

**(2012) 05 AHC CK 0234**

**Allahabad High Court**

**Case No:** Second Appeal No. 424 of 2009 and First Appeal No. 1 of 2012

State of U.P. and Others

APPELLANT

Vs

Uma Shankar Parashar and  
Others

RESPONDENT

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**Date of Decision:** May 24, 2012

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 24
- Specific Relief Act, 1963 - Section 38, 41
- Uttar Pradesh General Clauses Act, 1904 - Section 2, 21
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 1, 122B, 2, 2(2), 2(l)(c)

**Citation:** (2012) 7 ADJ 445

**Hon'ble Judges:** S.U. Khan, J

**Bench:** Single Bench

**Advocate:** Ramesh Upadhyay, V.B. Upadhyay, S.G. Husnain, G.K. Pandey and M.C. Chaturvedi C.S.C, for the Appellant; Prakash Padia, J.J. Munir, M.K. Gupta, Rajesh Yadav, Ram Kaushik, Vatsal Srivastava, R.N. Singh, Ramesh Upadhyay and B.B. Paul, for the Respondent

**Final Decision:** Allowed

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**Judgement**

Hon'ble S.U. Khan, J.

Order dated 5.1.2012 (on the order sheet) on which date after conclusion of the arguments judgment was reserved is quoted below:

Heard Sri V.B. Upadhyay, learned senior counsel, Sri S.G. Husnain, learned senior counsel, Additional Advocate General assisted by Sri G.K. Pandey, Learned Counsel for appellant, Sri R.N. Singh, learned senior counsel, assisted by Sri Ramesh Upadhyay, Learned Counsel for respondent No. 11 Aligarh Development Authority, Sri Ram Kaushik Learned Counsel for Nagar Nigam Aligarh, respondent No. 8 and

Sri B.B. Paul, Learned Counsel for respondent Nos. 1, 2, 3 and 5. Judgment reserved.

In the second appeal M/s Bharat Stores Limited had filed impleadment application, which was rejected on 5.1.2012 by the following order:

Heard Sri K.D. Tripathi, Learned Counsel on this impleadment application filed by M/s. Bharat Store Ltd, As M/s. Bharat Store Ltd. was not party either in the suit or in the First Appeal, hence I do not consider it appropriate to implead it as party in the Second appeal. Moreover, as M/s. Bharat Store Ltd. was not a party in the suit hence judgment would not be binding upon it.

Accordingly, impleadment application is rejected.

2. Substitution application to bring on record legal representatives of respondent No. 1 in the second appeal was also allowed on 5.1.2012 by the following order:

Sri B.B. Paul, Learned Counsel for the respondents states that he has filed Vakalatnama on behalf of Virendra Parasar one of the sons/legal representatives of late Sri Umashankar Parasar. Even though through this substitution application four sons two daughters in law and two grand sons have been sought to be substituted at the place of late Sri Umashanker Parasar, respondent No. 1, however, Sri B.B. Paul, Learned Counsel states that after the death of Sri Uma Shanker Parasar his son Virendra Parasar became Secretary of the Society of which Sri Umashanker Parasar was Secretary. Accordingly, this substitution application is allowed in part and Sri Virendra Parasar is substituted at the place of Umashanker Parasar, respondent No. 1, in the Second appeal.

Aligarh Development Authority was directed to be impleaded as one of the respondents in the second appeal through order dated 18.9.2009.

3. At one point of time during hearing of the second appeal it was stated by Learned Counsel for the respondents that respondent No. 6 had died. However afterwards when it was pointed out by the Learned Counsel for the appellant State of U.P. that as per his instructions respondent No. 6 was alive, Learned Counsel for the respondents also stated that under some confusion statement about his death had been made but in fact he was alive.

4. Through order dated 17.5.2010 passed on Application No. 146130 of 2010 filed u/s 24, C.P.C., Civil Appeal No. 35 of 2010 pending before Court of District Judge was summoned to this Court. After hearing on 23.12.2011, the following order was passed in the second appeal regarding consolidation of Civil Appeal No. 35 of 2010 which had been summoned.

Arguments remain in-conclusive. Put up at 11.30 a.m. on 2.1.2012.

Learned Counsel for all the parties state that the judgment which may be passed in this Second Appeal will also completely decide the First Appeal which has been withdrawn to this Court u/s 24 C.P.C. (registered before the Lower Appellate Court

as Civil Appeal No. 35 of 2010). Office is directed to allot fresh number to the First Appeal. Shri B.B. Paul, Learned Counsel who is appearing for the plaintiff-respondents in this Second appeal as well as Learned Counsel appearing for appellant in this Second Appeal shall also file Vakalatnama in the First Appeal. In any case this order amounts to issuing notice.

Thereafter, the civil appeal which had been summoned from the Court of District Judge was numbered as First Appeal No. 1 of 2012.

#### Details of the Suit

5. The second appeal arises out of O.S. No. 241 of 1986 filed by Uma Shankar Parashar in his personal capacity as well as Secretary, Bima Kalyan Nagar Co-operative Housing and Better Living Society, Aligarh, Indra Saran, Vijay Singh Patel, Jeevanmal, Dr. S.S. Gupta, Smt. Major Madhok Sanyogita Rani and Bhartiya Jeevan Bima Nigam against State of U.P., A.D.M. (R), S.D.M., Koil, A.D.M. (C), Tehsildar Koil all authorities of Aligarh District, Gaon Sabha, Ailampur, Municipal Board, Aligarh through Buddhsen suspended Pradhan Gaon Sabha, Ram Swaroop, Deputy Pradhan, Gaon Sabha, Ailampur and Sri Mori Singh, current Pradhan Gaon Sabha Ailampur. The suit was decreed on 25.4.1998 by Civil Judge, Junior Division, Koil Aligarh for declaration declaring that defendants did not have any type of ownership or right in the property in dispute situate in Bima Nagar and Kalyan Nagar. Defendants were also restrained from interfering in the peaceful possession and use of the plaintiffs over the land/ plots in dispute. Against the said decree two appeals were filed. One was numbered as Civil Appeal No. 93 of 1998 and was filed by State of U.P., its authorities and Gaon Sabha. The other appeal was numbered as Civil Appeal No. 105 of 1998 and was filed by Smt. Urmila Devi and Jagveer Singh Tomar. Both the appeals were dismissed on 12.2.2009 by A.D.J. Court No. 6, Aligarh. The second appeal is directed against decree passed by the lower appellate Court in Civil Appeal No. 93 of 1998, which had been filed by State of U.P., its authorities and Gaon Sabha, Ailampur.

6. One more appeal was filed by Nagar Nigam Aligarh in 1998 which was defective. The defects were not removed hence it was dismissed on 4.9.1998. Thereafter, it was restored in 2010 and numbered as Civil Appeal No. 35 of 2010. The said appeal has been withdrawn by this Court and numbered as First Appeal No. 1 of 2012 which is also being decided by this judgment.

#### Substantial Questions of law :

7. This second appeal was admitted on 19.5.2009 on the following substantial questions of law:

(1) Whether, in the absence of evidence and in view of the provisions contained u/s 2(2) of the U.P.Z.A. & L.R. Act as well as in view of the notification dated 1.9.1969 the land in question will be treated to have vested in the State Government from the

date of notification i.e. 1.7.1952?

(2) Whether, the suit was not maintainable under Order 1 Rule 8 C.P.C. ?

(3) Whether, the plaint was to be rejected under Order 7 Rule 11 C.P.C. for want of cause of action and for want of payment of sufficient Court fees?

(4) Whether suit was barred by provision of Section 38 and 41 of the Specific Relief Act?"

Relevant Provisions:

8. Relevant part of Section 2 of U.P.Z.A. & L.R. Act and notifications dated 1.7.1952 and 1.9.1969 are quoted below:

2. Modification of the Act, in its application to certain areas.-(1) The State Government may by notification in the Gazette apply the whole or any provision of this Act to any of the following areas or estates subject to such exceptions or modifications, not affecting the substance, as the circumstances of the case may require

(a) and (b) not relevant.

(c) areas held and occupied for a public purpose or a work of public utility and declared as such by the State Government or acquired under the Land Acquisition Act, 1894 (I of 1894), the United Provinces Land Acquisition (Rehabilitation of Refugees) Act, 1948 (U.P. Act XXVI of 1948), the United Provinces Acquisition of Property (Food Relief) (Temporary Powers) Act, 1948 (U.P. Act XXXIX of 1948) or any other enactment other than this Act, relating to acquisition of land for a public purpose;

(d), (e), (ee), (f) and both the provisos not being relevant are not quoted

(1-A) The power of the State Government under sub-section (1) to make exceptions or modifications in the provisions of this Act may be exercised from time to time.

(2) Where the declaration made by the State Government under Clause (c) of sub-section (1) is in respect of any area held on the seventh day of July, 1949, for the purposes of a housing scheme by a Co-operative Society registered under the U.P. Co-operative Societies Act, 1965 or a society registered under the Societies Registration Act, 1860 or a limited liability company under the Companies Act, 1956, the State Government may by notification, in public interest, rescind or supersede the declaration in respect of such area as has not actually been utilised in execution of a housing scheme till the date of the notification whether on account of any default on the part of such society or company or for any other reason whatsoever.

Explanation.-An area shall, for purposes of this sub-section be deemed to have not been actually utilised, in execution of a housing scheme if on the date of the notification under this sub-section :

(a) in the case of a building site, constructions have not been made at least up to the stage of completion of foundation; and

(b) in any other case, the land is not covered by any road or park.

(3) The area of land in respect of which notification under sub-section (2) is issued may be utilized by the State Government for the purposes of housing and urban development in such manner as may be prescribed.

Sub-section 1-A was inserted by U.P. Act No. 15 of 1978 and sub-section (2) together with the explanation was also substituted for the old subsection (2) by the same Act.

Notification dated 1.7.1952.-

Published in the U.P. Gazette, Extraordinary, dated July 1, 1952.

REVENUE (A) DEPARTMENT

Dated Lucknow, July 1, 1952.

No. 4093/I-A- 450/1951.- In exercise of the powers conferred under clause (C) of sub-section (1) of Section 2 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act I of 1951), the Governor is hereby pleased to declare that the areas-

(1) set apart for military encamping grounds;

(2) included within railway or canal boundaries;

(3) included in municipal trenching grounds;

(4) held or acquired by educational institutions for purposes of instruction or building;

(5) held or acquired by a gaushala, an association registered under the Societies" Registration Act, 1860, a medical institution or a dharmshala, for purposes of building and land appurtenant to such buildings;

(6) held on the seventh day of July, 1949, for the purposes of a housing scheme by a co-operative society registered under the Co-operative Societies Act, 1912, or a society registered under the Societies" Registration Act, 1860, or a limited liability company under the Indian Companies Act, 1913;

are areas held and occupied for a public purpose or a work of public utility.

No. 4094/I-A/450/1951.- In exercise of the powers conferred by sub-section (1) of Section 4 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act I of 1951), the Governor is pleased to declare that as from the first day of July 1952, all estates situate in Uttar Pradesh except those situate in the areas to which the said Act does not apply under sub-section (2) of Section 1 or in which the said Act has not come into force under sub-section (3) of Section 1 shall vest in the State of

Uttar Pradesh and, as from the beginning of that date, all such estates shall stand transferred to and vest, except as provided in the said Act, in the State free from all encumbrances.

Notification dated 1.9.1969

No. 449/IA-2-1 (3) - 69

AND Whereas the areas held and occupied on the seventh day of July, 1969, for the purposes of housing schemes by co-operative societies, registered under the Societies" Registration Act, 1860 and limited liability companies, whereby clause (6) of Revenue (A) Department notification No. 4093/1A-150-51, dated July 1, 1952, declared by the Governor under the Section 2(l)(c) of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the said Act) to be areas held or occupied for public purposes or works of public utility and whereas such exempted from the operation of the said act;

AND Whereas Governor is further satisfied that it will not be in public interest to allow continuance of the said exemption in respect of such of the other areas of the State covered by the said notification of July 1, 1952, as have not till now been utilized for purposes of housing schemes;

Now, THEREFORE, in exercise of the powers conferred by sub-section (3) of Section 1, read with sub-section (1) of Section 2 of the said Act and Section 21 of the U.P. General Clauses Act, 1904 the Governor is pleased to allow September 1, 1969 as the date with effect from which the whole of the said Act shall apply;

(i) to the said area of Dehra Dun District; and also, (ii) to all such other areas of the State as were declared under clause (c) of sub-section (1) of Section-2 of the said Act as areas held and occupied for a public purpose or a work of public utility by clause (6) of Revenue (A) Department notification No. 4093/1-A-150-1951, dated July 1, 1952 other than areas or parts thereof which have actually been utilized in execution of a housing scheme before the date of this notification.

Plaint Case :

9. According to the plaint case, the land in dispute (130 Bigha) was initially included in village Ailampur, Tehsil Koil District Aligarh. The then Zamindars Jaipal Singh and Digpal Singh transferred the property through two sale-deeds dated 28.5.1941 (60 bigha) and 6.4.1949 (70 bigha) to Swadeshi Bima Company Ltd. {afterwards Life Insurance Corporation (LIC)} and Bharat Stores Ltd., Agra, that Bharat Store Ltd., Agra through two sale-deeds dated 27.12.1952 and 2.9.1953 transferred the property which had been purchased by it to Swadeshi Bima Company and since 1956 Swadeshi Bima Company merged in Life Insurance Corporation (L.I.C.), hence Life Insurance Corporation became owner of the entire property, that afterwards the limit of Nagarpalika, Aligarh was extended and property in dispute came within the boundaries of Nagar Palika, Aligarh. It was further pleaded that by virtue of

above quoted provisions the land in dispute was exempted from operation of U.P.Z.A. & L.R. Act and it did not vest in the State and that several orders had been passed by different authorities including consolidation authorities directing for entry of the name of plaintiffs over the land in dispute in the revenue records but it was not so done.

Defence Case :

10. The defendants pleaded that firstly the land not being covered by clause (6) of notification dated 1.7.1952 it did not continue to belong to the Life Insurance Corporation. It was also pleaded that a fraction of the land had allegedly been given to different persons for construction hence relief could not be sought on the entire land of 130 bighas. It was pleaded in the alternative that even if land belonged to Swadeshi Bima Company Ltd. and Bharat Store Ltd., Agra and thereafter in L.I.C. still after the notification of 1969 almost the entire land reverted back to the State as no substantial constructions had been made till then.

11. Part of the land (about 37 bigha pukhta) had been given by Nagar Nigam, Aligarh to Aligarh Development Authority for construction of flats over which flats had been constructed and it was the reason for which Aligarh Development Authority was impleaded in the second appeal.

Arguments and Evidence:

12. Through first sale-deed dated 28.5.1941, 60 bighas land was sold to Swadeshi Bima Company, Agra for Rs. 46,000/-. The property was described by the plot numbers and the map attached with the sale-deed. Clause V of the sale-deed dated 28.5.1941 is quoted below:

That the vendors have sold the property with the knowledge that the vendee will put the property purchased by him for purposes of establishing a model colony and also for purposes of the expansion of the Mills.

The vendors described the sold property as their khudkasht and sir/ proprietorship.

13. Similarly in the second sale-deed dated 6.4.1949, the same Zamindars sold 70 bighas land to Bharat Stores Limited, Agra for Rs. 75,000/-. Property was described in Schedule-A appended to the sale-deed. Numbers of plots were given in Schedule-A. In the said deed unlike the earlier deed of 1941, purpose of sale/ purchase was not mentioned.

14. Before the Courts below as well as this Court, the main argument of Learned Counsel for the appellants (and Aligarh Development Authority) was that the land was not held on 7.7.1949 for the purposes of a housing scheme by Co-operative society or a society or limited liability company as mentioned under Clause (6) of Notification dated 1.7.1952 (supra). The further and more forceful argument is that even if it was so held still the exemption granted by notification dated 1.7.1952

stood withdrawn by notification dated 1.9.1969 (as the land had not till then been utilised for purposes of housing schemes hence the exemption stood withdrawn by the notification) and that no construction had been made upto the stage of completion of foundation as mentioned in the explanation added to Section 2(2) of U.P.Z.A. & L.R. Act through Act No. 15 of 1978 (supra).

15. Per contra Sri B.B. Paul, Learned Counsel appearing for the respondents has vehemently argued (as was argued before the Courts below also) that the following orders clearly showed that land was actually used for construction purposes :

(I) Order dated 20.2.1954 passed by S.D.O. and CO., Koil, District Aligarh. In the said order it is mentioned that there was some land in village Ailampur owned by Bharat Stores Ltd. and Swadeshi Bima Company for housing schemes and the said Firms divided the land into small buildings/plots and transferred them to different persons for building purposes. It was further observed in the said order that a dispute had arisen between the Gaon Samaj, Ailampur and some of the persons who had purchased the land about the ownership of the land. It was also observed that number of purchasers of the land had not till then put any construction over the land and Gaon Samaj was claiming that to have vested in the State on the enforcement of U.P.Z.A. & L.R. Act and subsequently in the Gaon Samaj. It is also mentioned in the said order that Presiding Officer made local inspection and found that number of purchasers had built houses or put other constructions on the land before 1.7.1952 and in respect of those plots there was no dispute. Thereafter it was mentioned that entire land was acquired by two limited companies hence it would be deemed to have been held for a work of public utility as provided by the explanation to Section 2 of U.P.Z.A. & L.R. Act and notification dated 1.7.1952 hence provisions of the Act did not apply.

From the perusal of the said order it is not clear that how much area of the land was in dispute in the said case.

(II) The next order is order dated 20.8.1956 passed by Compensation Officer, Koil, Aligarh. In the said order also dispute of ownership over the land in between Gaon Samaj and persons who had purchased small plots from Swadeshi Bima Company and Bharat Stores Limited had arisen. Names of ten persons were mentioned who had made their claim before the Compensation Officer. It was specifically mentioned in the order that number of persons had not till then constructed any building on the land. Ultimately it was held that entire land was acquired by the Firms and sold to others for purpose of building houses hence it would be deemed to have been transferred for a public utility. Ultimately it was held that the land belonged to the persons whose names were mentioned in the earlier part of the judgment hence they were not entitled to be paid any compensation.

(III) Order dated 26.11.1957 passed by Tehsildar/Assistant Collector Ist Class Aligarh in case No. 49 of 1956 under Rule 115(C) U.P.Z.A. & L.R. Rules Gram Sabha Ailampur



v. Vijai Kar and others. The suit was initiated on the report of Secretary cum Lekhpal of the Village in question dated 10.7.1956 to the effect that opposite party Vijay Kar had taken unauthorised possession over part of plot No. 160/1 area 6 bigha 15 biswa which had vested in the Gram Samaj. Another report was made on 12.7.1956 regarding plot No. 177/2 and third report on the same date with similar allegations in respect of plot No. 189/ 1 against Surendra Pal Singh was also made. Total ten reports had filed on the said date in respect of plot Nos. 187/1, 189, 238, 153, 177, 185 and 188 against different persons. In the said order reliance was placed on earlier orders dated 20.2.1954 and 20.8.1956 (at serial No. 1 and 2 supra). Ultimately notices issued to the opposite parties were vacated and it was directed that the land in dispute which was entered in the Gram Samaj register must be struck out. It was further directed that order dated 20.2.1954 (supra) might be given effect to in the Gram Samaj property register. It appears that cases against several persons had been separately registered accordingly at the end of the said order it was directed that the order would cover cases No. 50, 53, 55, 60 to 64 also.

(IV) The next order is order dated 1.4.1961 passed by S.D.O. Koil Aligarh. That order was passed on an application filed by Umashankar Parasar against the Gram Sabha Ailampur for correction of record claiming that applicant was honorary Secretary of the P.K. Nagar Housing Society G.T. Road Aligarh. That was in respect of several plots alleging that the said plots belonged to two land holders who in 1941 and 1949 transferred the entire area to limited housing societies i.e. Swadeshi Bima Company Ltd: Agra and Bharat Store Ltd., Agra. He further claimed that due to scarcity of material this area could not be covered (converted into residential houses plots) reference to earlier orders (supra) was also made ultimately the S.D.O. in view of notification dated 1.7.1952 (supra) and in view of various orders (already referred to above) ordered that the plots shall be recorded as abadi in the name of B.K. Nagar Housing and Better. Living Society, Aligarh. It was further observed that as the land did not vest in the Gram Samaj hence proceedings under Rule 115-D should be dropped. Ultimately, it was directed that file should be sent to the Tehsildar for determination of the land revenue and for Amaldaramad (mutation).

(V) Next order is dated 30.5.1966 by Tehsildar Koil, District Aligarh in Case No. 127 Gaon Sabha v. Umashankar Parasar, which was a case under Rule 115-D. In the said order also Tehsildar placing reliance upon earlier orders (supra) and the sale-deeds of 1941 and 1949 directed that the case was baseless and unfounded hence it was dismissed. Notice was vacated. It was also observed that the earlier order of S.D.O. dated 1.4.1961 (supra) for correction of the record and for deletion of the name of Gaon Sabha over the property in dispute had not been given effect to. However, it was noted in the very extract of Khatauni 1371 fasli on the file that the order dated 1.4.1961 passed by the S.D.O. had been noted for Amaldaramad.

(VI) The next order is dated 16.8.1969 by Tehsildar/Assistant Collector 1st Class that was also under Rule 115-D and after noting earlier orders it was observed that the

land did not vest in the State or Gaon Sabha. The case was dismissed and notice was discharged.

(VII) The next order is dated 23.1.1970 passed by Assistant Collector/Tehsildar in Case No. 128 Municipal Board Aligarh v. Umashankar Parasar. The suit was filed by the Municipal Board for eviction of Umashankar Parasar. Only few plots out of the total plots covered by sale-deed of 1941-1949 were included in the suit and total area was 7 bigha and few biswas. In the said suit also the orders mentioned above were filed. By that time land in dispute had been included in the Municipal Board due to extension of its boundaries. S.D.O. also on the basis of earlier orders held that the land did not vest in the State hence it could not vest in Gaon Sabha or Municipal Board. However in the said judgment it was also held that notification dated 1.9.1969 did not have any applicability. Ultimately suit was dismissed. However, against the said decree appeal (No. 179 of 1969-70) was filed by Nagar Palika Aligarh which was allowed on 23.12.1971 by Additional Commissioner, Agra Division, Agra and it was held that the property in dispute was not included in the definition of land. Even though learned Commissioner recorded some finding regarding non-applicability of notification dated 1.9.1969 however it held that the land in dispute was not included in the definition u/s 3(14) of U.P.Z.A. & L.R. Act. It was categorically held that Assistant Collector had no jurisdiction to decide about the property in dispute and the order passed by the Court below was without jurisdiction and it was set aside. Ultimately Court below was directed to return the plaint to the plaintiff for filing the same before competent Court.

Another suit u/s 209 of U.P.Z.A. & L.R. Act for eviction was filed by Land Management Committee Ailampur (O.S. No. 18 of 1971-72) against Umashankar Parasar which was dismissed on the technical ground that Buddhsen was not authorised to do so. No finding regarding merit was given.

(VIII) The next order is order dated 29.4.1985 passed by S.D.O. Koil, District Aligarh in Case No. 11 of 1984-85 u/s 122B of U.P.Z.A. & L.R.

Act, Gram Sabha Ailampur v. Umashankar Parasar. That was also in respect of small part of the property in dispute. The case was dismissed on 29.4.1985 on the ground that property belonged to Nagar Palika and not Gaon Sabha. Against the said order revision was filed by the Gaon Sabha in the form of Revision No. 6. Additional Collector (Adm.) Aligarh allowed revision on 7.10.1985 order dated 29.4.1985 was set aside and matter was remanded. Against order dated 7.10.1985 writ petition No. 16718 of 1985 was filed which was allowed on 21.1.1998. Order dated 7.10.1985 was set aside and revision of the Gaon Sabha was dismissed. In the judgment of the writ petition plot numbers and their areas which were in dispute have been mentioned. Nine plots have been mentioned and the area is about 5 bighas. In the said judgment it is mentioned that consolidation authorities (S.O.C.) had passed an order on 20.4.1978 treating the disputed land as abadi and ownership of Gaon Sabha was not accepted in the order of Consolidation Officer. The High Court further observed

that the Additional Collector in the impugned order had observed that parties should have approached the Civil Court which was not done. Earlier orders were also noticed in the said judgment. This Court in the said judgment noted that Additional Collector had himself held that in such cases the aggrieved party should approach a Court of competent jurisdiction. Accordingly, the Court held that repeated proceedings u/s 122B or Rule 115-C could not be taken.

The order of Consolidation Officer dated 28.6.1976 has also been filed directing that the entry of banjar and usar over the land in dispute should be scored off and the land shall be entered as abadi. It was specifically held in the said order that as the land in dispute was not included in the definition of land as given under U.P. Consolidation of Holdings Act hence no question of determination of title over the said land arose. Against the said order several appeals were filed which were dismissed on 20.4.1978 by Settlement Officer of Consolidation, Mathura Camp, Aligarh.

16. Learned Counsel for the respondents has referred to different orders passed in the suit and orders of this Court passed on the petitions directed against interim orders passed in the suit. However, at the stage of final hearing those orders are not much relevant.

17. It has been noticed in the order dated 18.9.2009 passed in the Second Appeal allowing the impleading application of Aligarh Development Authority that Nagar Nigam Aligarh transferred part of the property to Aligarh Development Authority for Rs. 2,09,88,000 and Rs. 1,10,12,000/- respectively and Aligarh Development Authority after taking possession had constructed 1,284 plots after making total expenditure of Rs. 15,51,00,000/- upto 28.3.2009. The two transferred chunks of land were of the area of about 4.48 hectares and 4.14 hectares, total 85631 square meters as mentioned in the counter-affidavit filed by A.D.A. on 15.2.2010 in the second appeal.

18. Accordingly, from the above it is quite clear that at least on part of the property in dispute until 1969 there was no construction and it was lying vacant even until transfer of part of the land by Nagar Nigam to Aligarh Development Authority, there was no construction on the said portion. There was absolutely no grievance by the respondents that while making more than one thousand flats Aligarh Development Authority demolished any house.

19. Learned Counsel for State of Uttar Pradesh argued that all the earlier orders passed in favour of respondents (supra) are meaningless as they were passed in summary proceedings u/s 122B of U.P.Z.A. & L.R. Act and Rule 115-C of the Rules framed thereunder. It is correct that under the said provisions orders passed are of summary nature but neither they can be brushed aside so lightly nor can be termed as of no importance and meaning. Such orders are subject to the result of the regular suit, hence they are fully operative unless set aside by regular Court in

regular suit/ proceedings. The proceedings before regular Court need not be initiated by the aggrieved party. The proceedings may be initiated even by the party under whose favour the said order has been passed in the form of declaration and/or injunction and in case it is held in such suit for injunction and declaration that the plaintiff has got no title then the decision is sufficient and plaintiff stands/is liable to eviction forthwith without there being any necessity on the part of the said injunction/declaration suit to file suit for eviction and declaration. In this regard reference may be made to a recent authority of the Supreme Court reported in M.M.S. Fernandes and others v. Erasmo Jack D.S., AIR 2012 SCW 2162 : JT 2012 (3) SC 451. In the said judgment the Supreme Court in para 82 has approved the view of Delhi High Court. Paragraphs 82 and 83 of the Supreme Court judgment are quoted below:

82. The High Court of Delhi in a case [Thomas Cook \(India\) Limited Vs. Hotel Imperial and Others](#), held as under:

28. The expressions "due process of law", "due course of law" and "recourse to law" have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed "forcibly" by the true owner taking law in his own hands. All these expressions, however, mean the same thing - ejection from settled possession can only be had by recourse to a Court of law. Clearly, "due process of law" or "due course of law", here, simply mean that a person in settled possession cannot be ejected without a Court of law having adjudicated upon his rights qua the true owner.

Now, this "due process" or "due course" condition is satisfied the moment the rights of the parties are adjudicated upon by a Court of competent jurisdiction. It does not matter who brought the action to Court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What is important is that in either event it is an action before the Court and the Court adjudicates upon it. If that is done then, the "bare minimum" requirement of "due process" or "due course" of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a Court seeking a protective remedy such as an injunction and it fails in setting up a good case, can it then say that the other party must now institute an action in a Court of law for enforcing his rights i.e., for taking back something from the first party who holds it unlawfully, and, till such time, the Court hearing the injunction action must grant an injunction anyway? I would think not. In any event, the "recourse to law" stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the present case, the plaintiffs failure to make out a case for an injunction does not mean that its consequent cessation of user of the

said two rooms would have been brought about without recourse to law.

83. We approve the findings of the High Court of Delhi on this issue in the aforesaid case.

20. Similarly the argument of Shri B.B. Paul, Learned Counsel the respondents that the orders passed in favour of the respondents right from 20.2.1954 till 21.1.1998 should be taken to be conclusive as State did not file any suit for declaration and other reliefs cannot be accepted. In the suit giving rise to the instant appeal title of either party could very well be seen and adjudicated. In the impugned judgment the Court below has based its entire judgment on the earlier orders passed in miscellaneous proceedings.

21. No evidence was brought on record by the plaintiffs-respondents that on the entire land in dispute constructions had been made.

22. Accordingly, it is quite clear that until 1969 the case of the plaintiffs-respondents was fully covered by the exemption clause Section 2(2) and notification dated 1.7.1952 however, after the notification dated 1.9.1969 the position drastically changed. It is also quite clear that no evidence is available on the file to show that requisite constructions in how much area of the total land in dispute had been made until 1969. Substantial question of law No. 1 is accordingly decided partly in favour of appellants and partly in favour of respondents. I do not consider it necessary to decide other substantial questions of law.

23. The matter therefore requires remand for determination of this question.

24. However, this much is clear that over the land which was transferred to Aligarh Development Authority by Nagar Nigam and on which A.D.A. made constructions there was no construction of the plaintiff-respondents till then. Accordingly, as far as the said part of the land in dispute is concerned suit stands dismissed. However, in respect of other land a finding regarding constructions made by plaintiffs till 1.9.1969 is required to be given by the Trial Court. Accordingly, both the appeals are allowed. The judgments and decrees passed by the Courts below are set aside to the extent indicated above. Matter is remanded to the Trial Court to decide the same in the light of the observations made above after providing opportunity to the parties to lead fresh evidence. All the parties are directed to appear before the Trial Court on 13.8.2012. Till the decision of the suit status quo in respect of entire land except the land allotted to A.D.A. by Nagar Nigam (regarding which suit is dismissed) shall be maintained by all the parties.