

**Court No. - 19**

**Case :-** WRIT - C No. - 3000005 of 1995

**Petitioner :-** Ram Dularey

**Respondent :-** State of U.P.

**Counsel for Petitioner :-** Shyam Mohan, Manoj Kumar Gupta, R.K. Srivasta, Rajesh Kumar Shukla

**Counsel for Respondent :-** C.S.C.

**Hon'ble Subhash Vidyarthi, J.**

**Order on C.M. Application No.2242 of 2003:**

1. Heard.
2. This is an application seeking substitution of sole petitioner who died on 11.04.2023 and it is claimed that the right to sue survives upon the heirs.
3. No objection has been filed against the application for substitution.
4. Accordingly, the application is allowed.
5. The learned counsel for the petitioner may carry out necessary corrections in the memo of writ petition forthwith.

**Order on memo of petition:**

6. Heard Sri Manoj Kumar Gupta, the learned counsel for the petitioner, Sri S.K. Khare, the learned Standing Counsel appearing on behalf of the State and perused the records.
7. The instant writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeking quashing of the order dated 27.03.1989, passed by the Additional Collector/Prescribed Authority (Ceiling), Barabanki in Case

No.3/28/5/22/9 year 1988-89, under Sections 11/17 of U.P. Imposition of Ceiling on Land Holding Act. The petitioner has also challenged an order dated 05.09.1994, passed by the Additional Commissioner, Faizabad Division, Faizabad in Appeal No.220/611, Barabanki under Section 13 of U.P. Imposition of Ceiling on Land Holdings Act, which was filed against the aforesaid order dated 27.03.1989, whereby the Additional Commissioner has dismissed the appeal of the petitioner along with several other connected appeals.

8. The facts in brief are that the proceedings under Section 10 (2) were initiated against Rani Drig Raj Kunwar and were concluded by means of order dated 17.9.1962 declaring certain land to be surplus. The said order became final and publication in this regard was also made on 5.9.1964.

9. The petitioner claims to be occupant of a part of the said land so declared surplus by means of the order by the Prescribed Authority on 17.9.1962. He moved objections before the Prescribed Authority stating that he was not given any opportunity of hearing though he was an occupant of the land declared surplus and accordingly prayed that the said order dated 17.9.1962 be revisited and recalled and fresh order be passed only after hearing him. The Prescribed Authority by means of order dated 1.4.1976 rejected the objections of the petitioner. The said objections came to be abated as per the provisions contained under Section 14 (3) of the Act of 1960 in terms of the ordinance dated 10.10.1975.

10. The petitioner and some similarly situated persons had challenged the said orders by filing writ petitions before this Court, which were also dismissed on 14.4.1980. While dismissing the writ petitions this Court had observed that the

petitioners would, in any way, be allowed to file their objections under Section 11 as per the amended ordinance dated 10.10.1975. The petitioner preferred objections under Section 11 before the Prescribed Authority stating that he was in possession of the land bearing old Plot No.1679/3-6-6 and Plot No.168 Minz. area 2 bigha 18 biswa situated in Village Tilokpur, Pargana Ram Nagar, Tehsil Fatehpur, District Barabanki. It was stated that patta of the said land was given by Raja Harnam Singh, the husband of Rani Drig Raj Kunwar and on the basis of the possession after coming into force of Zamindari Abolition and Land Reforms Act had acquired rights of the said land. It was further stated that Rani Drig Raj Kunwar had filed a suit for eviction against the petitioners under Section 202 of U.P. Z.A. & L. R. Act on 14.5.1959 which was decreed by a common judgment and order dated 26.12.1962.

11. Against the judgment and order dated 26.12.1962 ten appeals were filed before the Commissioner, Lucknow including the appeal filed by the petitioner and the said appeals were allowed on 14.7.1963 by Additional Commissioner, Lucknow. The second appeal was also dismissed on 18.9.1964 by Board of Revenue and the rights of the petitioners were upheld and the judgment attained finality. The petitioner and the others who were bhumidhari tenants before abolition of zamindari became sirdar after zamindari abolition and, as such, they are independent tenure holders from the year 1958 onward.

12. It is in aforesaid circumstances that it has been submitted by learned counsel for the petitioners that no notice or information was given by the Ceiling Authority to the petitioners and the other similarly situated persons, who are in possession of the

said land and even the suit under Section 202 had been dismissed.

13. Since the petitioner remained in continuous cultivatory possession of the land in question much prior to abolition of zamindari, he automatically became bhumidhar as per Section 204 and 210 of U.P. Z. A. & L. R. Act. With regard to possession it has been submitted by learned counsel for the petitioner that name of the petitioner found mention in khatauni for the fasli year 1959 and even after the consolidation proceedings were completed, name of the petitioner was duly mutated in the revenue records. It is in aforesaid circumstances that the petitioners had moved application under Section 11 of the Act of 1960.

14. The Prescribed Authority while considering the case of the petitioner had formulated seven questions for determination. One of the questions was as to whether the petitioner was bhumidhar of the said land ? With regard to the said aspect he had stated that the said land was initially recorded in the name of Zamindar Raja Harnam Singh. It is stated that after death of Raja Harnam Singh his wife Rani Drig Raj Kunwar had wrongfully got her name mutated in place of the petitioner. The petitioner had submitted that he had received the said land by way of patta from Raja Harnam Singh but he was unable to produce the said patta before the Prescribed Authority. He further considered the fact that benefit of the order passed in suit filed by Rani Drig Raj Kunwar under Section 202 could be given to the petitioners in as much as the suit was merely a suit for eviction where Rani was unsuccessful and the suit was dismissed. He did not rely upon the order passed in proceedings under U.P. Z.A. & L.R. Act in as much as the said orders were

passed after the cut off date prescribed in the Act of 1960 and hence declined to give any benefit of the case and accordingly rejected the objections filed by the petitioners.

15. Being aggrieved by the said order of the Prescribed Authority the petitioner preferred an appeal before the Commissioner, Lucknow. The said appeal was also rejected by the Commissioner, holding that the petitioners were unable to demonstrate that he was the owner of the said land in as much as his claim which was based on the patta given by Raja Harnam Singh could not be produced either before the Prescribed Authority or before the appellate court and, hence, in absence of such evidence he found that the appeal could not succeed and accordingly upheld the findings recorded by the Prescribed Authority.

16. Learned counsel for the petitioners while assailing the aforesaid orders has submitted that the petitioner is in continuous possession since 1359 fasli till date. He submits that merely the fact that Rani Drig Raj Kunwar had moved application for eviction is demonstrative of the fact that the petitioner was in cultivatory possession of the said land. He submits that the said suit was decreed and the appeal filed by the petitioner was allowed and the suit was dismissed. Subsequently his possession and rights over the said land were duly recognized by the consolidation authorities who recorded name of the petitioner on the said land. He submits that litigation with regard to the said land was continuing since 1959 and culminated only on 10.09.1964 when the second appeal was dismissed by the Board of Revenue. He further submits that the authorities below have not correctly appreciated the findings recorded in the said case and have not given any

benefit of the same to the petitioner and consequently erred. He submits that even if the petitioner was unable to produce patta, still the authorities should have considered the fact that he had acquired rights over the said land on the basis of adverse possession.

17. Explanation II of Section 5 of the Act of 1960 is relevant in this regard which reads as under:-

*Explanation II — [ If on or before January 24, 1971, any land was held by a person who continues to be in its actual cultivatory possessions and the name of any other person is entered in the annual register after the said date] either in addition to or to the exclusion of the former and whether on the basis of deed of transfer or license or on the basis of a decree, it shall be presumed, unless the contrary is proved to the satisfaction of the prescribed authority, that the first mentioned person continues to hold the land and that it is so held by him ostensibly in the name of the second mentioned person. ]*

18. The learned counsel for the petitioner submits that undisputedly possession of the petitioner on the said land was continuing prior to the cutoff date i.e. 24.1.1971 and, hence, it is to be presumed that the petitioner is the owners of the land until any contrary evidence is produced. In the entire proceedings there is no other person who claimed title adverse to the petitioner and, hence, even as per the provisions contained in Explanation II the Prescribed Authority should have issued notice to the petitioners before proceeding to decide the said case.

19. Lastly, it was submitted that in the facts of the present case, it was incumbent upon the Prescribed Authority to have

considered whether by the adverse possession rights over the said land has been perfected by the petitioners or not?

20. Learned Standing counsel, on the other hand, has opposed the writ petition. He submits that the Board of Revenue has passed the order and dismissed the appeal filed by Rani Drig Raj Kunwar only on 10.9.1964 which was after consolidation proceedings had culminated and consequently the benefit of the said order could not be given to the petitioner. He submits that the petitioners had laid claim of ownership on the said land on the basis of patta and he was not able to demonstrate their title either before the Prescribed Authority or Additional Commissioner and accordingly submits that there is no infirmity in both the orders.

21. I have heard learned counsel for the parties and perused the records.

22. From the materials contained in the writ petition as well as the orders of the authorities below it is clear that the petitioner is in possession of the land bearing old Plot No.1679/3-6-6 and Plot No.168 Minz. area 2 bigha 18 biswa situated in Village Tilokpur, Pargana Ram Nagar, Tehsil Fatehpur, District Barabanki. Civil suit was filed by Rani Drig Raj Kunwar for eviction of the petitioner from the said land where she was unsuccessful. However, she challenged the same before Board of Revenue and even consolidation proceedings under the Act of 1960 were commenced. The said orders of the Prescribed Authority with regard to Rani Drig Raj Kunwar who was original tenure holder became final by the order dated 17.9.1962 and publication was made on 5.9.1965. The petitioners was not aware of the said proceedings and it is only

after he moved application in consolidation proceedings and only after interference of the High Court that he preferred his objection under Section 11 before the Prescribed Authority.

23. The question which arises for consideration in the present writ petitions is that as to whether the petitioner had sufficient or any right on the said land which ought to have been considered by the Prescribed Authority while concluding the ceiling proceedings against Rani Drig Raj Kunwar. With regard to possession and ownership of the said land it has been submitted that the petitioner had been given patta by Raja Harnam Singh. Undisputedly, the petitioner was in possession of the said land and it is due to possession over the said land that Rani Drig Raj Kunwar had filed suit under Section 202 of U.P. Z.A. & L.R. Act where she was unsuccessful and the proceedings were laid to rest by the order passed by the Board of Revenue on 18.9.1964. The claim of the petitioner was duly considered during the consolidation operations and record was duly modified including his name on the land on which he claims to be in possession. Once it has been shown that the petitioner has succeeded in sustaining his objection in the suit proceedings, it is clearly demonstrated that the petitioner was in possession and with the knowledge of the person who was claiming herself to be owner of the said land and consequently he was in adverse possession of the said land. Once this fact is demonstrated the Prescribed Authority was under duty to consider the rights of the petitioners on the ground of adverse possession and by not considering this, he has not exercised jurisdiction vested in him and consequently the period during which the petitioners were in possession of the said land cannot be ignored. This should have been duly dealt with by the Prescribed Authority. It is also without doubt that the



proceedings for eviction were commenced in 1959 which is prior to coming into force of the Ceiling Act, 1960. The proceedings were pending against the petitioner since much before the cutoff date and the finding of the Prescribed Authority that the benefit of the said proceedings cannot be given to the petitioner as the proceedings had culminated after the cut off date, is clearly arbitrary. The petitioner was a defendant in the said suit and was able to demonstrate his possession while Rani Drig Raj Kunwar was unable to establish her title over the said land. Therefore, the Prescribed Authority in the facts of the present case was bound to consider the rights of the petitioner over the said land on the basis of possession. In not doing so both the authorities below have acted arbitrarily and consequentl the impugned orders are liable to be set aside.

24. Apart from that, in the present writ petitions interim order was passed in 1995 in favour of the petitioners which is continuing till date. Numerous other writ petitions filed by similarly situate persons against the similar orders have been allowed by means of a judgment and order dated 13.10.2023, passed by a coordinate Bench of this court in a bunch of writ petitions, leading writ petition being Writ-C No.3000009 of 1995.

25. In order to meet the ends of justice as well as to provide opportunity to the petitioner to lay their claim over the said land the matter is remitted back to the Prescribed Authority for reconsideration of the rights of the petitioners if it has perfected on the basis of adverse possession. The issues which have been considered by both the authorities below do not require any interference as they have duly considered the same and we do not find any infirmity or error in the orders except that they

have not considered the aspect of adverse possession and only for this reason, the orders impugned are liable to be set aside. Accordingly, the order dated 17.9.1962 and 27.3.1989 passed by the Prescribed Authority, the order dated 5.9.1994 passed by Commissioner, Faizabad Division, Faizabad and orders dated 30.12.1981 and 13.9.1994 under challenge in Writ C No.3000009 of 1995 are set aside.

26. The matter is remitted back only for limited purposes to the Prescribed Authority as stated above. The Prescribed Authority is directed to conclude and pass necessary orders expeditiously, say within a period of four months from the date a certified copy of this order is placed before him.

27. The petitioners undertake to participate in the proceedings and submit all the documents in support of their submissions within a period of one month from today before the Prescribed Authority.

28. In light of the above, the writ petitions are allowed.

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**(Subhash Vidyarthi, J.)**

**Order Date :- 30.4.2024**  
Ram.