

# **Smt. Susheela Devi @ Susheela vs State Of U.P. Thru. Secy. Revenue, Lko. ... on 1 April, 2025**

**Author: Saurabh Lavania**

**Bench: Saurabh Lavania**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

A.F.R.

Neutral Citation No. - 2025:AHC-LK0:18072

Court No. - 7

Case :- WRIT - C No. - 2884 of 2025

Petitioner :- Smt. Susheela Devi @ Susheela

Respondent :- State Of U.P. Thru. Secy. Revenue, Lko. And Others

Counsel for Petitioner :- Santosh Kumar Tripathi, Paritosh Shukla

Counsel for Respondent :- C.S.C., Pankaj Gupta

Hon'ble Saurabh Lavania, J.

1. Heard Sri Santosh Kumar learned Counsel for the petitioner, Sri Hemant Kumar Pandey, learned State Counsel, who appeared on behalf of opposite party nos. 1 to 5 and Sri Pankaj Gupta, appearing for opposite party no.6/Gaon Sabha.

2. The present petition has been filed seeking following main reliefs:-

"i. Issue a Writ, order or direction in the nature of 'Certiorari' thereby quashing and

setting aside impugned order dated 31/01/2025 passed in Case No. 1226/2024, 'Smt. Susheela Devi Vs President, LMC' by Learned Additional Commissioner (Administration-I), Devipatan Division and impugned order dated 23/02/2024 passed by Learned Sub-Divisional Magistrate, Bhinga, Shrawasti (Annexure-1 and 2), in the interest of justice;

ii. Issue a Writ, order or direction in the nature of 'Mandamus' thereby directing the Respondent authorities to not act upon impugned order dated 31/01/2025 and 23/02/2024 and not disturb the peaceful possession of the Petitioner, during pendency of this Writ Petition, in the interest of justice;"

3. It would be apt to indicate that order dated 23.02.2024 passed by opposite party no.4/Sub-Divisional Magistrate, Bhinga, Shrawasti, is a non speaking order, which reads as under:-

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4. At this stage, it would also be relevant to indicate that order should be speaking and reasoned, which are required in view of the settled principles of law (Vide CCT Vs. Shukla & Bros., (2010) 4 SCC 785 considered in Civil Appeal No.3465 of 2023 (State Project Director, U.P. Education for All Project Board & others Vs. Saroj Maurya & others, decided on 21.08.2024 and Ircon International Limited Thru. General Manager Vs. Deepak Yadav, 2019 SCC OnLine All 4239).

5. In terms of impugned order dated 23.02.2024 passed by opposite party no.4/Sub-Divisional Magistrate, Bhinga, Shrawasti, the entry favourable to one Rampheran s/o Cheddi, who had expired about 15 years back, in the revenue record related to Gata No.128/0.3200 Hectare, over which Rampheran was in possession in terms of 'Patta' executed in his favour, has been expunged.

6. Vide order dated 31.01.2025 passed by opposite party no.2/Additional Commissioner (Administration-I), Devipatan Division, Shrawasti (in short 'Revisional Authority') in revision preferred by the petitioner in terms of Section 210 of U.P. Revenue Code, 2006 (in short 'Code of 2006') being Revision No. 1266/2024, Computerized Case No. C202408000001226 (Smt. Susheela Devi Versus President, Land Management Committee and others), the Revisional Authority, dismissed the revision. The order dated 31.01.2025 reads as under:-

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7. Upon due consideration the material available on record as also the submissions advanced by learned Counsel for the parties, this Court is of the view that interference in the matter is required. It is for the following facts/reasons:-

- (i) A 'Patta' with regard to Gata No.128/0.3200 Hectare, situated at Village Shahpur Bargadva, Post and Tehsil Bhinga, District-Shrawasti, was executed in favour of one Rampheran s/o Cheddi;
- (ii) The land in issue i.e. Gata No.128/0.3200 Hectare, detailed above, was ceiling land and covered under the U.P. Imposition of Ceiling on Land Holdings Act 1960 (in short Act of 1 of 1961;

(iii) During his lifetime late Rampheran s/o Cheddi executed a registered 'Will' dated 16.11.2007 before the Sub-Registrar, Bhinga, District-Shrawasti, in favour of the petitioner;

(iv) Section 131 of U.P. Z.A. & L.R. Act, 1950 ( in short 'Act of 1950') was amended by U.P. Act No. 14 of 1987 w.e.f. 14.04.1987. By this amendment Sub-section 'd' was inserted in Section 131 of the Act of 1950. The same reads as under:-

"131. Bhumidhar with non-transferable rights.

Every person belonging to any of the following classes shall be called a bhumidhar with non-transferable rights and shall have all the rights and be subject to all the liabilities conferred or imposed upon such bhumidhars by or under this Act, namely-

(a) every person admitted as a sirdar of any land under Section 195 before the date of commencement of the Uttar Pradesh Land Laws (Amendment) Act, 1977 or as a bhumidhar with non-transferable rights under the said section on or after the said date;

(b) every person who in any other manner acquires on or after the said date, the rights of such bhumidhar under or in accordance with the provisions of this Act;

(c) every person who is, or has been allotted any land under the provision of the Uttar Pradesh Bhoodan Yagna Act, 1952.

(d) [ with effect from July 1, 1981 every person with whom surplus land is or has been settled under Section 26-A or sub-section (3) of Section 27 of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960.] [Inserted by U.P. Act No. 24 of 1986.]"

(v) After the aforesaid, Act of 1950 was amended by Act No.14 of 1987, effective from 15th April, 1987 and by this Section 131-A was inserted. Section 131-A, reads as under :-

131-A. Bhumidhari rights in Gaon Sabha or State Government land in certain circumstances.- Subject to the provisions of Section 132 and Section 133-A, every person in cultivatory possession of any land, vested in a Gaon Sabha under Section 117 or belonging to the State Government, in the portion of District Mirzapur South of Kaimur Range, other than the land notified under Section 20 of the Indian Forest Act, 1927, before the 30th day of June, 1978, shall be deemed to have become a Bhumidhar with non-transferable rights of such land :

Provided that where the land, in cultivatory possession of a person, together with any other land held by him in Uttar Pradesh exceeds the ceiling area determined under the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960, the rights of a

Bhumidhar with non-transferable rights shall accrue in favour of such person in respect of so much area of the first-mentioned land, as together with such other land held by him, does not exceed the ceiling area applicable to him and the said area shall be demarcated in the prescribed manner in accordance with the principles laid down in the aforesaid Act.

(vi) After the aforesaid, Section 131-B was inserted by U.P. Act No.19 of 1995, w.e.f. 14.01.1995. Section 131-B reads as under :-

"131-B. Bhumidhar with non-transferable rights to become bhumidhar with transferable rights after ten years. -

(1) Every person who was a bhumidhar with non-transferable rights immediately before the commencement of the Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 1995 and had been such bhumidhar for a period of ten years or more, shall become a bhumidhar with transferable rights on such commencement.

(2) Every person who is bhumidhar with non-transferable rights on the commencement referred to in sub-section (1) or becomes a bhumidhar with non-transferable rights after such commencement, shall become bhumidhar with transferable rights on the expiry of period of ten years from his becoming a bhumidhar with non-transferable rights.

(3) Notwithstanding anything contained in any other provision of this Act, if a person, after becoming a bhumidhar with transferable rights under sub-section (1) or sub-section (2). Transfers the land by way of sale, he shall become ineligible for a lease of any land vested in Gaon Sabha or the State Government or of surplus land as defined in the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960."

(vii) At this stage, it would be relevant to take note of Section 132 of the Act, 1950, which indicates that when 'Bhumidhari Rights' shall not accrue. Section 132 of the Act, 1950 reads as under :-

"132. Land in which [bhumidhari] rights shall not accrue.- Notwithstanding anything contained in Section 131, but without prejudice to the provisions of Section 19, [bhumidhari] rights shall not accrue in -

(a) pasture lands or lands covered by water and used for the purpose of growing singhara or other produce or land in the bed of a river and used for casual or occasional cultivation;

(b) such tracts of shifting or unstable cultivation as the State Government may specify by notification in the Gazette; and

(c) lands declared by the State Government by notification in the Official Gazette, to be intended or set apart for taungya plantation or grove lands of a [Gaon Sabha] or a Local Authority or land acquired or held for a public purpose and in particular and without prejudice to the generality of this clause-

(i)lands set apart for military encamping grounds;

(ii)lands included within railway or canal boundaries;

(iii)lands situate within the limits of any cantonment;

(iv)lands included in sullage farms or trenching grounds belonging as such to a local authority;

(v) lands acquired by a town improvement trust in accordance with a scheme sanctioned under Section 42 of the U.P. Town Improvement Act, 1919 (U.P. Act V11 of 1919) or by a municipality for a purpose mentioned in Clause (a) or Clause (c) of Section 8 of the U.P. Municipalities Act, 1916 (U.P. Act VII of 1916); and

(vi) lands set apart for public purposes under the U.P. Consolidation of Holdings Act, 1953 (U.P. Act V of 1954).]"

(viii) It is also relevant to mention here that there is a Government Order on the subject matter of the issue, i.e. G.O. No.258/16(1)/73-Rajasva-1, dated 9th May, 1984.

(ix) It would also not be out of place to mention here that according to the judgment of this Court dated 06.12.2017, passed in Civil Misc. Writ Petition No.54990 of 2007 (Matlub and Ors. Vs. State of U.P. and Ors.), 2018 (7) ADJ 240 : 2018 139 RD 491, the person to whom the 'Patta' was provided in relation to the surplus land of ceiling would be entitled to the benefits flowing from Section 131. The relevant paragraphs of the judgment are extracted herein under :-

"1. The land of Khasra No. 107/2, area 0.165 hectares situate in village Haroda, District "- Saharanpur, was allotted to the father of the petitioner Late Bundu under section 27 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as 'the Act'), after the same was declared as a surplus holding of another tenure-holder. The petitioners on 24.4.2006 sold the property in question to the respondent No. 5 and 6 by means of a registered sale-deed. However, the respondent No. 5 and 6 were put to notice by the Additional Collector Saharanpur that the sale-deed by which they had purchased the Plot No. 107/2 was void and, therefore, no title accrued to them. In response to the notice, the respondents replied but by the order dated 29.2.2007, the sale was cancelled as it was found violative of section 131 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1951 (hereinafter referred to as 'the U.P.Z.□ & L.R. Act). As per the sections 166 and 167 of the U.P.Z.A. & L.R. Act, it was held that the land had vested in the State Government. The

petitioners who were sellers were thereafter being pestered by the purchasers as they were asking for the return of the sale consideration. This necessitated the petitioners to file a Revision, which was decided ex parte on 5.7.2007. Thereafter, the recall application was also dismissed on 10.9.2007. Aggrieved thereof, the petitioners have filed the instant writ petition.

2. The contention of the petitioners is that after the petitioners' father was given the patta of the surplus land on 14.7.1976 then on 1.7.1981, the predecessor in interest of the petitioners i.e. their father became a bhumidhar with nontransferable rights. Section 131 of the U.P.Z.A. & L.R. Act, 1950 was read out by the petitioner. It is, therefore, being reproduced here as under:-

"Section 131. Bhumidhar with nontransferable rights.- Every person belonging to any of the following classes shall be called a bhumidhar with non-transferable rights and shall have all the rights and be subject to all the liabilities conferred or imposed upon such bhumidhars by or under this Act, namely,-

(a) every person admitted as a sirdar of any land under section 195 before the date of commencement of the Uttar Pradesh Land Laws (Amendment) Act, 1977 or as a bhumidhar with non-transferable rights under the said section on or after the said date;

(b) every person who in any other manner acquires on or after the said date, the rights of such bhumidhar under or in accordance with the provisions of this Act;

(c) every person who is, or has been allotted any land under the provisions of the Uttar Pradesh Bhoodan Yagna Act, 1952.

(d) with effect from July 1, 1981 every person with whom surplus land is or has been settled under section 26-A or sub-section (3) of section 27 of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960."

3. Thereafter with the coming into force of the Uttar Pradesh Act No. 19 of 1995 which came into effect on 14.1.1995, the Counsel for the petitioner submitted, the petitioners became bhumidhars with transferable rights. As the learned Counsel for the petitioners read out section 131-B of the U.P.Z.A. & L.R. Act the same is being reproduced here as under: -

"131-B Bhumidhar with nontransferable rights to become bhumidhar with transferable rights after ten years.- (1) Every person who was a bhumidhar with non-transferable rights immediately before the commencement of the Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 1995 and had been such bhumidhar for a period of ten years or more, shall become a bhumidhar with transferable rights on such commencement.

(2) Every person who is a bhumidhar with non-transferable rights on the commencement referred to in sub-section (1) or becomes a bhumidhar with non-transferable rights after such commencement, shall become bhumidhar with transferable rights on the expiry of period of ten years from his becoming a bhumidhar with non-transferable rights. (3) Notwithstanding anything contained in any other provision of this Act, if a person, after becoming a bhumidhar with transferable rights under sub-section (1) or sub-section (2). Transfers the land by way of sale, he shall become ineligible for a lease of any land vested in Gaon Sabha or the State Government or of surplus land as defined in the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960."4. The Counsel for the petitioner, thereafter submitted that since they were bhumidhar with transferable rights w.e.f. 14.1.1995, the sale which took place on 24.4.2006 was a valid sale-deed and no fault could be found with it. This ground was raised before both the Courts below. Specific argument is also to be found in the body of the judgements impugned.

5. However, simply because the petitioners were entered as bhumidhars with non-transferable rights in the revenue record, the two Courts below had held that the sale-deed could not have been executed.

6. Learned Standing Counsel could not dispute the factual and the legal aspect of the matter and submitted that the petitioners, in fact, on the date when the sale-deed was executed were bhumidhars with transferable rights.

7. Having heard the learned Counsel for the parties, I am of the view that because of the provisions of sections 131 and 131(B) of the U.P.Z.A. & L.R. Act, the petitioners had initially become bhumidhars with non-transferable rights and subsequently had acquired bhumidhari with transferable rights and they could definitely have sold off their land. Revenue entries do not matter it mattered little that the petitioners were entered as Bhumidhars with non transferable rights.

8. Therefore, the impugned orders fated 10.9.2007 and 5.7.2009 passed by Additional Commissioner Saharanpur and the order dated 28.2.2007 passed by Additional Collector (Administration) Saharanpur cannot be sustained and are, thus, quashed. The writ petition is allowed."

(x) From a conjoint reading of aforesaid and impugned order(s) dated 23.02.2024 and 31.01.2025, this Court finds that the entire facts and relevant provisions were not been taken note of by the opposite party no.2/Sub Divisional Magistrate concerned as also by the Revisional Authority, as such the same are unsustainable in the eyes of law.

8. Accordingly, the order dated 31.01.2025, passed by Additional Commissioner (Administration-I), Devipatan Division, Gonda and order dated 23.02.2024, passed by learned Sub Divisional Magistrate, Bhinga, Shrawasti are hereby set aside/quashed.



9. The matter is remanded back to the opposite party no.2/Sub Divisional Magistrate concerned to pass an appropriate order afresh, by a reasoned and speaking order, after taking note of the aforesaid facts and relevant statutory provisions. The petitioner would remain in possession of the property/land in issue, which would be subject to the order passed afresh by opposite party no.2/Sub Divisional Magistrate in terms of this order.

Order Date :- 01.04.2025 Jyoti/-