act to effect necessary changes in the revenue records.

41. So far as the question as to whether the order passed conferring benefit of Section 122-B(4-F) of the Act on any person or an order cancelling such benefit is an administrative order and against such order no appeal or revision would lie, as claimed by learned counsel for the petitioners is concerned, suffice is to observe that provisions of Section 122-B(4-F) of the act does not confer any independent right on a person and the provisions as envisaged under Section 122-B(4-F) of the Act is to be read in consonance with other provisions under

Section 122-B of the Act. Under Section 122-B(4-A) of the Act, there is a specific provision of filing revision against an order passed in proceedings under Section 122-B of the Act, as such, I am of the considered view that any order passed in the matter relating to Section 122-B(4-F) of the Act is a judicial order and the same would be amenable to revisional jurisdiction under Section 122-B(4-A) of the Act. Any person aggrieved has a remedy of filing revision under Section 122-B(4-A) of the Act in this regard.

42. As such, I am of the considered view that the petitioners have statutory remedy of filing revision against the impugned order, as observed above, which they have not availed. Therefore, the writ petition in the High Court directly against the impugned orders is not maintainable. It is accordingly dismissed with remedy to petitioners to avail statutory alternative remedy before the concerning competent Court.

1Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950

2U.P. Zamindari Abolition and land Reforms Rules, 1952