



2026:AHC-LKO:21359-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 1632 of 2026

Budhiram

.....Petitioner(s)

Versus

State of U.P. Thru. Secy. Deptt. of Revenue Lko. and 3 others

.....Respondent(s)

Counsel for Petitioner(s)	: Manish Mani Sharma,
Counsel for Respondent(s)	: C.S.C., Atul Kumar Dwivedi

Court No. - 1

**HON'BLE RAJAN ROY, J.
HON'BLE MANJIVE SHUKLA, J.**

(C. M. Application No. NIL of 2026)

1. Application for amendment filed on behalf of the petitioner is taken on record.

2. Heard Shri Manish Mani Sharma, learned counsel for the petitioner, learned Additional Chief Standing Counsel for the State and Shri Atul Kumar Dwivedi, learned counsel for the opposite party no. 4.

3. Amendment application is allowed.
4. Let amendment be carried out during course of the day.

Order on Writ Petition

1. By means of this writ petition the petitioner has sought following relief:-

"I. Issue a writ, order or direction in the nature of mandamus directing and commanding the Respondents to consider the case of Petitioner for payment of compensation of his acquired land gata no. 364 -7 area 1600 square meter and its assets i.e. house, Sahan, trees and other things of Petitioner situated in village Salahpur Rajor, Tehsil - Tanda, Pargana Tanda, District Ambedkar Nagar as early as possible, in the interest of justice."

2. The abadi land over which the petitioner claimed possession was resumed by the State Government vide Notification dated 21.02.2013. The said resumption notification issued under Section 117 (6) of the erstwhile U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as 'the Act, 1950') was put to challenge by the petitioner by means of Writ Petition No. 11305 of 2018. Other persons were also filed writ petitions which were connected with aforesaid writ petition. The aforesaid writ petitions were decided on 04.12.2024. In the said writ petition a

plea of possession referable to Section 9 of the Act, 1950 was raised, which was repelled. We may in this regard refer to Para 93 as also the operative portion contained in para 106 of the said judgment which read as under:-

"93. Therefore, in the cases at hand, we have no hesitation in holding that petitioners are simply encroachers over the Government Abadi land recorded under Category 6(2) and their status is no more than that of an encroacher. As we have already discussed above, the benefit of Section 9 of the Act can be claimed only in respect of such buildings as were in existence on the date of vesting. A building, constructed later on, cannot be held to be settled with its owner, occupier etc as also held in Basti Ram v. Nagar Nigam, Ghaziabad and another (supra)¹¹. and Committee of Management, Imambara Qadeem and Ors. vs. Union of India and Ors. (supra)⁸, the law in this regard is very clear.

X. Conclusion

106. In light of the discussion above, we summarise our findings as follows:

- a. the effect of Sections 4 and 6 of the Act 1950, is that all the estates in State of U.P. to which the Act applies shall stand transferred to and shall vest in the State of U.P. free from all encumbrances;*

b. an absolute title and ownership vested in the State of U.P., free from all encumbrances under Sections 4, 3(8) and 6 of the Act, 1950 and all rights stood terminated and vested in State of Uttar Pradesh;

c. the vesting in the State was absolute but the vesting in the Gaon Sabha was limited to possession and management subject to divestiture by Government;

d. the vesting of land in Gaon Sabha only provided the better management and superintendence of the land by the Gaon Sabha and the vesting of land in the Gaon Sabha by virtue of Section 117(1) is clearly not a complete vesting of right, title and interest;

e. the Legislative intent of Section 9 of the Act, 1950, is very clear and it provides a settlement of existed/standing wells, trees, buildings and the area appurtenant thereto to those persons who lawfully held them at time of date of vesting, i.e., on 1st of July 1952, with the intention to continuity of the possession;

f. the idea behind Section 9 of the Act is to provide continuity of the possession of the wells, trees, buildings to those persons who

lawfully held them before the date of vesting shall be deemed to be settled with the said person who had been in the lawful possession before the date of vesting;

g. the expression 'held' occurs in Section 9 of Act is interpreted to mean "lawfully held, to possess by legal title" as held by the Supreme Court in Budhan Singh v. Nabi Bux¹, and not gained wrongful possession. In other words, the expression 'held' connotes possession by the legal title. The word "held" cannot be extended so as to include within its ambit the mere trespasser or persons having no otherwise right to hold the building so as to extinguish or overlook legal right or title over the disputed property of others.

h. the benefit of section 9 of the Act can be extended only when there is evidence and proof of factum that there was lawfully existing/standing well or building on the land on the date of vesting, i.e., on 1st of July 1952;

i. the Burden of proof to establish that building in question was in existence on the date of vesting shall lie on the person who is seeking benefit of section 9 of the Act. It cannot shift to other parties. A building,

constructed later on, cannot be held to be settled with its owner, occupier etc.

j. the copies of Parivar Register (Kutumb Register) issued under the U.P. Panchayat Raj Maintenance of Parivar Register Rules, 1970, cannot be relied upon as the Parivar Register Rules came to be maintained only after the coming into operation of U.P. Panchayat Raj Maintenance of Parivar Register Rules, 1970. Petitioners could not produce any of the documents which establish that they were residing on the land in question on the date of vesting, i.e., 1st July 1952. Existence of building on date of vesting is a necessary condition for providing benefit under section 9 of the Act, 1950;

k. Khasra is an indicator of possession where as Khatauni relates to title and nature of occupancy over the land. In the present case, petitioners have led no evidence whatsoever to show that they had lawful right over the land and were also in lawful possession over the land in question;

l. the land recorded as Sarvajanik/Village Abadi Land under category 6(2) of para A-124 of the U.P. Land Records Manual, belongs to the State/Gaon Sabha and is vested in the State as held in Phool Singh and Another (supra) and Masroor Ahmed and

Others (supra). Therefore, there is no fetter on the part of the State Government to resume the land recorded as above;

m. Government cannot and does not acquire its own land, only resumption can be done in terms of section 117(6) of the Act, 1950 because right, title and ownership still continues with the State;

n. The observation and conclusion made in the case of Committee of Management, Durga Narain College and Adity Kumari School v. State of U.P.⁹, were correct on its own facts and circumstances and would not apply to the present case. The factual matrix of Durga Narain College case is entirely different from the present case;

o. Petitioners are simply encroachers over the Government village Abadi land recorded under Category 6(2) and their status is not more than an encroacher. Existence of building on the date of vesting is a condition precedent for providing benefit under section 9 of the Act, 1950. The petitioners have not produced any document for establishing the factum of existence of houses on the date of vesting;

p. the essence of a decision is its ratio and not every observation found therein nor

what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found;

q. the ratio of a decision has to be understood regard being had to its context and factual exposition. In order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute."

3. The petitioner was held to be an encroacher of the said abadi land, however, in view of the Government Order dated 01.06.2016, as, there was certain structures existing on the said land which belongs to the petitioner, therefore, the measurement of the said structure and compensation payable in respect thereof based on such measurement was calculated as has been stated by the petitioner himself in Para 12 of the writ petition which reads as under:-

"12. That, respondents are paying compensation only for 153 square meter of land. They have taken rest part of land and its assets forcefully in arbitrary and illegal manner without payment of compensation."

4. As regards the open land which the petitioner claimed as his, rights in this regard have already been considered and settled by the earlier judgment dated 04.12.2024, wherein, the petitioner was held to be a mere encroacher, therefore, he is not entitled to any compensation in respect of the said open land assuming that the law otherwise permitted payment of such compensation, as, under Sub-section 6 of Section 117 of the Act, 1950 compensation was payable to the Gaon Sabha or the local authority concerned.

5. Learned counsel for the petitioner stated that he confines his relief only to the structure existing on the said land, which, according to him, was not 153 square meter in measurement but 1600 Square Meters.

6. On being asked to demonstrate the aforesaid fact assuming that this issue a purely factual one could be adjudicated in exercise of writ jurisdiction learned counsel for the petitioner invited our attention to a Commissioner's report filed in a suit preferred by the petitioner against the National Thermal Power

Corporation for whose benefit the resumption was made by the State Government. The suit, which was for permanent injunction, has been dismissed.

7. We fail to understand as to how in writ jurisdiction we can take into consideration such a Commissioner's report unless there is any finding in the said suit proceedings by the court below regarding the structure existing on an area of 1600 square meters. We, therefore, find ourselves unable to enter into these factual issues that too at such a belated stage when the resumption notice was issued in 2013 and the judgment in the earlier round of litigation was rendered in 2024.

8. Nevertheless, if the petitioner is able to make out a case for payment of enhance compensation in respect of the structure by proving to the State Government that the structure existed not on 153 square meters but on a large area, then, it is open for him to move an application before the concerned Authority for its claim.

9. Subject to the above, the writ petition is **disposed of**.

(Manjive Shukla,J.) (Rajan Roy,J.)

March 25, 2026
R.K.P.