



2026:AHC-LKO:4459

A.F.R.

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 1000345 of 2001

Krishna Mohan Tewari And Another

.....Petitioner(s)

Versus

Additional Commissioner Judicial Faizabad And
Others

.....Respondent(s)

Counsel for Petitioner(s)	: O.N. Tripathi, Kuldeep Kaur, Rajeev Narayan Pandey
Counsel for Respondent(s)	: C.S.C., Abhishek Vishwakarma, Mohan Singh, Pankaj Gupta, R.N. Gupta, Satya Prakash, Shikhar Srivastava

Court No. - 4

HON'BLE IRSHAD ALI, J.

1. Heard Sri Rajeev Narayan Pandey, learned counsel for the petitioners, Sri Mohan Singh, learned counsel for respondent No.4, Sri Satya Prakash, learned counsel for respondent No.3 and Sri Rajiv Srivastava, learned Additional Chief Standing Counsel for respondent No.2.

2. The present writ petition has been filed against the impugned orders dated 20.10.1997 - annexure 6 to the writ petition and order dated 19.01.2001 passed by respondent No.2 and 1 respectively.

3. Factual matrix of the case is that Gata no. 1135 area 6 biswa 5 biswansi recorded as "Reserve for general Abadi" in khasra of fasli year 1395. Vide Resolution dated 3-12-1983 Land Management Committee allotted 1 Biswa each to both the petitioner and also allotted 1 Biswa to O.P. no. 3 and his father gata no. 1135 and in pursuance of that petitioner deposited the Nazrana on 28/05/84 and thereafter petitioners and O.P. no. 3 possess the allotted land.

4. Opposite party no. 3 filed a Suit no. 41/1988 Om Prakash vs Krishna Mohan & others stating therein land gata no. 1135 recorded as Abadi and prayed permanent injunction against the petitioner by denying the

resolution dated 03-12-1983. When opposite party attempting to dispossess the petitioners from allotted land then petitioner moved application to the Revenue Authority who directed to the Supervisor Kanoongo and police restoring possession of the petitioners and authorities visited the land and restored the possession of the petitioners.

5. A misconceived application u/s 161 of U.P.Z.A & L.R Act have been filed by the opposite party No. 3 for exchange of gata no. 1135/0-6-5 from the gata no. 2057/0-7-0 & 1891/0-3-19 stating therein gata no. 1135 is recorded as Banjar and provisions of Rule 144, 145 & 146 of U.P.Z.A Rule have also not complied with. Under the Chairmanship of up-Pradhan who have no authority under the Law / Rules L.M.C. passed resolution for exchange of land.

6. On the application u/s 161 report have been sought from the Revenue authorities who filed their report stating therein gata no. 1135 reserved for Abadi and both parties are in possession over the gata no. 1135 and gata no. 1891 & 2057 recorded as Bhumidhar land and situated at the bank of Darban lake and also stated that before allowing the application both parties should be heard.

7. Vide letter dated 12-8-97 learned S.D.M requested to the learned D.G.C. Civil Ambedkar Nagar to provide legal opinion in matter and learned D.G.C. Civil send/provided legal opinion on 15-10-97 stating therein there are some legal impediment in the matter therefore at this stage exchange would not be proceeded with out curing the illegalities but without considering the provisions as well as legal opinion learned S.D.M approved the exchange.

8. Learned S.D.M. approved the exchange without considering the reports submitted by the revenue authority and provisions of section 161 of U.P.Z.A & L.R. Act as well as Rule 144, 145 & 146 of Z.A. Rules. Against the order dated 20-10-97 petitioners filed revision before the learned Commissioner Faizabad Division. Learned Additional Commissioner on the basis of report submitted by revenue authorities passed an order on 19.01.2001, whereby the claim setup by the petitioner has been rejected.

9. Submission of learned counsel for the petitioners is that once resolution was passed by Land Management Committee granting lease to the petitioner of Gata No.1135 and the same was returned by S.D.M., even then possession was handed over to the petitioner, therefore, without applying the provisions contained under Section 122 B the petitioners cannot be dispossessed.

10. He next submitted that eviction of the petitioner from the land in dispute can only be made after giving notice to him. He placed reliance upon a judgment in the case of **Shiv Murat Vs. Board of Revenue, U.P. Allahabad and others; 2017 (4) AWC 4302**, paragraphs 6, 8, 11, 13 & 18. He also placed reliance upon a judgment of Hon'ble Supreme Court in the case **In Re. Directions in the matter of demolition of structures**, paragraph 91.

11. Learned counsel for respondent No.3 and 4 along with learned Additional CSC submitted that once the resolution of Land Management Committee was not approved by the S.D.M., the petitioners have no right to hold possession over the land in dispute. In case they are holding the possession over the land in dispute, the same is illegal and without any basis.

12. They also pointed out that in Annexure 3 to the writ petition, the petitioners have admitted this fact that they are not in possession over the land in dispute, therefore, the claim setup by the petitioners is on irrelevant consideration and has no right to claim possession over the land in dispute. They placed reliance upon a judgment in the case of **Pradeep Kumar Vs. State of U.P. and 4 others; Writ C No.3968 of 2024** decided on 14.03.2024, paragraphs 6, 7 & 8.

13. I have considered the submissions advanced by learned counsel for the parties and perused the material on record.

14. To resolve the controversy involved in the matter, Section 122 B of U.P. Z.A. & L.R. Act is being quoted below:

122B. 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] [Substituted by U.P. Act No. 20 of 1982 (w.e.f. 03.06.1981).] 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] [Substituted by U.P. Act No. 24 of 1986.] 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.] [Substituted by U.P. Act No. 11 of 2002 (w.e.f. 21.6.2002).]]

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.R 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 in force until altered or repealed or amended in

accordance with the provisions of this Act.] [Substituted by U.P. Act No. 35 of 1976.]

15. On perusal of aforesaid provisions, it is evident that if the person is on unauthorized occupation of land by adopting the recourse provided under Section 122 B, he can be evicted from the land in dispute.

16. Relevant portion of the judgments relied upon by learned counsel for the parties are also being quoted below:

Judgments relied upon by learned counsel for the petitioners:

a) Shiv Murat (Supra):

6. In rebuttal, learned Standing Counsel would submit (i) the plot sought for exchange is recorded as manure pit (Khad Ka Gaddha), therefore, being public utility land under section 132 cannot be exchanged; (ii) admittedly, there is no notice to the Gaon Sabha which is mandatory and without resolution of the Land Management Committee approving the exchange Sub-Divisional Officer could not have passed the order merely on the report of the Lekhpal; (iii) under section 127:B the panel lawyer of the State/Land Management Committee can maintain the revision on behalf of the State; (iv) section 161 does not confer any legal right upon the applicant seeking exchange.

8. The question for determination is as to whether the land vesting in the Gaon Sabha can be exchanged without notice to the Land Management Committee and without there being resolution of the Gaon Sabha approving the exchange.

11. Upon receiving such an application, Rule 145 requires that the Assistant Collector shall cause calculation of the rental value of the land proposed to be given in exchange and the land proposed to be received in exchange at hereditary rates and if he is satisfied that the exchange is not invalid according to the proviso to sub-section (1) of section 161 the Assistant Collector shall call upon the parties, if any, to show - cause why the exchange should not be made. Every such notice shall be accompanied by copy of the application. If the Assistant Collector decides that the exchange should be allowed, he shall also make an order for delivery of possession, if necessary, and for the correction of papers.

13. On plain reading of sub-clause (i) of section 161 and Rule 145, it is apparent that the Assistant Collector upon being satisfied with the conditions of exchange, as consequence of the Rule he is required to call upon the parties to show cause why the exchange should not be made and thereafter under Rule 146 the Assistant Collector is

to decide the objections, if any, and pass suitable orders. It is, therefore, clear that without notice to the Gaon Sabha and in absence of resolution recording consent of the Land Management Committee the permission to make an exchange suo motu by the Assistant Collector on report of the Halka Lekhpal would be void not being mandated under section 161 of the Act:

18. From the conjoint reading of section 161, as well as, the Rules relating thereto, it transpires that the legislature has extended facility upon bhumidhar to exchange his bhumidhari land from land of another bhumidhar for their convenience upon satisfying the conditions for exchange. Such exchange cannot be valid unless permission of the Assistant Collector has been obtained. An exchange involves the transfer of property by one person to another and reciprocally the transfer of property by that other to the first person. There must be mutual transfer of ownership of one thing for the ownership of another.

b) In Re. Directions in the matter of demolition of structures:

91. 91. At the outset, we clarify that these directions will not be applicable if there is an unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a Court of law.

A. NOTICE

- i. No demolition should be carried out without a prior show cause notice returnable either in accordance with the time provided by the local municipal laws or within 15 days' time from the date of service of such notice, whichever is later.*
- ii. The notice shall be served upon the owner/occupier by a registered post A.D. Additionally, the notice shall also be affixed conspicuously on the outer portion. of the structure in question.*
- iii. The time of 15 days, stated herein above, shall start from the date of receipt of the said notice.*
- iv. To prevent any allegation of backdating, we direct that as soon as the show cause notice is duly served, Intimation thereof shall be sent to the office of Collector/District Magistrate of the district digitally by email and an auto generated reply acknowledging receipt of the mail should also be issued from the office of the Collector/District Magistrate. The Collector/DM shall designate a nodal officer and also assign an email address and communicate the same to all the municipal and other authorities in charge of building Regulations and demolition within one month from today.*

- v. *The notice shall contain the details regarding:*
 - a. *the nature of the unauthorized construction.*
 - b. *the details of the specific violation and the grounds of demolition.*
 - c. *a list of documents that the noticee is required to furnish along with his reply.*
 - d. *The notice should also specify the date on which the personal hearing is fixed and the designated authority before whom the hearing will take place;*
- vi. *Every municipal/local authority shall assign a designated digital portal, within 3 months from today wherein details regarding service/pasting of the notice, the reply, the show cause notice and the order passed thereon would be available.*

B. PERSONAL HEARING

- 1. *The designated authority shall give an opportunity of personal hearing to the person concerned.*
- II. *The minutes of such a hearing shall also be recorded.*

C. FINAL ORDER

- 1. *Upon hearing, the designated authority shall pass a final order.*
- ii. *The final order shall contain:*
 - a. *the contentions of the noticee, and if the designated authority disagrees with the same, the reasons thereof;*
 - b. *as to whether the unauthorized construction is compoundable, if it is not so, the reasons therefor;*
 - c. *if the designated authority finds that only part of the construction is unauthorized/non-compoundable, then the details thereof.*
 - d. *as to why the extreme step of demolition is the only option available and other options like compounding and demolishing only part of the property are not available.*

D. AN OPPORTUNITY OF APPELLATE AND JUDICIAL SCRUTINY OF THE FINAL ORDER.

- 1. *We further direct that if the statute provides for an appellate opportunity and time for filing the same, or even if it does not so, the order will not be implemented for a period of 15 days from the date of receipt thereof. The order shall also be displayed on the digital portal as stated above.*
- ii. *An opportunity should be given to the owner/occupier to remove the unauthorized construction or demolish the same within a period of 15 days. Only after the period of 15 days from the date of receipt of the notice has expired and the owner/occupier has not removed/demolished the unauthorised construction, and if the same is not stayed by any court, the concerned authority shall take steps to demolish the same. It is only any appellate authority or a such*

construction which is found to be unauthorized and not compoundable shall be demolished.

iii. Before demolition, a detailed inspection report shall be prepared by the concerned authority signed by two Panchas.

E. PROCEEDINGS OF DEMOLITION

1. The proceedings of demolition shall be video-graphed, and the concerned authority shall prepare a demolition report giving the list of police officials and civil personnel that participated in the demolition process. Video recording to be duly preserved.

II. The said demolition report should be forwarded to the Municipal Commissioner by email and shall also be displayed on the digital portal.

Judgment relied upon by learned counsel for the respondents:

a) Pradeep Kumar (Supra):

6. Challenging the aforesaid order, learned counsel for the petitioner has contended that the revisional authority without appreciating the correct facts on record dismissed the revision. It is submitted that the plot i.e. Khasra No. 1071Gha Min. Rakba 0.2155 hectare of village Nandpur could not have been exchanged with Khasra No.350 Min. Rakba 0.2675 hectare and given to respondent no.5, inasmuch as there is a number of dispute pending with respect to the said land, and thus, the proceeding under Section 101 of U.P. Revenue Code, 2006 was illegally initiated on account of this fact, and the Sub Divisional Magistrate has erred in law in allowing the exchange of plot by order dated 25.09.2023.

7. Be that as it may, the order of Sub Divisional Magistrate dated 25.09.2023 reflects that the Sub Divisional Magistrate after hearing all the aggrieved persons, passed the order. The petitioner is complainant, and was not a party in the proceeding under Section 101 of U.P. Revenue Code, 2006, therefore, the petitioner has no locus to file the revision, inasmuch as the petitioner is not an aggrieved persons.

8. In such view of the fact, the revision preferred by the petitioner was not maintainable unless the petitioner should have taken leave of the revisional authority to prefer revision after demonstrating that the order dated 25.09.2023 passed by Sub Divisional Magistrate prejudices his rights and he is aggrieved person. In such view of the fact, this Court is not inclined to interfere with the order passed by the revisional authority.

17. It is admitted case of the parties that a resolution was passed by the

Land Management Committee giving lease to the petitioners of Gata No.1135, which was not approved by the S.D.M. In spite of that, the petitioners are alleging that they are in possession over the land in dispute.

18. It is surprising that a person, who has no authority to hold possession over the land in dispute is alleging possession over the land in dispute. The provisions contained under Section 122 B are not applicable to the case of the petitioners.

19. In regard to judgment placed by learned counsel for the petitioners of Hon'ble Supreme Court, it has been provided therein that these directions will not be applicable if there is unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a Court of law. The judgment referred hereinabove is not applicable to the case of petitioners.

20. The petitioners have admitted in annexure No.3 to the writ petition that they are not in possession over the land in dispute, therefore, the impugned orders passed against the petitioners do not suffer from any infirmity or illegality and are just and valid.

21. It is however, made clear that the resolutions passed in favour of the petitioners was not approved by the competent authority i.e. S.D.M. vide order dated 31.10.1985 and it was returned back to the Land Management Committee and thereafter, no resolution allotting lease to the petitioners was ever submitted before the S.D.M., therefore, the petitioners have no right over the land in dispute and to adopt recourse as provided under law for unauthorized occupation on the land in dispute. The possession, if any, of the petitioners, is wholly illegal.

22. On the reasons recorded above, the writ petition fails and is hereby dismissed.

(Irshad Ali,J.)

January 20, 2026

Adarsh K Singh