U.P.Z.A. & L.R. Act

S. 10 – Deduction of collection charge in order to recovery of dues as arrears of land revenue would be permissible.

In Mange Ram and another v. State of U.P. and Others reported in 2010(4) ADJ 390. The question for consideration before the Court was whether the cost of collection of recovering land revenue or a sum as an arrear of land revenue can at all be recovered or realized
from the defaulter when the recovery has not been made through the process/machinery of the Collector under the provisions of the U.P. Zamindari Abolition and Land Reforms Act/Rules despite provisions under the Act to realize 10% of the amount as collected charges.

This Bench was pleased to observe that on a plain reading of Section 10 along with Rule 8 of the Rules, it is clearly brought out that the Recovering Authority has to remit the amount to the authority concerned after deducting the collection charges, if any. The learned Bench then observed that this envisages deducting of collection charges only after recovering the amount and before remitting the same to the authority concerned. **(Satya Veer Singh v. State of U.P. & Ors.; 2010(6) ALJ 48 (All HC)**

S. 20(4) - Benefit of Section 20(4) - Entitlement

It has also recorded the finding of fact that there was default in payment of rent, arrears and other amount which was also not deposited by tenant on the first date of hearing. Hence, sub-section (4) of Section 20 would not help the tenant. Before the revisional court, it appears that the tenant raised only one ground i.e. his entitlement for benefit of Section 20 sub-section (4) which has been considered by Revisional Court. It has held that tenant is not entitled for such benefit having failed to deposit requisite amount on the first date of hearing. (**Laxmi Prasa vs. Special Judge, Gorakhpur; 2013(2) ALJ 30)**

S. 122-B - Civil Procedure Code, Section 9 Suit for injunction - Jurisdiction of Civil Court to Decide

On the day of filing of the suit plaintiff was recorded as bhumidhar of the land in dispute, hence on that time there was no need for filing of suit in the revenue court.

The learned court below has while deciding this issue held that the suit has been filed for injunction and under specific relief Act only civil court is empowered to grant injunction.

In the case of Ram Awalamb and others vs. Jata Shanker and others 1968 RD 470. a Full Bench decision of this Court it has been held that:-

> "in each and every case, the cause of action of the suit shall have to be strictly scrutinised to determine whether the suit is solely cognizable by a revenue court or is impliedly cognizable only by a revenue court, or is cognizable by a civil court. Where in a suit, from a perusal only of the reliefs claimed, one or more of them are ostensibly one relief is cognizable only by the revenue court, further questions which arise are whether all the reliefs are based on the same cause of action and, if so, (a) whether the main relief asked for on the basis of that cause of action is such as can be granted only by a revenue court, or (b) whether any real or substantial relief (though it may not be identical with that claimed by the plaintiff) could be granted by the revenue court. There can be no doubt that in all cases contemplated under (a) and (b) above the jurisdiction shall vest in the revenue court and not in the civil court. In all other cases of a civil nature the jurisdiction must vest in the civil court.

The determination of the question as to which out of the several reliefs arising from the same cause of action is the main relief will depend on the facts and circumstances of each case. Where, on the basis of a cause of action.

(a) the main relief is cognizable by a revenue court the suit would be cognizable by the revenue court only. The fact that the ancillary reliefs claimed are cognizable by civil court would be immaterial for determining the proper forum for the suit;

(b) the main relief is cognizable by the civil court the suit would be cognizable by the civil court only and the ancillary reliefs, which could be granted by the revenue court may also be granted by the civil court.

The above principle will apply also to a suit for injunction and demolition relating to agricultural land and brought against a trespasser. Where the revenue court was not competent to grant all the reliefs arising out of one and the same cause of action and the main relief was that of injunction and demolition the suit would lie in the civil court."

In the instant case only one relief of injunction has been sought so the civil court has jurisdiction to decide the suit. (**State of U.P. vs. Ram Prasad Saxena; 2013(2) ALJ 38)**

Sec. 122B-- Uttar Pradesh Zamindari Abolition and Land Reform Rules, Rr. 115C and 115E—Uttar Pradesh Revenue Code, S. 67—Uttar Pradesh Revenue Code Rules, S. 67—Encroachment over public pond by raising construction—Removal of—Only Assistant Collector empowered to remove encroachment

In this case, encroachment over the pond has neither been intimated by the Land Management Committee of the village nor by the Lekhpal and the petitioner if filed an application informing the authority regarding such encroachment, the application of the petitioner, in Court's considered opinion, shall be covered under the umbrella of the word _otherwise' used Section 67 (2) & Rule 67 of the
Rules.

The intention of the legislature is very much clear on the point that firstly it is the duty of the Gaon Sabha/Land Management Committee and the local authority and the Lekhpal of the concerned area to make inspection of the site in each fasli while preparing the khasra and if any encroachment is found to be there, the same has to be reported to the Assistant collector who happens to be the competent authority under Section 67 of the Code or Section 122-B of

the Act and on their failure, the competent authority was also given additional power to ensure removal of such encroachment if it comes to the knowledge of the encroachment over the gaon sabha land or the land belonging to the local authority from any other source.

In view of the fact that under the code, it is the Assistant Collector who has been empowered to pass an order for removal of such encroachment and ensuring removal of such encroachment, the application by an individual private person has to be made to the Assistant Collector but if the application has been made other than the Assistant Collector, to the Commissioner or the Collector of the Deputy Collector or any other authority, in view of the law laid down by this Court in the case of Rama Shankar (2013 (1) ALJ 31) the authority concerned i.e. the Commissioner or the Collector or the Deputy Collector or any other authority, after receipt of such information regarding encroachment has to immediately transmit the application to the Assistant Collector of the concerned tehsil and after receipt of the application either from the office of the Commissioner or the Collector or the Deputy Collector thereafter is obliged to proceed in accordance with law and take suitable decision in accordance with the provisions contained under Rule 67 of the Rules.

Bhole Nath vs. State of U.P., 2016 (6) ALJ 129

Sec. 122-B-4(f)- Restoration application - Any order passed on restoration application seeking recall of order was not revisable

The brief facts of this case are that in a proceeding under section 122B (4F) of U.P. Zamindari Abolition and Land Reforms Act, 1950 (in short the Act) the Sub Divisional Officer has passed an order dated 10.10.1998 for recording the name of respondent no. 6 as Bhumidhar with non transferable right over plot no. 547 situated in village Bansdeeha upon which it is alleged that the respondent no. 6 had been in possession prior to 1985.

The petitioner herein claiming himself to be lease holder on the aforesaid plot, has filed restoration application seeking recall the order dated 10.10.1998 before the Sub Divisional officer on 28.7.2004. The restoration application was allowed on 31.5.2005 by Sub Divisional Officer and order dated 10.10.1998 was recalled. Aggrieved by the order dated 31.5.2005 the respondent no. 6 has filed revision No. 511/886/G (Dwarika Vs. Ganga Raman) before the Additional Commissioner, Gorakhpur Division, Gorakhpur which, in turn, was heard and allowed by the Additional Commissioner (Admn.) vide order dated 29.10.2011 on the ground that the petitioner had no right to file restoration application.

It is contended by learned counsel for the petitioner that against the order, allowing restoration application seeking recall of the order, passed under section 122B (4F) of the Act revision was not maintainable.

Division Bench of this court in the case of Shushila and another vs. State of U.P. and others being Special Appeal No. 479 of 2015 decided on 29.9.2015 has held that an order passed under section 122B (4F) of the Act is not revisable. In view of the fact that the order passed under section 122B(4F) itself is not revisable therefore any order passed on the restoration application seeking recall of the order passed under section 122B (4F) is also not revisable therefore in my opinion the order passed by the Revisional court, against the order allowing restoration application, is without jurisdiction. **Ganga Raman Sharma V. State of U.P. and others, 2016 (5) AWC 5023**

Ss. 122B(4F) & 132 – Whether declaration of right of any person can be made in respect of public utilities land U/s. 132 of above Act – Held (ii)

Court has observed that the order dated 30-9-1983 refers to the land in question having been converted under an order dated 14th

October, 1977 for the purpose of extending the benefit of a declaration in favour of the petitioner. Nonetheless there is no authority with the Sub Divisional Magistrate under the law for the time being in force to declare a land of public utility in the shape of a road/rasta as defined under Section 132 of the 1950 Act as an old parti. The record of settlement therefore, could not have been altered by the Sub Divisional Magistrate under his executive order or even otherwise which has been made the basis of declaration in favour of the petitioner in the order dated 30-9-1983. Apart from this, the order dated 30-9-1983 also appears to have rested the entire finding on the basis of such an entry in the khataunt to give a declaration in favour of the petitioner.

In the opinion of the Court the consequential action which is based on the order of 1977 also was equally erroneous and, therefore, in the opinion of the Court the Sub Divisional Magistrate did not commit any error in law to have set aside the order dated 30-9-2009. (**Ram Adhar (Chamar) v. Board of Revenue, U.P. at Allahabad and others; 2012(2) AWC 1885)**

S. 122-C - Cancellation of Allotment of plot – Applicability of principle of estoppels - If allotment found contrary to law i.e. against provisions of Sec. 122, No plea of estoppels against State Machinery i.e., Collector in cancelling irregular Patta Allotted

Court considered its opinion that since the petitioner cannot dispute aforesaid factual position regarding her non-eligibility for allotment of the land of Gaon Sabha for house site under Section 122-C (3) of U.P.Z.A. & L.R. Act and by getting further opportunity of hearing before the Collector, she would not be able to improve her case on merit, therefore, providing further opportunity of hearing to the petitioner, would be abuse of process of law and would be an exercise in futility under Article 226 of the Constitution. Not only this, but by doing so, this court would restore the irregular allotment of land of Gaon Sabha made in favour of the petitioner by Asstt. Collector, Salempur, Deoria on 27.3.1993 and would perpetuate illegality. therefore, court inclined to exercise discretionary writ jurisdiction in favour of the petitioner in the above factual back drop of the case.

So far as submission of the learned counsel for the petitioner that the land of Gaon Sabha was allotted to her in lieu of her sterilization under which the petitioner had under gone operation of Tubecto my, and the respondent State functionaries are bound by the principle of estoppel is concerned, it is to be noted that since the petitioner's allotment was found to be contrary to the law i.e. against the provisions of Section 122-C of the Act, therefore, no plea of estoppel is operative against State machinery i.e. the Collector in cancelling the irregular Patta allotted to the petitioner which was contrary to the provisions of Section 122-C of the Act. (Shanti Deve Rajeshwar Prasad Tripathi vs. State of U.P.; 2012(2) ALJ 353)

Sec. 131-B – Temporary Injunction – Refused in a suit for permanent injunction – Appeal against – Dismissed – Legality of

Till date sale-deed has not been calncelled. Revenue entries are also in favour of the petitioner. Learned Counsel for the respondent has argued that respondent No. 1 took permission of the D.M. To sell his land to Ramvriksha and firstly he did not execute the in sale deed in favour of the petitioner and secondly even if sale-deed was executed it was illegal because no permission had been sought. Both petitioner as well as respondent No. 1 are scheduled caste. The property is not covered by section 131-B of U.P.Z.A.L.R. Act. Accordingly, permission was not necessary.

Accordingly, in court's opinion prima facie the petitioner has made out a case for grant of temporary injunction. Writ petition is accordingly allowed impugned order are set aside, petitioner's temporary injunction application is allowed in the following manner :-

It is directed that until decision of the suit respondents shall not interfere in the possession of the petitioner. Petitioner is also restrained from alienating the property in dispute or changing its

nature till the decision of the suit. All the four suits shall be consolidated and decided together. It is stated that in OS No. 47 of 1999 filed by respondent No. 1 Lal Chand. He (Lal Chand) has filed application for dismissal of the suit as withdrawn. If such an application is pending then the suit shall be dismissed as withdrawn. Respondents No. 2 to 5 are sons of Lal Chand. The suits must be decided very expeditiously. Absolutely, no unnecessary adjournment shall be granted to the plaintiff as he has been granted temporary injunction. If any adjournment is granted to the plaintiff then is shall be on heavy cost which shall not be less than Rs. 300/- per adjournment payable before the next date failing which suit shall be dismissed for non-prosecution. However, if defendants-respondents seek more than two adjournments then this direction shall stand automatically vacated/recalled. **Bechan v. Lal Chand, 2016 (133) RD 645 (Alld.HC)**

Sec. 166 – Attractibility of

So far as the argument that sale-deed is affected by section 166 of the Act, is concerned, it has been found that sale-deed was in respect of bhumidhari holding, therefore, section 166 is not attracted. Otherwise also on the basis of plea of Section 166 of the Act, the petitioners will not get any benefit of land as the land will vest in State of U.P. Therefore this Court is not inclined to interfere in the matter. **Amarjeet v. Board of Revenue, Allahabad, 2016 (133) RD 8 (Alld.HC)**

Rs. 176 and 176-A – Asami Pata-Asami patta shall not be for a period exceeding five years – Sub divisional officer is empowered to determine the asami lease at any time

Besides, from a perusal of the order passed by the Sub Divisional Magistrate, it is clear that it has been passed in exercise of powers conferred by Rule 176-A of the U.P. Zamindari Abolition and Land Reforms Rules which provides that an asami lease shall not be for a period exceeding five years and that it is lawful, for the Assistant Collector (Incharge) of the sub division, namely, the Sub Divisional Officer to determine, at any time, a lease in favour of an asami.
Chandan Prasad V. State of U.P., 2016 (133) RD 648 (Alld.HC)

S. 117- Scope of- A pond or tank in holding of a person could not be vested in State/Gaon Sabha

The intention of Legislature in enacting section 117 of Act was to vest all such ponds and tanks which were on the barren covered with the water, as envisaged in Chapter A-VIII Para A124, Part I (6)of the U.P. Land Record Manual, and was meant for public utility or purpose. Meaning thereby, if any pond or tank is in the nature of holding of a person, may for the reason of cultivating the water chestnuts or fisheries, then it must not and could not have been vested in the State Government, much less in the Gaon Sabha, town area or the municipality, as the case may be.

If there is any pond or tank or any land covered with water, then it was not a Government land, but the land forming part of the holding or a particular individual and such land could not have been vested in the State Government. **Nagar Palika Parishad, Jaspur V. Sunder (Dead) Through L.Rs. and others, 2016 (132) RD 286**

Section 117- Notification under- Power with the Government to rescind the notification-Not in the Director of Panchayat Raj.

The reference to the Panchayat Raj Act in the said provision will not amount to conferring a power either on the Director or on any other authority under the Panchayat Raj Act to rescind a notification under

section 117 of the U.P.Z.A. & L.R. Act. It is settled principle of law that a power to do in a particular authority empowers the same authority to undo the notifications. The State Government has the power under the provisions of section 117 of the U.P.Z.A. & L.R. Act and not the Director of Panchayat Raj to rescind the notification of section 117. The powers under the Panchayat Raj Act, 1947, operate in a different field and so is the case under the U.P. Municipalities Act, 1916. There the limits of boundaries are defined that does not deal with any such power of divesting the management of Gaon Sabha Land which is within the exclusive domain of the U.P.Z.A. & L.R. Act, 1950. **(Yatindra Kumar Singh @ Raju and others v. State of U.P. Through Secretary, Urban Development, U.P., Lucknow and others, 2011 (114) RD 50)**

S. 122-B- Scope of- An asami lease cannot be determined in proceeding U/s 122- B of the above Act

It is equally true that an Asami lease cannot be determined in proceedings under section 122-B of the U.P. Zamindari Abolition and Land Reforms Act which provision is meant for eviction of unauthorized occupants. A person recorded as an Asami cannot be said to be an unauthorized occupant especially when the entry is not alleged to be a forged or fraudulent entry. **Baijanath (Dead) and others V. State of U.P. and others, 2016 (132) RD 294**

S. 122-B (succeeded by S. 67 of the U.P. Revenue code, 2006)- U.P. Revenue Code Rules, 2006- Rule 67 (6) –Scope of explained.

The writ petition which has been filed in the public interest has highlighted the failure of the State to implement the judgment of the Division Bench of this Court dated 28 May, 2014 in Om Prakash Varma and others V. State of Uttar Pradesh and others, Misc. Bench No. 6472 of 2012. This judgment of the Division Bench dealt with the serious issue of encroachments on public utility lands, including among them lands which are reserved for parks, ponds and pasture

lands which are being increasingly encroached upon in the absence of any remedial action by the State Government.

In court view, since the Division Bench has already laid down comprehensive guidelines and has issued directions to the State Government in Om Prakash Verma , the issue which now really remains is the lack of administrative will to secure enforcement of the directions. This is a serious matter which must necessarily be taken up by the Court. Court may note that the provisions of section 67 and 136 of the U.P. Revenue Code, 2006 sufficiently empower the respondents to rid public utility lands from encroachments. Rule 67 (6) of the U.P. Revenue Code Rules, 2006 mandates that the Assistant Collector shall conclude the enquiry under section 67 within 90 days of the issuance of the show cause notice and in case of failure to adhere to the time frame, the authority is obliged to record reasons. Yet this Court on a daily basis is deluged by petitions alleging failure to act against encroachments or apathy in implementing orders of eviction. The obligation to preserve land meant for public utility purposes rests upon the State. Action against encroachments cannot be left to depend upon individuals instituting legal proceedings to secure enforcement of the mandate cast by section 67 and 136.

In these circumstances, this Court would be constrained to reiterate the guidelines which were issued in Om Prakash Verma and to further direct the State to strengthen the procedure for enforcement so as to secure the interest of the public. **Dayaram Yadav and others V. State of U.P. through Chief Secretary, U.P. Govt., Lucknow 2016 (132) RD 11**

S. 143

The petitioner instituted Original Suit No. 479 of 1993 seeking partition in the disputed plot which was recorded in revenue record as agricultural land. The defendant raised an objection that Civil Court has no jurisdiction in the matter. The Trial Court answered with respect to jurisdiction of Civil Court holding, if there existed a permanent construction

over agricultural land, the Civil Court will have jurisdiction to adjudicate suit for partition. Decision of Trial Court confirmed by Revisional Court.

There is no declaration under Section 143 of Act, 1951- Since the land in dispute, despite and irrespective of nature of construction continued to be an "agricultural land", in absence of any declaration made under Section 143, evidently Civil Court had no jurisdiction to decide the matter being barred by Section 331 of Act, 1951. The dispute could have been settled in Revenue Court. The writ petition allowed accordingly. **(Satgur Dayal Vs. IV Additional District Judge & Others; 2013 (6) AWC 6327 (LB)**

Ss.195, 198(4) and 198(6) – Allotment of Gram Sabha laid – Cancellation of – Allotment of Gram Sabha land cannot be cancelled U/s. 198(4) of U.P.Z.A. and L.R. Act when limitation therefore U/s. 198(6) thereof had expired for initiating proceedings

The scheme of the Act clearly provides that in case any proceeding has been initiated by the Assistant Collector either on a complaint or suo motu the period of limitation in both the case is circumscribed by Section 198(6). It does not make any distinction in respect of where the proceedings have been initiated on a complaint or by Collector suo motu. All the grounds available for cancellation of the lease or allotment are to be circumscribed by period of limitation provided therein. Power to cancel the lease under Section 198(4) of the Act does not carve out any special category which can be excluded from the purview of the limitation. The ground on which the lease of the petitioner is cancelled relates to non-approval granted by the Collector at the time of allotment. This can be an issue for the purpose of cancellation of allotment provided same can be raised within period of limitation provided under the Act. Once the period of limitation has expired the Collector cannot cancel the lease on the ground that there was no prior approval granted as contemplated by Section 195 of the Act.

It is required to mention that in the earlier proceedings on 13.3.1985 report was called from the Tehsil authorities by the Collector in which it is stated that the lease granted in favour of the petitioners on 1.2.1976 was approved by the S.D.M. in the same very year even on this ground also the findings of both the courts below

cannot be sustained.

In the result, the writ petition is allowed. The orders impugned dated 5.8.2006 and 9.12.2004 are hereby quashed. (**Jiya Ram and others v. State of U.P. and others; 2012(3) AWC 2708)**

Lease- Cancellation of- Provisions of section 198 of the U.P.Z.A. & L.R. Act to be availed- Lease cannot be cancelled through an administrative order- Rules of natural justice to be followed- Procedure prescribed under law cannot be avoided- Petition disposed of with observations.

Suffice it to say, if the orders have been passed by the Authorities conferring a lease on the petitioner then the respondent administration has to move an application for recall or for setting aside such orders. In the instant case, the petitioner relies on a lease conferred by the competent authority. The procedure for cancellation of a lease which can be said to be invalid is provided for under sub-section (4) of section 198 of the U.P.Z.A. & L.R. Act, 1951. This provision can be availed of in the event the lease is invalid. It cannot be cancelled through an administrative order. The rules of natural justice have to be complied with and the procedure prescribed by law has to be followed. It is well settled that even an order criticised as being void requires setting aside. Reference be had to the observations of the Apex Court in the Constitution Bench decision of Janardhan Reddy v. State of Hyderabad, AIR 1951 SC 217, (Paragraphs 25 and 26) extracted hereinunder:

..... ―Evidently, the Appellate Court in a case which properly comes before it on appeal is fully competent to decide whether the trial was with or without jurisdiction, and it has jurisdiction to decide the matter rightly as well as wrongly. If it affirms the conviction and thereby decides wrongly. If it affirms the conviction and thereby decides wrongly that the trial Court had the jurisdiction to try and convict it cannot be said to have acted without jurisdiction and its order cannot be treated as a nullity.

Ss. 198(4) and (5) – Regarding proceedings under Sections 198(4) and (5), Section 5 of Limitation Act has no application

Limitation for suits of different nature, appeals and applications have been given in Schedule. First Division of the schedule from Article 1 to 113 prescribes limitation for suit, Second Division of the schedule from Articles 114 to 117 prescribes limitation for appeal and Third Division of the schedule from Article 118 to 137 prescribes limitation for applications. U/s. 2(1) of Limitation Act, 1963 it has been clarified that suit does not include an appeal or an application. Under section 5 of Limitation Act, 1963 delay can be condoned only in the appeals and applications falling under Second Division and Third Division of the schedule. The case for cancellation of patta as given under section 198(4) of the Act cannot be treated as an application as provided under Third Division of the schedule from Article 118 to 137. Section 198(4) provides the provision of the category of the suit. Section 5 of Limitation Act, 1963 has no application and delay cannot be condoned in exercise of powers under section 5 of Limitation Act, 1963.

The Court can condone the default only when the statute confers such a power on the Court and not otherwise. In that view of the matter court has no other option but to hold that section 5 of the Limitation Act, 1963 has no application in the instant case. Thus, section 5 of the Limitation Act, 1963 has no application as the application for cancellation of patta under section 198(4), is the original proceedings of the nature of suit and not an application falling in the categories given from Article 118 to 137.

In the cases where fraud has been committed by the defendant or his agent the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it, or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production. In this case, it was alleged by the respondents that Land Management Committee granted patta of the land in dispute to them on 24.8.1989and they were given possession over the land in dispute. Subsequent allotment of the land in dispute to petitioner on 2.2.1990 is vitiated on the ground of fraud/mistake. In such circumstances issue relating to limitation ought to have been framed and decided as preliminary issue after taking evidence of the parties. (**Harish Chandra v. State of U.P.; 2014 (124) RD 5)**

S. 229-B – Suit for declaration as sole owner – Maintainability of

In this case tenancy rights in respect of land in question were in name of Karta of family. His two brothers had 1/3rd right in land in question so all the three brothers thereby held 1/3rd share. After death of brothers the son of one brother cannot claim to be sole tenant of property as there were other co-sharers. Hence, he would hold only 1/3rd share and cannot be declared as exclusive owner of land in question. **(Ramdeo v. Board of Revenue, U.P., 2011 (3) ALJ 199**
(SC)

S. 286 – Auction Sale – Effect of approval of auction sale conducted U/s. 286 to sub-div. officer. Sub div. officer has no power under U.P.Z.A. & L.R. Act.

After notification dated 17.1.1976 it has to be accepted that the power to approve the auction sale conducted under Section 286 of the U.P.Z.A. & L.R. Act vests with the Collector and Sub-Divisional Officer cannot exercise the power of the approval.

In the present case it is admitted position that Collector has not approved the auction sale and learned single Judge has rightly set aside the auction and also its confirmation by Sub-Divisional Officer and all other consequential action on that ground. **(Ram Awadh Tiwari v. Sudarshan Tiwari and Others; 2009(1) AWC 310)**

Sec. 298(2) – No fee can be charged under by-laws of Municipality on advertisement shown on cable T.V. network

Bye-laws framed by the municipality provided that the fee would be chargeable on the advertisements pasted on the public notice board but not the advertisements shown by the cable operator. In fact, normally the cable operators show the different channels. The advertisements are shown in the channels. The cable operators have nothing to do with the same. They pay fees to show the channel. There was nothing in the Bye-laws to show that any kind of fee or money can be charged for the advertisements shown on the cable TV network.

Thus no fee can be charged under the Bye-laws on the advertisements shown on cable TV network. **(Sanjai Gupta v. State of U.P. & ors., 2011 (3) ALJ 12 (All HC) U.P. Zamindari Abolition and Land Reforms Act**

S. 299 B –CPC, Order IX, Rule 13- Suit for declaration of right –Decree exparte- summon found to have not been served upon defendants and not sent through past –In absence of service of summons exparte decree held to have rightly set aside

The writ petition has been filed for quashing the order of Board of Revenue U.P. dated 20.02.2014, arising out of suit for declaration of rights under Section 229-B of U.P. Zamindari Abolition and Land Reforms Act, 1950

In this case, summons were not sent through registered post as such the presumption under Section 114 Illustration (f) of the Evidence Act, 1872 and Section 27 of General Clauses Act, 1897 cannot be raised. The Process Server made endorsement on the duplicate summon that Ram Pal had refused to take summons issued by the Court in presence of two witnesses thereafter one copy of summon was pasted on his door. Ram Pal filed his affidavit and denied service of summons upon him. He also filed affidavits of two witnesses Radhey Shyam and Chhedi Lal, mentioned as witnesses on the summons, before the Trial Court, who stated that in their presence, Process Server never tendered the summons to Ram Pal nor they had signed the duplicate summon. Trial Court and First Appellate Court illegally ignored these affidavits on record. Trial Court held that it is unbelievable that Ram Pal had not taken copy of khatauni for such a long time while First Appellate Court has taken into account the notices issued in the revision filed by Rukmani. In order to decide the application for setting aside decree under Order IX Rule 13 C.P.C. the Court is required to decide as to whether summons of the suit were served or there was any other cause due to which the defendant was prevented to appear before the Court on the date fixed in the suit. Trial Court and First Appellate Court have illegally failed to record any findings in this respect and based their judgment on irrelevant considerations. In such circumstances Board of Revenue has not committed any illegality in setting aside the orders of the Courts below.

In this case, summons were not served upon the defendants. The summons were not sent through post as such presumption of service could

not be raised in this case on the basis of endorsement of 'refusal' by Process Server. In the absence of service of summons, ex parte decree has been rightly set aside by Board of Revenue. **(Shiv Murat and another v. State of U.P. and others 2014 (5) AWC 5295)**

S. 331 – U.P. Reorganization Act, S. 591 – Transfer of pending proceedings – Whether Board of revenue can pass order on revision after enforcement of U.P. Reorganization Act – Held, "No" but it can transfer the proceedings which pending before it

A reading of the plain language, the provision makes it clear that every proceeding pending before a Court, Tribunal, Authority or Officer in any area which fell within the State of U.P. on 09.11.2000 stood automatically transferred to the corresponding Court, Tribunal, Authority or Officer of the State of Uttaranchal (now Uttarakhand). Therefore, the revisions which were pending before the Board of Revenue, U.P. on 9.11.2000 stood transferred to the State of Uttaranchal and, as such, the same could not have been decided by the Board of Revenue, U.P. Unfortunately, the learned Single Judge over looked the fatal flaw in the order of the Board of Revenue, U.P. and pronounced upon the legality of the purchases made in the names of the respondents. **(State of Uttaranchal v. M/s. Golden Forest Co.**
(P) Ltd.; AIR 2011 SC 1723)

Ss. 331, 143, 9 – CPC, O-20 R-18 – Suit for partition - Adjudication – Bar to civil courts jurisdiction

The Court clearly held that future probable use of land will not determine its nature but it has to be seen as to what was its nature at the time of execution of instrument.

In the present case admittedly there is no declaration under Section 143 of Act, 1951. The exposition of law as discussed above clinches the issue in question in favour of petittioner and Sri Avadhesh Kumar, learned counsel appearing for respondents despite repeated query neither could

place any authority taking otherwise view not could advance any other submission so as to pursue this Court to take a different view

Since the land in dispute, dispute and irrespective of nature of construction as discussed above, continued to be an ―agricultural land‖ in absence of any declaration made under Section 143, evidently Civil Court had no jurisdiction to decide the matter being barred by Section 331 of Act, 1951. The dispute could have been settled in Revenue Court. **(Satgur Dayal v. IV Additional District Judge, Kheri & others; 2013 (4) ALJ 595)**

S. 331- Scope of –Doesn‘t expressly for a suit for cancellation of sale deed

Under section 331, jurisdiction of Civil Court is expressly barred for the suits mentioned in Column 3 of Schedule II of U.P. Act No. 1 of 1951 and impliedly barred for a suit based on a cause of action, in respect of which, relief could be obtained by Revenue Court (mentioned in column 4 of Schedule II). Column 3 of Schedule II of U.P. Act no. 1 of 1951 does not provide for a suit for cancellation of sale-deed of agricultural land as such section 331 (1) does not expressly bar a suit for cancellation of sale deeds. **Chandrika V. Shivnath and others, 2016 (132) RD 247**

S. 331- Suit for cancellation of sale-deed based on ownership and Bhumidhari right over disputed agricultural land is barred by S. 331, only court relief and civil Court had no jurisdiction to decide suit

The suit of plaintiff/respondent has been based on claim of his ownership and bhumidhari rights over disputed agricultural land, for which the plea of bar of suit under Section 331 of U.P.Z.A. & L.R. Act was taken by defendants in their written statement. Section- 331 of U.P. Zamindari Abolition & Land Reforms Act, 1950.

The present case of plaintiff-appellant is based on claim that they are owner and bhumidhar of disputed land. Admittedly the name of defendant-respondent are recorded as bhumidhar on disputed land i.e. agricultural 'land' as defined in UPZA & LR Act. Even the alleged relief of permanent injunction regarding disputed land is also based on the relief of declaration of title of disputed agricultural 'land'. Therefore it is explicitly clear that only the court of Assistant Collector has jurisdiction to grant these reliefs, and Civil Court has no jurisdiction to decide the suit or other proceeding based on cause of action for declaration of ownership rights of such agricultural land. Therefore this finding of trial court as well as first appellate court are erroneous dispute between the parties. that civil court had jurisdiction to hear real

17. From above discussion, it is clear and proved that main relief sought by plaintiff-appellants are based on declaration of their alleged right of bhumidhari over disputed agricultural land but it cannot be granted to the appellants, and therefore, claim of plaintiff/respondent is barred by Section 331 of U.P.Z.A. & L.R. Act, so respondent is not entitled for any relief claimed in the original suit. **Onkar Singh and another V. Om Prakash (D) through his L.Rs., 2016 (4) AWC 3580**

S. 331- Scope of- Issue whether the land in dispute was agricultural or abadi in nature –Determination of- the proper cause for the court is to refer the matter u/S 331-A of the above Act

Section 331-A is clear in its terms that when the nature of the land has been pleaded to be agricultural and the same has been denied in the reval contention, being pleaded as an Abadi, the issue must have been referred to as envisaged under section 331-A of UPZA & LR Act and this view has well been propounded even by the Hon‟ble Apex Court in Chandrika Prasad case.

That apart, even if the contention of learned counsel for the respondents is taken into consideration for a moment, then also the

settled proposition of law is that to seek the prohibitory injunction against anyone and granting of the relief to the plaintiff pre-supposes has possession over the land, in question, and the issue of possession on agricultural land could only be decided by the Revenue Court. Civil Court has not jurisdiction to give finding on possession over agricultural land and this view has been laid down in Kamla Prasad case.

So, both ways, when the issue was framed that whether the land, in question, was agricultural or Abadi in nature, then the proper course for both the Courts below must have been to refer the matter under section 331 of the UPZA & LR Act. **Bhim Bahadur V. Vikram Singh and another, 2016 (132) RD 33**

Nature of –Special Act hence prevails over the general Law

The law relating to right, title and interest over the agricultural land is contained in Act 1950, which is a complete Code by itself.
The said Act being special Act, its provisions would prevail over the general law. The jurisdiction of civil court is ousted if the relief can be granted by the special court conferred with jurisdiction to grant such reliefs. Section 331 which specifically ousts the jurisdiction of other courts in respect of all suits, applications etc., enumerated in Schedule II, the main emphasis is on the words 'cause of action" and "any relief". **(Sanjay Sharma and others v. Kashi Prasad and other, 2016 (131) RD 346)**

S. 117- Interpretation of –Discussed

Sub section (1) of Section 117 empowers the State Government to issue a notification at any time after the estate has vested in the State under Section 4(1). Sub section (1) of Section 117 provides as follows:-

"117. Vesting of certain lands, etc. In Gaon Sabhas and other Local Authorities. - (1) At any time after the publication of the notification referred to in Section 4, the State Government may [by general or special order to be published in the manner prescribed], declare that as from a date to be specified in this behalf, all or any of the following things, namely –

(i) lands, whether cultivable or otherwise, except lands for the time being comprised in any holding or grove;
(ii) forests;
(iii) trees, other than trees in a holding on the boundary of a holding or in a grove or abadi;
(iv) fisheries;
(v) hats, bazars and melas, except hats, bazars and melas held on lands to which

the provisions of Clauses (a) to (c) of sub-section (1) of Section 18 apply or on sites and areas referred to in Section 9; and

(vi) tanks, ponds, private ferries, water channels, pathways and abadi site,-

which had vested in the State under this Act, shall vest in a Gaon Sabha or any other local authority established for the whole or part of the village in which the said things are situate or partly in one such local authority (including a Gaon Sabha) and partly in another:

Provided that it shall be lawful for the State Government to make the declaration aforesaid subject to such exceptions and conditions as may be [specified in such order]."

Sub section (6) of Section 117 is in the following terms:

> "(6)The State Government may at any time, by general or special order to be published in the manner prescribed, amend or cancel any declaration, notification or order made in respect of any of the things aforesaid, whether generally or in the case of any Gaon Sabha or other local authority and resume such thing and whenever the State Government so resumes any such things, the Gaon Sabha or other local authority, as the case may be, shall be entitled to receive and be paid compensation on account only of the development, if any, effected by it in or over that things:
>
> Provided that the State Government may after such resumption make a fresh declaration under sub-section (1) or sub-section (2) vesting the thing resumed in the same or any other local authority including a Gaon Sabha, and the provisions of sub-sections (3), (4) and (5), as the case may be, shall mutatis mutandis, apply to such declaration."

The effect of Section 117(1) of the Act is that after the estate has vested in the State Government under Section 4, the State Government is empowered to direct that the land, among other things, which had vested in the State, shall vest in the Gram Sabha or any other local authority established in respect to the village in question. Under sub-section (6), however, the State Government is empowered to amend or cancel any declaration or notification made by it and to order resumption. When the State Government issues an order of resumption, the Gram Sabha or local authority, as the case may be, is entitled to receive compensation on account only of the development, if any, effected by it in or over the land or thing. Under the proviso to sub-section (6), the State Government, upon resumption, is empowered to make a fresh declaration vesting the land resumed in the same or any other local authority including the Gram Sabha. The provisions of sub-sections (1) and (6) make it abundantly clear that the vesting of land in the Gram Sabha or the local authority does not confer an absolute title which at all material times continues to vest in the State Government. Indeed that is the basis on which the State under sub-section (6) of Section 117 is empowered to cancel or amend a notification of vesting which has been issued under sub-section (1). Upon the issuance of such a notification, the Gram Sabha or local authority in which the land has originally vested, is entitled to receive compensation in respect of the development carried out by it

thereon.

The true nature of the vesting in the State Government under sub-section (1) of Section 4 as contrasted with the vesting under sub-sections (1) and (6) of Section 117 in the Gram Sabha or local authority has been adjudicated upon in the judgment of the Supreme Court in Maharaj Singh. **(Rajendra Tyagi and another v. State of U.P. through Principal Secretary, Nagar Vikas, Bapu Bhawan, Lucknow and others , 2016 (131) RD 243)**

S. 131 B-Transfer of property Act, S. 43- Suit for specific performance of agreement to sell- Land not transferable in Law cannot be ordered to be transferred by decree of Courts- Hence, courts below rightly refused to decree suit for specific performance

The plaintiff appellant has preferred this second appeal after losing the suit for specific performance of the agreement to sell dated 05.06.1996 in the courts below.

The courts below in refusing specific performance have decreed the suit for the alternate relief of refund of earnest money.

The courts below found that the land in dispute was the Bhumidhari land with non-transferable rights of the defendants respondents, therefore, it was not liable to be transferred. Thus, it refused the decree of specific performance while exercising discretion under Section 20 of the Act.

The land which cannot be transferred in law cannot be ordered to be transferred by the decree of the court. The courts below have therefore rightly refused to decree the suit for specific performance. The refusal is based upon sound judicial principle as no land cannot be transferred against the law.

In the present case, there was only an agreement to sell and not actual transfer of the property. Therefore, Section 43 of the Act does not come into play.

In view of the above, the plaintiff appellant was not even entitle to the decree of refund of earnest money. Therefore, omission to award interest on the amount ordered to be refunded is not material and fatal. **(Charan Singh v. Dinesh Kumar and others, 2016 (2) AWC 1776)**

Ss. 161 and 333- U.P. Land Revenue Act 219- Whether revision would lie or suo moto power under Section 219 of Land Revenues Act or it would lie u/s 333 of the U.P.Z.A. and L.R. Act?

There is substance in the submission of the learned Additional Chief Standing counsel but the question would be as to whether revision would lie or suo motu power can be exercised by the learned Member, Board of Revenue sitting at Lucknow while invoking powers under section 219 of the Act, 1901 or it would lie under section 333 of the Act, 1950 at Allahabad in view of the conferment of the jurisdiction as finds mention in Board Resolution dated 9.10.1990, which, according to the respondent has not yet been diluted and this jurisdiction is literally followed at Lucknow as well as at Allahabad. Admittedly, here the proceeding of exchange under section 161 of the Act of 1950 has been questioned, therefore, the Board of Revenue, Allahabad will

have jurisdiction to adjudicate upon under section 333 of the Act, 1950. Otherwise also the order passed under section 161 of the Act, 150 is appealable and the appeal would lie before the Commissioner of the Division or any other authority prescribed in the Schedule, therefore, the impugned order passed by the learned Member, Board of Revenue sitting at Lucknow, while exercising power under section 219 of the Act, 1901 is without jurisdiction. It is settled that any order without jurisdiction is nullity. Reference may be made to the decisions of the Apex Court in Managing Director, Army Welfare Housing Organization vs. Sumangal Services Pvt. Ltd. (2004)9 SCC 619, Sarup Singh and Anr. vs. Union of India and Anr. (2011) 11 SCC 198 and a Division Bench decision of this Court in the case of Committee of Management Shri Jawahar Inter College and Anr. vs. State of U.P. and Ors. in Special Appeal No. 164 of 2012 decided on 25.1.2012.

In the result, the writ petition succeeds and is allowed. The impugned order dated 3.5.2006 passed by the learned Member, Board of Revenue, Lucknow in suo motu Revision No. 813 of 2005-06 in respect of the petitioner is hereby quashed. However, passing of this order will not preclude the State Government to avail such other remedies as available to it under law.

(Santosha Craft (Pvt.) Ltd. v. Board of Revenue, U.P. at Lucknow and others, 2016 (3) AWC 2735)

Ss. 195, 197 and 122-C – Lease granted without prior approval of S.D.O. – Validity of – A previous approval of S.D.O. is condition precedent for allotment of Gaon Sabha land and in absence of it, the land cannot be allotted to anyone

Admittedly the alleged pattas granted to the petitioners was never approved by the Sub Divisional Officer. Under sections 195, 197 and 122-C previous approval of Sub Divisional Officer for allotment of gaon sabha land is a condition precedent and in the absence of the prior approval, the land cannot be allotted to anyone.

So far as the finding recorded by the Additional Commissioner that earlier petitioners produced photostate copies of the pattas which did not bear the seal and signature of Tehsildar and the alleged original pattas produced on 29-5-2009 bears the seal and signature of Tehsildar as such it shows that the subsequent pattas were fabricated papers. This finding of fact also does not suffer from any illegality. In the absence of valid pattas the names of the petitioners cannot be recorded in the revenue record. [**Smt. Meharbano and others v. State of U.P. and others, 2014 (124) RD 173 (All HC)]**

S. 198 (4) –Constitution of India, Art. 226- Writ Petition against order dismissing application U/s 198(4) of above Act –Maintainability of

In this matter, learned Single Judge was, with respect, in error in coming to the conclusion that the remedy of a revision is available in respect of an order

which has been passed by the Assistant Collector under Section 122B (4F). By the plain terms of the statutory provision made in sub-section (4A), such a remedy has been made available only in respect of an order under sub-sections (3) or (4). The remedy of a revision is a creature of the statute. The revisional authority cannot expand its own jurisdiction where a statutory provision has not provided such a recourse.

The second schedule provides inter alia sections, a description of proceedings, courts of original jurisdiction and courts of first and second appeal. No appeal is provided in respect of an order passed under Section 122B, including against an order under Section 122B (4F). Consequently, it is clear beyond the shadow of a doubt that a remedy of a revision would not be available under Section 333 against an order which has been passed under sub-section (4F) of Section 122B. **(Sushila and Another v. State of U.P. and others, 2016 (34) LCD 1124)**

Rule 285-I- Proceedings under- Section 5 of the Limitation Act, 1963 is applicable for condonation of delay.

However, as far as question of delay is concerned first of all Full Bench authority of this Court in Ram Swaroop v. Board of Revenue and others, 1990 RD 291, has held that provision for condonation of delay under section 5, Limitation Act is applicable to the proceeding under Rule 285-I of U.P.Z.A.L.R. Rule (cancellation of auction sale). **(Raksha Pal Singh and others v. Pokhi Singh and others, 2011 (113) RD 778)**

Entries based on the orders passed by the Consolidation Authorities- Proper to move an application for recall or for setting aside or to file appeal against- Order passed by adjudicatory forum cannot be set aside through administrative orders.

The Apex Court while further explaining the above in the context of the case before it went on to hold in Para 7 as under:

> ―..... In our opinion, even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations. Ordinarily, such an order will, in fact, be effective inter parties until it is successfully avoided or challenged in a higher forum. Mere use of the word ‗void' is not determinative of its legal impact. The word ‗void' has a relative rather than an absolute meaning. It only conveys the idea that the order is invalid or illegal. It can be avoided. There are degrees of invalidity depending upon the gravity of the infirmity, as to whether it is, fundamental or otherwise.....‖
>
> Any order passed by the Consolidation Officer, if ex-parte, is

subject to recall or restoration proceedings as the case may be. It is also subject to appeal under section 11 of the UPCH Act or section 21(2) thereof, depending upon the nature of the orders to be assailed. Thus the Act itself is a complete Code where this opportunity can be availed of. The benefits and the rigours of the Limitation Act are also available as per section 53-B thereof. Apart from this correction of entries can be made under the U.P. Land Revenue Act, 1901 as applicable read with the provisions of the U.P.Z.A. & L.R.Act 1951. The rules of natural justice have to be complied with in all cases. Nonetheless orders passed by an adjudicatory forum cannot be set aside through administrative orders.

(Abdul Mannon v. Collector/District Deputy Director of Consolidation, Jaunpur, 2011 (113) RD 789)

Transfer of Land by a member of schedule caste

Uttar Pradesh Zamindari Abolition & Land reform Act 1950- From a perusal of Section 157 A UPZALR Act 1950, it would be clear that nowhere does the (Section 157A) restricts itself to agricultural land. On the contrary, the language used is that no bhumidhar or asami belonging to a Scheduled Caste Category shall have the right to transfer any land without the approval of the collect.

In our opinion, once an act has to be done by a specific method, it is not possible to accept the contention of the petitioner that because at the time of execution of the lease deed, the said lease deed was registered and that amounts to a transfer granting approval by the Collector under Section 157A of the Act. **(Suman Chauhan Vs. Union of India and others; 2011 (4) AWC 3544)**

Class-III Lessee-Statute itself determines the period of lease-No fresh determination is required- Mere continuance of entry would not confer any title beyond the period for which the lease existed. (para 8)

Where the Statute itself has determined the period of lease then in the opinion of the Court, no fresh determination is required. If the person has unauthorizedly held over the land, he can be ejected by either taking recourse to summary proceedings or to any other mode after putting him to notice. The ratio of the case of Hari Ram, Therefore, has to be understood in the aforesaid context. **(Ashok Kumar v. State of U.P. Through Secretary (Revenue), Government of U.P., Lucknow and others, 2011 (113) RD 823)**

S. 331- Scope of- Explained

The suit of plaintiff-appellant has been based on claim of his ownership and bhumidhari rights over disputed agricultural land, for which the plea of bar of suit under Section 331 of U.P.Z.A. & L.R. Act was taken by defendants in their written-statement.Section- 331 of U.P. Zamindari Abolition & Land Reforms Act, 1950 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 an~hing contained in the Civil Procedure Code, 1908, (5 of 1908) take cognizance of any 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 in so far as they relate to suit, application 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."

This section provides that no court other than court mentioned in Column 4 of Schedule II shall, notwithstanding anything contained in C.P.C., take cognizance of any suit, application or proceedings, mentioned in Column 3 thereof, or of a suit, application or proceedings based on cause of action in respect of which any relief could be obtained by means of any such suit or application. In Schedule II of this Act serial number-34 of Column-3 deals with "Suit for declaration of rights'; and in front of it in column-4 the name of court of original jurisdiction is given as "Assistant Collector, 1st Class'. **(Ram Ratan (Dead) Through L.R. v. Bhagwandeen and others, 2016 (131) RD 616)**

S. 331 – Suit for cancellation of sale deed – Applicability of S. 331 of above Act – Determination of

In the present case, the order of the competent authority is in favour of the plaintiff and only the formality of entering the name in the revenue records remained to be completed.

In view of above, the order of the competent authority directing for the mutation of her name is sufficient and good enough to establish her prima facie title entitling her to institute suit for cancellation of the sale deed in the civil court and the same would not be barred by Section 331 of the U.P. Zamindari Abolition and Land Reforms Act. **(Smt. Chankali v. Doodh Nath Mani & Ors.; 2010(6) ALJ 502 (All**

HC)

It is well settled that if a Court acts without jurisdiction, its decision can be challenged in the same way as it would have been challenged if it had acted with jurisdiction, i.e., an appeal would lie to the Court to which it would lie if its order was with jurisdiction.‖ **(Ram Awadh v. Collector/ District Deputy Director of Consolidation, Jaunpur and others. 2011 (113) RD 712)**

Suit-For declaration and partition of agricultural land-No limitation provided- If part of land is pond then parties cannot seek any declaration and partition among them.

However, it is directed that in case the land in dispute or part thereof is entered in the revenue records as pond then area mentioned as pond in the revenue records should at once be got vacated and handed over to the State and the Gaon Sabha which are also defendants in the suit by the S.D.O. in the suit in question itself. Supreme Court in Hinch Lal Tiwari v. Kamala Devi, 2001 (92) RD 689 has held that if some plot of land was pond at the time of Zamindari abolition in U.P. then it continues to be pond and the fact that it has become plain land or has been converted in to plain land does not rob it of its character of being pond and it cannot be allotted to any one and the State authorities must convert the same into the shape of a pond. The said authority has recently been followed by the Supreme Court in Civil Appeal No.1132 of 2011 Jagpal Singh v. State of Punjab decided on 28.1.2011. In the latter authority it has also been held that public utility land like pond etc. should be got vacated at once Relevant sentence in para 20 of the said authority is quoted below:

> ―The time has now come to review all these orders by which the common village land has been grabbed by such fraudulent practices.‖

It has been held in Kunti v. Commissioner, 2009 (107) RD 405 (SC) and Dinanath v. State of U.P., 2009 (108) RD 321 that Collector of each district should get the public utility land in possession of unauthorised persons vacated even if earlier some consolidation or revenue authority or Court had passed the order in favour of unauthorised occupant. The authority of Dinanath has been approved by the Supreme Court through its judgment dated 29.3.2010 given in S.L.P. (Civil) C.C. 4398 of 2010. After quoting extensively from the judgment of the High Courts, the Supreme Court observed as follows:

―In a matter like the present one, the Court cannot be a silent spectator and is bound to perform its constitutional duty for ensuring that the public property is not frittered by unscrupulous elements in the power corridors and acts of grabbing public land are properly enquired into and appropriate remedial action taken.‖ **(Janki Devi v. State of U.P., 2011 (113) RD 642**

S. 331- Suit for permanent injunction- Grant of –Status of plaintiff appellant found to be only that trespasser and as unauthorized occupant – Hence, he had not entitled to get injunction against true owner of disputed property

In "Mahadeo Savlaram Shelke And Ors. v. Puna Municipal Corporation, JT 1995 (2) SC 504" Hon'ble Supreme Court held as under:

> " It is settled law that no injunction could be granted against the true owner at the instance of persons in unlawful possession."

Division bench of Hon'ble Allahabad High Court, which held in ruling "Ashu Sonkar v. Vth Additional District Judge, 1999 (4) AWC 3107" as under: "There is no doubt that a person having no right to remain on the property, cannot be dispossessed by the owner of the property except the recourse to law. It is one thing to say a person cannot be dispossessed even if he has no right to remain on the property except through recourse to law. It is another thing to say that a trespasser can maintain an injunction against the rightful owner. Even if a person can claim that he cannot be evicted except through law. But still then he cannot maintain an injunction as a trespasser against the rightful owner."

On the basis of above discussion, it is explicitly clear that though it is a general rule that no trespasser should be evicted except in accordance with process of law, but there is no doubt that this legal position is also certain that no injunction can be granted against the true owner at the instance of persons in unlawful possession. Since the status of appellant- plaintiff in present case is only that of a trespasser and as an unauthorized occupant, therefore he is not entitled to get injunction against true owner of disputed property. **(Ram Naresh v. Bachchi Singh and others, 29016 (2) AWC 1816)**

Section 331 –Scope of –Discussed

Section 331 of the Act which specifically ousts the jurisdiction of Civil Court in respect of suits etc., enumerated in Schedule II makes the phrase 'cause of action' as pivotal point for determining the jurisdiction of civil or revenue court. It is the real 'cause of action' which determines the jurisdiction of the court to entertain particular action, notwithstanding, the language used in the plaint or the relief claimed. The strength on which the Plaintiff comes to the court does not depend upon the defence or relief claimed which could determine the forum for the entertainment of claim and grant of relief. It is the pith and substance which is to be seen and not the language used which may even have been so used to oust the jurisdiction of a particular court. The

expression 'any relief' used in Section 331 is of too wide import and would not only mean the relief claimed but would also include any relief arising out of the cause of action which led the Plaintiff to invoke the jurisdiction of a court of law. The word 'relief' is not part of cause of action nor the same is related to the defence set up in the case. The relief is a remedy which the court grants from the facts asserted and proved in an action. **(Sanjay Sharma and others v. Kashi Prasad and other, 2016 (131) RD 346)**

Checkout Plat- Passing of order relating to title or share thereto by consolidation authorities –Validity of- No question of any order being passed by the consolidation Authorities

In this matter, contention of the learned counsel for the petitioner is that it was the case of the plaintiffs that the parties had ⅕ share in each in the disputed land was based upon the entries made in CH-4 of an order passed in the year 1971 recording their share to be 1/5 each. There is alleged to be a forged and fabricated entry.

In support of this contention, he has placed reliance upon the CH Form 2A to show that both the plots which were the subject matter of the sale deed and which are in dispute in the instant writ petition, were chak out plots and therefore there was no justification of any order being passed as regards the share of the parties therein, during the consolidation operations.

Since the plots were chak out plots, there was no question of any order being passed by the Consolidation Authorities as regards title or share thereto. **(Vijay Shanker v. Board of Revenue, Allahabad and others, 2016 (130)RD 402)**

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S. 333 - Appealable cases - Revision filed directly instead of filing appeal - Maintainability of - Revision would be maintainable

Court has considered the arguments of the counsels for the parties and examined the records. The revision is filed under Section 333 of U.P. Act No. 1 of 1951, which provides that Board can call for record of any suit or proceeding decided by any court subordinate to him in which no appeal lies or where an appeal lies but has not been preferred, for the purposes of satisfying himself as to the legality or propriety of any order passed in such suit. Thus revision is maintainable in the cases where an appeal lies but has not been preferred. Similar provisions contained in U.P. Consolidation of Holdings Act, 1953. The same controversy has been raised and the matter was referred to and decided by Division Bench in Faujdar Rai v. DDC and other, 2006 (100) RD 462 (DB). Division Bench held that in spite of the fact that the appeal is maintainable and no appeal has been filed, the revision can directly be filed. Thus this case is fully covered by the dictum of Division Bench of this Court. **[Nargis Bano v.**

Board of Revenue, U.P. at Allahabad and others, (2014 (32) LCD 1550) (Allahabad High Court)]

Section 9A (2) –Withdrawal of suit after filing u/s 229-B by mother of the minor –effect of- Some was not binding on the minor- Finding regarding minority is a finding of fact

As regards the contention regarding filing of the suit under section 229B and its subsequent withdrawal without permission to file a fresh suit, it would be relevant to note that the courts below have recorded a finding that this suit had been filed by the mother of Subedar and was also withdrawn by her and on her application. This was done during the minority of Subedar and, therefore, the same was not binding upon the respondent. The finding regarding minority of Subedar is a finding of fact, which cannot be assailed in a writ petition and, therefore, even the second submission made by the learned counsel for the petitioner, lacks substance. **(Green Land Public School Samiti, Duhai, Ghaziabad v. State of U.P. and others, 2016 (130) RD 44)**

Section 34 (5) Applicability of

Section 34 (5) of U.P. Land Revenue Act, 1901 provides that in case report relating to succession of transfer of possession has not been given under section 34 of U.P. Land Revenue Act then no Revenue Court shall entertain the suit. Thus the bar contained under section 34 (5) of U.P. Land Revenue Act is fully applicable.

Admittedly the petitioner has not filled any application under section 34 of U.P. Land Revenue Act for mutation of their names after death of their father. Thus the impugned orders do not suffer from any illegality. **(Dev Dutta and others v. Narendra Nath and others, 2016 (130) Rd 573)**

Section 182 –B- Applicability of- Explained

In this matter the allegation that the application under section 182 –B was filed as the final decree had been obtained by concealing material facts or that the final decree was not correct as it was passed regarding land which had already been acquired by the government, are in courtconsidered opinion, grounds for either an appeal or review. This could not be a ground for filing an application under section 182-B of the U.P.Z.A and L.R. Act which only provides that the principles to be followed while portion of a joint holding will be, as may be prescribed. **(Shekhar Agarwal v. Board of Revenue Allahabad Camp Court, Meerut and others, 2016 (115) ALR 424)**

Section 229- B- Admission made in mutation case not the sale basis for

deciding the title in the title suit –Courts below also relied on the other evidence available on record

Court has carefully perused the orders passed by all the three courts below and I find substance in the submission of the learned counsel for the respondent that the alleged admission of the petitioner in a mutation case is not the sole basis of the orders impugned in the writ petition. The courts blow have also relied upon the other evidences available on record, like kutumb register, written statement filed in mutation case and the statement of the Pradhan. The SOC has noticed another additional circumstance. He has stated that although the petitioner consistently denied that Subedar, respondent no. 4, was the son of Dular, yet she did not spell out his actual parentage. At a later stage, avoters' list was filed to show that Subedar was in fact son of one Gulab. However, the SOC has referred to the statement of Pradhan of the village, who has stated that no person by the name of Gulab resides in the village. It is, therefore, clear that the case has not been decided against the petitioner relying exclusively upon her alleged admission in the mutation case. Since the judgements are supported by various other documentary and oral evidences available on record, and since no perversity has been pointed out, I do not find any illegality in the impugned orders.

As regards the contention regarding filing of the suit under section 229B and its subsequent withdrawal without permission to file a fresh suit, it would be relevant to note that the courts below have recorded a finding that this suit had been filed by the mother of Subedar and was also withdrawn by her and on her application. This was done during the minority of Subedar and, therefore, the same was not binding upon the respondent. The finding regarding minority of Subedar is a finding of fact, which cannot be assailed in a writ petition and, therefore, even the second submission made by the learned counsel for the petitioner, lacks substance.

Since the alleged admission of the petitioner in the mutation case is not found to be the sole basis of the orders impugned, I do not consider it necessary to refer to various case-laws relied upon by the learned counsel for the petitioner in support of his contention that an admission made in the mutation proceedings has no relevance in the title proceeding. This question is not relevant for the purposes of the instant writ petition.

Accordingly, and in view of the above, the writ petition lacks merits and is dismissed. **(Green Land Public School Samiti, Duhai, Ghaziabad v. State of U.P. and others, 2016 (130) RD 44)**

Section 331- Scope of -Explained

This section provides that no court other than court mentioned in Column 4 of Schedule II shall, notwithstanding anything contained in C.P.C., take cognizance of any suit, application or proceedings, mentioned in Column 3 thereof, or of a suit, application or proceedings based on cause of action in

respect of which any relief could be obtained by means of any such suit or application. In Schedule II of this Act at serial number 34 Column 3 deals with `Suit for declaration of rights'; and in front of it in column 4 name of court of original jurisdiction is given as `Assistant Collector, 1st Class'. Present suit of the plaintiff-appellants is based on the claim that appellants are owner of disputed land. **(Parma Chauhan v. Luxmina, 2016(130) R.D. 396)**

Section 333, 122- B(4-F) – Revision –Remedy of- A remedy of a revision would not be available U/s 333 of above Act against an order which passed U/s 122-B(4-F) of the Act

This appeal has arisen from a judgment and order of the learned Single Judge dated 25 August 2015 by which a writ petition filed by the appellants to question the legality of orders passed by the Sub Divisional Officer, SDO, Rudauli, district Faizabad on 26 February 2014 and 13 January 2015 has been dismissed. The view of the learned Single Judge is a remedy of a revision would be available under sub-section (4A) of Section 122B of the U.P. Zamindari Abolition and Land Reforms Act, 1950 against an order passed under sub-section (4F). Hence, the writ petition was not entertained on the ground of the availability of alternate statutory remedy.

Sub-section (4F) of Section 122B has been construed and interpreted in a judgment of the Hon'ble Supreme Court in Manorey alias Manohar vs. Board of Revenue (U.P.) and Ors.. The Supreme Court held that sub-section (4F) carves out an exception from the provisions of sub-sections (1), (2) & (3) under which a procedure for eviction of unauthorized occupants of land vested in the Gram Sabha is provided. The exception which is carved out by sub-section (4F) is in favour of agricultural labourers belonging to Scheduled Castes and Schedule Tribes having land below the stipulated ceiling of 3.125 acres. Where the conditions of sub-section (4F) are fulfilled, the legislature has provided that no action to evict such person shall be taken and he shall be deemed to have been admitted as Bhumidhar with non transferable rights over the land.

The learned Single Judge was, with respect, in error in coming to the conclusion that the remedy of a revision is available in respect of an order which has been passed by the Assistant Collector under Section 122B (4F). By the plain terms of the statutory provision made in sub-section (4A), such a remedy has been made available only in respect of an order under sub-sections (3) or (4). The remedy of a revision is a creature of the statute. The revisional authority cannot expand its own jurisdiction where a statutory provision has not provided such a recourse.

The matter can be looked at from an additional perspective as well. Section 333 provides for the power of the Board of Revenue or Commissioner or the Additional Commissioner to call for the record of any suit or proceeding decided by any court subordinate.

The second schedule provides inter alia sections, a description of 136 proceedings, courts of original jurisdiction and courts of first and second appeal. No appeal is provided in respect of an order passed under Section 122B, including against an order under Section 122B (4F). Consequently, it is clear beyond the shadow of a doubt that a remedy of a revision would not be available under Section 333 against an order which has been passed under sub-section (4F) of Section 122B. **(Sushila and another v. State of U.P. and others, 2016 (130) RD 610)**

U.P.Z.A. and L.R. Act

S. 22-B (4-F)- U.P.Z.A. and L.R. Rules, Rules 115-C, 115-D –Protection from eviction- power of judicial review- Long duration of illegal occupation of Gaon Sabha land cannot be regarded as justification for regularizing unlawful occupation

The reference to the Division Bench has been occasioned by an order dated 1 October 2013 of a learned Single Judge while dealing with the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950.

The learned Single Judge noticed several judgments of coordinate Benches dealing with the provisions of Section 122-B. In some of the judgments, learned Single Judges had held that in certain circumstances, while deciding a challenge to an order of eviction under Section 122-B, this Court, in the exercise of its power of judicial review under Article 226 of the Constitution, had the jurisdiction to direct the settlement of the land in favour of an individual found to be in unauthorized occupation by substituting an order for the payment of damages in lieu of the order of eviction.

For these reasons, court answered the reference as follows:

(i) The law laid down by the learned Single Judge in the decisions in Ajanta Udyog Mandal Vidyalay (supra), Budhaee (supra), Sukhdeo (supra), Kishore Singh (supra) and Siya Ram (and other decisions following the same line) do not reflect the correct position in law and those decisions are hence overruled;

(ii) A person against whom an order of eviction has been passed under Section 122-B would not be entitled to a protection against eviction on the grounds which have weighed with the learned Single Judges in the above cases. Once the legislature has, by enacting a specific provision in sub-section (4-F) of Section 122-B, made a specific statutory provision which overrides the other preceding sub-sections of Section 122-B, it would not be open for the Court in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution, to create a new legislative category and to issue a mandamus contrary to law;

(iii) The decision in Sukhdeo (supra) to the effect that if a person is in possession for more than 12 years, instead of eviction, an award of damages

would be the appropriate relief, does not express the correct position in law. No such provision has been made by the legislature and it would not be open for the Court to introduce a new legislative category or to introduce a period of limitation as was purported to be done in the decisions of the learned Single Judge noted above.

The reference to the Division Bench is, accordingly, answered. The writ petition shall now be placed before the regular Bench according to the roster of work for disposal in the light of the reference as answered. **[Jagat Narain and others v. State of U.P. and others 2015 (4) ALJ 420]**

Bhumidhari Right- A person who is Bhumidhar of land cannot claim to be owner of trees standing on the land by reason of such tenancy unless it is shown that he had planted the same

In Lalita Singh v. Patiraj Singh, this Court held that a person, who is bhumidhar of land, by reason of such tenancy rights itself cannot claim to be owner of trees standing on the land, unless it is shown that he has planted the same or otherwise own the same.

Even if court follow the principle, ―trees goes with land‖, yet the findings has to be recorded against the plaintiff since plaintiff is not the owner of land. In absence of any other evidence to show that plaintiff own the trees standing on the land in question having planted or otherwise, it cannot derive its claim only from his status of bhumidhar. Court has no hesitation in observing that Trial Court in the case in hand has proceeded in a very perfunctory manner while deciding the suit. It has failed to look into the real issues in correct perspective. Point No. 2, therefore, is answered against the plaintiff and in favour of appellant. Court hold that plaintiff, may be in symbolic possession of trees standing on the land in question having bhumidhari rights over the land in question, but plaintiff did not have ownership rights over the trees in question. The findings of Trial Court otherwise are reversed. [**State of U.P. v. Daiya Charitable Society, 2015 (112) ALR 138]**

S. 122 (B) (4A) – Benefit of –Petitioner Entitled to get only if he can show that his name entered in revenue records as occupant before 1-5-2002

In another case of Ghanshyam Singh v. State of U.P. Secretariat, Lucknow and others, 2005 (98) RD 489, it was held that the petitioner therein was entitled to get U.P.Z.A. and L.R. Act only if he can show that his name was entered in the revenue records as occupant before 1.5.2002 and not otherwise.

In view of the above discussion this court finds that the petitioners are not entitled for protection of section 122 (B) (4F) as they have failed to establish that their name have been recorded in the revenue records prior to 1.5.2002. This apart they are also not entitled for benefit of Section 123(1) as it is clearly emerged that they have not build their house prior to 1.5.2002. **[Satya Veer And another v. State of U.P. and others, 2015 (4) AWC 3557]**

Amaldaramad- contraction in mutation order and decree will prevail and not amaldaramad

So far as the recording of the order in khatauni 1366-1368 fasli is concerned, if there is contradiction in the mutation order and decree of the Court then decree will prevail and not amaldarmad, which is mutation of the main decree. So far as the decree is concerned, in paragraph 2 of the plaint it has been clearly admitted that share of Baithole was inherited by his mother Smt. Maraji, who was also co-plaintiff in the suit. So far as share is concerned, inheritance will be decided under law and not on the basis of admission of the parties. **[Gyandas and others v. Chief Revenue officer, Basti and 2015 (128) RD 334]**

S. 155 and 164- Mortgage –Right of redemption –Right of redemption can be rejected U/s 164 above Act if transaction is contravention of legal provisions contained U/s 155

In the first case cited on behalf of the respondents it has been held that even if a transaction is alleged to be mortgage with conditional sale and there is refusal for re-transfer of land, the same , in view of the deeming provisions of section 164, would be deemed to be sale and the mortgagor upon execution of the same would loose all his rights in the land in question.

The Apex Court, upon a consideration of section 164 held that a mortgage with possession ―would be deemed at all times and for all purposes to be sale to the transferee‖ and therefore, the statutory right of redemption under Section 60 of the Transfer of property Act would not be available the mortgagor in view of section 164.

In view of the aforesaid decision as also section 164 itself, it must necessarily be held that the deed in question was a transfer or sale. **[Moti Lal v. Dy. Director of Consolidation, Jhansi and others, 2015 (128) RD 661]**

S.10(1) and (2) – tenant of Sir – Protection – Entitlement of – A minor is entitled for the protection fo his right if he is recorded on relevant date in Khatauni.

Section 10 of U.P. Act No. 1 of 1951 deals with the tenant of seer and protection has been given under section 10(2) of the Act to following persons:-

(i) A woman;

(ii) A minor;

(iii) A lunatic;

(iv) An idiot;

(v) A person incapable of cultivation by reason of blindness or

physical infirmity; or

(vi) A person in military, naval or air force of Indian Union.

Both at the commencement of tenancy and on the date of vesting.

In such circumstances, at least it is proved that respondent-2 was minor and protection under section 10(2) is fully applicable to him. Although Deputy Director of Consolidation has mentioned that protection under section 157 was available but in this case, protection under section 10(2) was available. In such circumstances section 20(1) will not apply in the matter and Deputy Director of Consolidation has rightly held that only asami right has been acquired by the petitioners under section 21(h) of the Act. On the objection filed by respondent-2 claiming the land in dispute, the petitioners are liable to be ejected according to the provisions of section 202 of U.P. Act No. 1 of 1951.

So for as claim on the basis of long continuous possession is concerned, in view of section 133(a) read with section 202 of U.P. Act No. 1 of 1951 of the right of the petitioners will remain as asami year to year through out and on the objection filed by respondent-2 they are liable for ejectment. Therefore, no better right can be conferred only on the basis of long continuous possesion. **Naimuddin and others v. A.D.M., (City)/ D.D.C., Gorakhpur and others, 2015(127) RD 183.**

S.133(a) and 2022 Asami – Right and ejectant – clasified.

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Naimuddin and others v. A.D.M., (City)/ D.D.C., Gorakhpur and others, 2015(127) RD 183.

Sec. 6—Scope of—Vesting of estate in state of U.P.—Discussed and explained

In this case, it is found that the land in dispute was parati/banjar land on the date of vesting and was an estate of an intermediary, as such, it was vested in the State of U.P., free from all encumbrances u/ss. 4 and 6 of U.P. Act No. 1 of 1951 on the date of vesting. U/s. 6(a) of U.P. Act No. 1 of 1951, all rights, including easementary right to use the land in dispute as khalihan of the petitioner or other villagers, were terminated and vested in State of U.P.,

[Kripa Shankar Pandey vs. Deputy Director of Consolidation, Ballia, 2015 (129) RD 690 (All.)]

S. 12- Mutation –No period of Limitation has been provided for but delay in disclosing will creates doubt

Although no limitation has been provided for mutation but in the case of inheritance on the basis of unregistered Will, delay in disclosing the Will itself crate a doubt in respect of its genuineness. In these circumstances the Will was surrounded with suspicious circumstances and the propounders have failed to explain suspicious circumstances Supreme Court in H. Venkatachala v. B.N. Thimbajamma AIR 1959 SC 443, S.R. Srinivasa v. S. Padmavathamma 2010 (111) RD 675 (SC) and M.B. Ramesh v. K.M. Veraje , 2013 (a120) RD 438 (SC) held that in case, the propounder has taken active part in execution of the Will, then it create a suspicious circumstance **(Shardul Ranjan and othrs v. D6y Director of Consolidation, 2015 (129) RD 495)**

Sec. 122-B— Possession over land—Whether petitioner can claimed right over land on basis of sale deed declared to be void and barred by Sec. 157AA of Act—Held, —No‖

So far as the contention of learned counsel for petitioner that the petitioner is in possession over the land in question, as such, he is entitle to get the benefit of Section 122-B (4F) U.P.Z.A.&L.R. Act is concerned, suffice is to observe that the petitioner has claimed the right over the land in question on the basis of alleged sale-deed dated 10.11.1998 and he is in possession over the land in question subsequent to the said transaction. Since it has been held that the said execution of sale-deed was void and was barred by Section 157-AA U.P.Z.A.&L.R. Act, the petitioner could not have got the possession over the land in question, as such he is not entitle to claim the benefit of Section 122-B (4F) U.P.Z.A. & L.R. Act. **[Prem Chandra vs. Additional Commissioner (Administration), Lucknow Mandal and others, 2015 (6) AWC 5738 (All.)]**

Sec. 143- Land use- Change of- Locus standi to apply u/s 143 of the U.P.Z.A. & L.R. Act –Person not having right over the land in dispute and not a tenure holder has no locus standi to apply u/s 143 of the Act

Section 143 of U.P.Z.A.&L.R. Act clearly provides that where a Bhumidhar with transferable rights uses his holding or part thereof for a purpose not connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming, the Assistant Collector-in-charge of sub-division may, suo motu or on an application, after making such enquiry may pass an order for change of land uses. It clearly means that in case the holding or part of the holding (land) is being used for the purpose not connected with agriculture land use of said land can be changed in exercise of powers under Section 143 of U.P.Z.A.&L.R.Act. Petitioner does not own holding or part of holding as in the present case, admittedly, the petitioner has no right over the land in question as she is not a tenure holder of the land in question. Her

husband has merely constructed the house on a part of the said land, as such court is of the view that provisions of Section 143, U.P.Z.A.&L.R. Act would not be applicable in the case of petitioner. The petitioner has no right to move any application for change of land uses under Section 143, U.P.Z.A.&L.R. Act.
(Smt. Praveen Singh v. Board of Revenue, U.P. at Alahabad and others, 2015(129) RD 534)

Sec. 157 AA- Scope of –Land belongs to a schedule caste which was allotted to him u/s 131-B of the Act- Petition on the basis of sale-deed acquired the disputed land- before the execution of the sale-deed no permission from competent authority was abstained –Restriction imposed u/s 157-AA of above act applicable

It is the admitted case of the petitioner, as has been submitted by learned counsel for the petitioner before the Court, that the land in question belongs to a Schedule Caste which was allotted to him in exercise of powers under Section 131-B U.P.Z.A.&L.R. Act. The petitioner on the basis of the alleged registered sale-deed dated 10.11.1998 had acquired the land in question from Bhusey son of Bhagwant.

It is also admitted position that before execution of the said sale-deed no permission from the competent authority i.e., Assistant Collector, Mohanlalganj, Lucknow was obtained.

Section 157-AA U.P.Z.A.&L.R. Act specifically provides that no person belonging to Schedule Caste having become bhumidhar with transferable rights under Section 131-B U.P.Z.A.&L.R. Act shall have the right to transfer the land by way of sale, gift, mortgage or lease to person other than a person belonging to Scheduled Caste and such transfer, if any, shall be in the following order of preference:

(a) land less agricultural labourer;
(b) marginal farmer;
(c) small farmer; and
(d) a person other than a person referred to in Clauses (a),
(b) and (c).

In the present case, the restriction imposed under Section 157-AA U.P.Z.A.&L.R. Act would be fully applicable, as such, courts of the considered view that the alleged sale-deed dated 10.11.1998 was void and the petitioner on the basis of said sale-deed could not have acquired any right over the land in question. **(Prem Chandra v. Addl. Commissioner (Admini) Lucknow Mandal and others,2015 (129) RD 417)**

Sec. 161- Exchange of Land by Bhumidhar with non-transferable rights- Not permissible

The petitioner has filed this writ petition challenging an order dated 25.03.2015 of the Commissioner, Aligarh, whereby he has set aside an order passed in favour of the petitioner in proceedings under Section 161 of the U.P. Zamindari

Abolition & Land Reforms Act for exchange of certain plots of the petitioner with those of the Gaon Sabha recorded in the revenue records as banjar. This order for exchange was passed by the Sub Divisional Officer.

It has been submitted by counsel for the petitioner that on his application proceedings under Section 161 of the U.P.Z.A.&L.R. Act were initiated and the order for exchange was passed, validly and in accordance with law. The order was also in consonance that the resolution of the Gaon Sabha in this regard and it was passed after the Pradhan had given her consent in her oral testimony, recorded by the Sub Divisional Officer. The order therefore was a consent order. Prior to the order being passed, the opinion of the D.G.C. Revenue had also been obtained. The order for exchange have been passed in public interest. The revision filed against this order, was preferred by the D.G.C. (Revenue), without there being any resolution of the Gaon Sabha in this regard. The revision was therefore, incompetent. It was also highly time barred and was not accompanied by any application under Section 5 of the Limitation Act for condonation of delay. The revision therefore has wrongly been entertained and allowed. The impugned order therefore is patently illegal and is liable to be set aside.

In the writ petition, the fact that the petitioner was at best a bhumidhar with non transferable rights, is not in dispute. It is well settled that a bhumidhar with non transferable rights cannot exchange such holding. **(Vishambhar Dham Higher Secondary School v. State of U.P. and others, 2015 (129) RD 486)**

Sec. 169 (Amendment w.e.f. 23.08.2014) –Scope of- Registration of will was made compulsory under –Testator was alive on 23.8.2004, hence unregistered will not admissible in evidence

Section 169 of U.P. Act No. 1 of 1951, as amended by U.P.Zct Non 27 of 2004, w.e.f. 28.8.2004 provided that a „bhumidhar with transferable right‟ may by Will bequeath his holding or any part thereof in writing, attested by two persons and registered. Thus from 23.8.2004, registration of the Will was U.P. Act No. 1 of 1951. As Smt. Chiraita Devi was alive on 23.8.2004, as such the amended provisions of section 169 Will apply upon her and it was compulsory for her to got her Will registered. An unregistered Will produced by the petitioners was not admissible in evidence and could not be relied upon.

(Shardul Ranjan and othrs v. D6y Director of Consolidation, 2015 (129) RD 495)

Sec. 209 –Suit under –When maintainable- Discussed

A suit under 209 of the Act would be maintainable if the case of taking or thereafter continuing in possession is otherwise than in accordance with law. This provision would not be attracted if the initial act of taking possession was in accordance with law, but latter on account of the fact that contract of sale could not materialize, and licence stood revoked, that the plaintiff has become entitled to get back possession of his land. The status of defendant appellant

does not turn into that of a trespasser and the revenue suit would not be maintainable. The judgment in the case of Bajara Singh would thus apply to the facts of this case. **(Sharif Ahamad and another v. Faiz Mohammad and others, 2014 (129) RD 531)**

Secs. 331 and 333- Nature of Explained

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. **(Sushila and another v. State of U.P. through Collector Faizabad and others, 2015 (129) RD 253)**