

# Udai Pratap Singh And Another vs State Of U.P. And 2 Others on 1 May, 2025

**Author: Ashwani Kumar Mishra**

**Bench: Ashwani Kumar Mishra**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:69259-DB

Court No. - 29

Case :- WRIT - C No. - 317 of 2015

Petitioner :- Udai Pratap Singh And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- A.K. Shukla,Yash Tandon

Counsel for Respondent :- C.S.C.

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Praveen Kumar Giri,J.

1. This petition is directed against an order passed by the Chief Conservator of Forest, Gorakhpur Division, Gorakhpur, dated 22.04.2014, as well as a subsequent order of the Divisional Forest Officer, Gorakhpur Forest Division, Gorakhpur dated 27.06.2014. By these two orders, petitioners' claim for grant of permission to cut their trees on 9.4 acres of land has been rejected.

2. The facts of the case as emerge from the records are that petitioners' ancestors, namely, Champa Devi (grand mother of the petitioners) was recorded over plot no. 806/2 corresponding to new plot

no. 769/2, area 9.40 acre situated in Village Rajaura Panjum, Pargana Haveli, Tehsil Sadar, District Gorakhpur. The land now forms part of District Maharajganj. According to petitioners, an objection was filed in consolidation proceedings under section 9A(2) of U.P. Consolidation of Holdings Act as to whether the plot in question is a reserved forest or not. An order came to be passed in consolidation proceedings holding that plot no. 806/2 area 9.40 acre is on the other side of Rajaura minor and, therefore, it be recorded in the name of Ram Bihari. This order was challenged in revision which was dismissed. The forest department of the State filed writ petition No. 26397 of 1994 which came to be dismissed on 03.08.1995 by following orders:

"A perusal of the order passed by Ziladhikari/Zila Up-Sanchalak (Chakbandi) Maharajganj, shows that the order is based on consideration of an order dated 09.05.61 of the Forest Settlement Officer passed in favour of contesting respondent and entry in khasra 1359 F. In view of the order dated 9.5.61, the consolidation authorities can not be said to have committed any error which may be is apparent on the face of the record is holding that the property does not belong to forest department. The land belonging to individual tenure holder can not be declared as "Reserve Forest" Under Section 4 readwith section 20 of the Forest Act."

3. This Court for the purposes of dismissing the writ petition had taken note of an order passed by Forest Settlement Officer in favour of the petitioners' ancestor dated 09.05.1961, as per which, the land in question was not a forest land. The judgement of learned Single Judge dated 03.08.1995 was then carried in appeal before the Supreme Court by the State which was also dismissed on the ground of delay.

4. It appears that after the previous round of litigation the claim of the petitioners' ancestor had attained finality. The claim of State with regard to land being forest land was revived relying upon a notification issued on 13.09.1977 under section 20 of the Forest Act. By this notification, 40 odd acres of land was declared as forest land. The petitioners contested the proceedings on the ground that total area of pot no. 806 was 63.93 acre and the land included in forest by virtue of notification under section 20 was limited to 40 odd acres. We may note that the claim of the petitioners was not accepted by the Divisional Forest Officer on 08.03.2013. Against this order, a revision was permitted to be filed before the Chief Conservator of Officer and a Division Bench of this Court disposed of the writ petition No. 13248 of 2014, filed by the petitioners vide order dated 04.03.2014. The order is reproduced hereinunder:

"Since the Revision which has been filed by the petitioner before the Chief Conservator of Forest, Gorakhpur on 30 July 2013 is still pending and having regard to the statement made by the learned counsel that the arguments were concluded on 4 September 2013, we direct the second respondent to dispose of the Revision expeditiously, and within a period of two months of the receipt of a certified copy of this order.

The petition is, accordingly, disposed of."

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"1. As per notification of the year 1977, an area of 41.52 Hectare of Plot No.806 was declared as Reserved Forest. The petitioners claim right over 9.40 acre (3.6 Hectare) of the said plot. The total area of Plot No.806 has not been disclosed.

3. List this matter on 25.7.2023."

"4. That according to the CH Form No. 2-Ka of the year 1975, the total area of Gata No. 806 is 63.93 acre, in which 40.77 acre (16.499 Hect.) is recorded as "Jangal Sakhoo" and according to the CH Form 2-Ka of the year 1975, in the Gata No. 806,

the Gata No. 806/2 area 40.77 acre is recorded as "Jangal Sakhoo", Gata No. 806/1/1 area 15.11 acre is recorded in the name of Smt. Ramvasi Devi, Gata No. 806/1/3 area 4.81 acre is recorded in the name of Mewa Lal son of Rampav but in the Khasra the said gata is recorded as "Jangal Sakhoo", Gata No. 806/1/2 area 3.50 acre is recorded in the name of Smt. Ramvasi Devi but in the khasra the said gata is recorded as "Jangal Sakhoo" and gata no. 806/3 area 1.24 acre is recorded in the name of Jatan Basrat. Copy of the CH Form-2-Ka is being filed herewith and marked as ANNEXURE NO. SA-1 to this affidavit.

5. That the area of the land in dispute is 9.4 acre and the land which is disputed in the writ petition is undisputedly Reserve Forest Land, which has been declared as Reserve Forest Land by the Gazette Notification No. 4712/14-2-20 (138)-76 dated 13.09.1977 issued under Section 20 of Indian Forest Act, 1927. Copy of the gazette Notification No. 4712/14-2-20 (138)-76 dated 13.09.1977 and copy of the Map according to the Gazette notification are being filed herewith and marked as ANNEXURE NO. SA-2 & 3 to this affidavit."

9. From the stand taken by the respondent, it remains undisputed that though the total area of plot 806 is 63.93 acre but the land notified under section 20 as forest land is only 41.52 acres. Remaining land of plot 806 is not shown to have been notified as forest land. According to petitioners their plot of 9.4 acre forms part of the remaining land which is not notified as forest land.

10. A supplementary affidavit has also been filed by the petitioners placing on record an order passed by the revenue authority under section 24 of the U.P. Revenue Code, 2006 in case no. 201 of 2016. As per which petitioners' land (identified with reference to new plot no. 769) is an area of 3.62 hectare which has been demarcated on the spot.

11. Learned State counsel, however, submits that in respect of forest land the revenue authorities have no power to carry out demarcation.

12. Be that as it may, in the facts of the case, we find that the claim of the petitioners in respect of 9.4 acre land has been rejected primarily on the ground that such land forms part of notification issued under section 20 of the Forest Act dated 13.09.1977.

13. The order of Chief Conservator of Forest fails to notice the total area of the plot and also does not consider as to whether petitioners' 9.4. acre land forms part of the land notified as forest land or it forms part of the land which is left out of the notification issued under section 20. This determination would also require physical survey of the spot. According to the revenue authorities, petitioners' land is out of forest. In the previous round of litigation the claim of the petitioners' ancestor has been accepted and has attained finality up to the Supreme Court. Since on these aspects there is no consideration or finding in the order of the Chief Conservator of Forest as such the orders impugned cannot be sustained.

14. Consequently, the writ petition succeeds and is allowed. The impugned order dated 22.04.2014 passed by the Chief Conservator of Forest, Gorakhpur Division, Gorakhpur, and subsequent order dated 27.06.2014 passed by the Divisional Forest Officer, Gorakhpur Forest Division, Gorakhpur are set aside and quashed. The matter stands remitted to the Chief Conservator of Forest for a fresh consideration of cause in terms of the above observation after affording opportunity of hearing to the parties within a period of four months.

Order Date :- 1.5.2025 K.K. Maurya