



2026:AHC:171221

Reserved on 31.07.2026

Delivered on 14.08.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - B No. - 9566 of 1980

Achhaibar Singh

.....Petitioner(s)

Versus

Board of Revenue And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	: A.K.Rai, Vishnu Kumar Singh
Counsel for Respondent(s)	: Manoj Kumar Yadav, S.C., Sankatha Rai

HON'BLE ARUN KUMAR, J.

1. Heard Sri Durgesh Kumar Singh, learned Senior Counsel, assisted by Sri Narendra Shanker, holding brief for Sri A. K. Rai, learned counsel for the petitioner, learned Standing Counsel for respondent nos. 1 to 3, and Sri B. K. Tripathi, learned counsel for respondent no. 4, Gaon Sabha.

2. The present writ petition has been filed challenging the judgments and orders dated 1.10.1980 and 29.10.1966 passed by respondent nos. 1 and 2, respectively, arising out of proceedings under Section 212 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as 'the Act of 1950').

3. The facts of the case are that, on an application moved by Achhaibar Singh, the petitioner, before His Highness Maharaja of

Banaras, Vibhuti Narain Singh, the plot in dispute was allotted to him. Thereafter, the petitioner instituted a suit under Sections 59/61 of the U.P. Tenancy Act, 1939 (hereinafter referred to as 'the Act of 1939') seeking a declaration that he was the hereditary tenant of the land in dispute. The said suit was decreed in his favour on 07.02.1953, which was upheld by the Board of Revenue, U.P., at Allahabad, respondent no. 1, by its order dated 16.3.1956 in a reference proceeding. Pursuant thereto, the petitioner continued in possession of the land in dispute. After the abolition of Zamindari, a suit under Section 212 of the Act of 1950 was instituted against the petitioner for his ejectment from the plot in question on the ground that it was a tank. The suit was decreed by the Sub-Divisional Officer, Varanasi (South), by order dated 29.10.1966, holding the petitioner liable to ejectment.

4. Aggrieved by the aforesaid order of the Sub-Divisional Officer, the petitioner preferred Appeal No. 614 of 1966 before the Commissioner, Varanasi Division, Varanasi. The Additional Commissioner, Varanasi, by order dated 4.1.1971, allowed the appeal, holding that the tank situated in the plot in dispute was the tenant's tank and, as such, would not vest in the State Government after the abolition of Zamindari under Section 6 of the Act of 1950. The second appeal preferred by the Gaon Sabha before the Board of Revenue was allowed by order dated 1.10.1980, whereby the order of the Additional Commissioner was set aside and the order of the Sub-Divisional Officer was upheld.

5. It is contended by learned Senior Counsel appearing for the petitioner that the order of the Sub-Divisional Officer, purportedly passed under Section 212 of the Act of 1950, is illegal, inasmuch as no compensation was awarded while directing the ejectment of the petitioner from the land in dispute. It is further contended that the suit in respect of the plot in dispute was not maintainable merely on the basis of the entry of the land as a 'Tank' in the revenue records, particularly when the entire land was not in the form of a tank. It is further contended that

the plot in dispute was settled with the petitioner as land alone and that the tank was subsequently dug by the tenant. According to the learned Senior Counsel, this fact stands established from the order passed by the Sub-Divisional Officer decreeing the petitioner's suit under Sections 59/61 of the Act of 1939, which order was subsequently upheld by the Board of Revenue. It is further submitted that, as the petitioner had been declared a hereditary tenant of the plot in dispute and continued in such capacity until the date of vesting, he became a Sirdar thereof and, as such, could not have been evicted in proceedings under Section 212 of the Act of 1950. It is submitted that the findings recorded by the Additional Commissioner were just, legal and proper and were arbitrarily interfered with by respondent no. 1.

6. Per contra, learned counsel appearing for the Gaon Sabha has placed reliance upon the findings recorded by the Sub-Divisional Officer in his judgment dated 29.10.1966, wherein it has been observed that continuous entries from 1319 Fasli to 1369 Fasli, showing the land as a tank used for irrigation of fields, establish that the land was a customary tank of public utility.

7. I have considered the submissions advanced by learned counsel for the parties and have perused the record.

8. The controversy in the present writ petition essentially turns upon the question as to whether, notwithstanding the decree dated 07.02.1953 whereby the petitioner was declared to be a hereditary tenant of the disputed plot, he could be ejected therefrom in proceedings instituted under Section 212 of the Act of 1950 on the ground that the disputed land was a tank of public utility.

9. Before examining the rival submissions, it would be appropriate to notice the scheme of Section 212 of the Act. The said provision applies where a person has been admitted, on or after 08.08.1946, as a tenure-holder or grove-holder upon land which was recorded as, or was customary, common pasture land, cremation or burial ground, tank,

pond, pathway or khalian, and provides for his ejectment in the manner prescribed by the Act. The provision is thus attracted only when the foundational facts bringing the case within the statutory description are established. The mere fact that a plot is subsequently described as a tank in the revenue records cannot, by itself, be treated as conclusive of the applicability of Section 212. The material question, therefore, is whether, at the time relevant for the application of Section 212, the petitioner was admitted as a tenure-holder upon land which was recorded as or was a customary tank or other land of public utility specified in the said provision.

10. In the present case, the petitioner's claim to the disputed land did not originate after the commencement of the Act. On an application made by him before His Highness Maharaja of Banaras, Vibhuti Narain Singh, the disputed plot was settled with him. Thereafter, the petitioner instituted proceedings under Sections 59/61 of the Act of 1939 for declaration of his hereditary tenancy rights. The said suit was decreed in his favour and the decree was thereafter upheld by the Board of Revenue in the reference proceedings by order dated 16.3.1956. Thus, the petitioner's status as hereditary tenant in respect of the disputed land stood judicially recognised prior to the date of vesting.

11. The significance of the aforesaid decree cannot be overlooked. The question whether the petitioner possessed hereditary tenancy rights in the disputed land had already been adjudicated by the competent authority under the U.P. Tenancy Act, 1939. The earlier decree is binding to the extent that it adjudicated the petitioner's status as hereditary tenant of the disputed land. That status could not be disregarded by the authorities while considering the subsequent proceedings under Section 212. The earlier decree is binding to the extent that it adjudicated the petitioner's status as hereditary tenant of the disputed land. That status could not be disregarded by the authorities while considering the subsequent proceedings under Section 212.

12. At the same time, the earlier decree has to be given its proper legal effect. It establishes the petitioner's adjudicated status as a hereditary tenant; it would not, by itself, dispense with an examination of the independent statutory question whether the disputed land falls within the description contemplated by Section 212. The case of the Gaon Sabha, therefore, has to be tested on that statutory touchstone.

13. The principal material relied upon by the Gaon Sabha before the Sub-Divisional Officer was the revenue record containing entries from 1319 Fasli to 1369 Fasli describing the disputed land as a tank and indicating its use for irrigation. Revenue entries undoubtedly constitute relevant evidence concerning the nature and use of land. However, they are not conclusive proof, by themselves, of the legal character of the rights of the person in possession or of the precise circumstances in which a tank came into existence. The Court is required to examine the entire material, including the nature of the original settlement and the findings recorded in the earlier tenancy proceedings.

14. The petitioner has consistently asserted that the settlement in his favour was of the land and that the tank was subsequently constructed by him as tenant. This aspect assumes considerable significance. If the tank was constructed by the tenant upon land lawfully settled with him as tenancy land, the mere subsequent description of the plot as a tank would not, by itself, establish that the petitioner had been admitted as a tenure-holder upon a tank or other land of public utility within the meaning of Section 212.

15. The distinction between the rights of an intermediary and the independent rights of a tenant is also material. Section 6 of the Act brings about vesting in the State of the rights, title and interest of intermediaries; it does not, merely by reason of such vesting, extinguish rights which a tenant had independently acquired in accordance with law. This principle was recognised by this Court in **Nirjhin Kumari v. Gram Samaj**, 1980 RD 164, where the rights of tenants in a tank and bhita constructed upon tenancy land were held not to have vested in the

State merely by abolition of zamindari. The same principle was subsequently noticed and applied in **Gaon Sabha, Domanpur v. Jagannath Singh, 1984 AWC (Supp.) 27**, where the Court examined the circumstances in which the tenant's predecessor had obtained the settlement, paid nazrana and constructed the pond, and held that the tenant's rights were not extinguished merely on account of vesting.

16. The aforesaid authorities, however, have to be understood in the context of their facts. They do not lay down that every land subsequently described as a tank remains immune from the operation of Section 212. The principle which is relevant here is that where the foundation of the tenant's right is an earlier lawful tenancy in land which was not shown to have been a public-utility tank at the time of such settlement, and the tank was thereafter constructed by the tenant, the subsequent physical character of the land as a tank does not, without more, divest the tenant of his pre-existing statutory rights.

17. In the present case, the order of the Sub-Divisional Officer does not satisfactorily examine this distinction. The Sub-Divisional Officer accepted that, in view of the earlier decree under Sections 59/61 of the U.P. Tenancy Act, the Gaon Sabha could not question the petitioner's title as a sirdar, but nevertheless proceeded to order his ejectment by treating the land as a public-utility tank. The two conclusions, in the facts of the present case, required reconciliation. Once the petitioner's hereditary tenancy in the disputed land had been judicially recognised, it was incumbent upon the authority invoking Section 212 to establish, by reference to the relevant evidence, that the case nevertheless squarely fell within the statutory conditions of that provision.

18. The mere existence of entries describing the plot as a tank could not substitute for such an enquiry. In particular, the authority was required to consider whether the disputed plot was a tank at the time when the petitioner was admitted as tenant or whether, as asserted by the petitioner and supported by the material arising from the earlier tenancy proceedings, the tank was subsequently constructed by him upon the

tenancy land. This distinction goes to the root of the applicability of Section 212.

19. The legal consequence of the petitioner's established hereditary tenancy at the time immediately preceding vesting also requires consideration. Section 19 of the Act expressly provides that land held immediately before the date of vesting by a hereditary tenant shall, subject to the provisions of the Act and the exceptions contained therein, be deemed to have been settled by the State Government with such person, who would thereby be entitled to retain possession as a sirdar. Section 19 thus recognises the statutory consequence flowing from an existing hereditary tenancy, whereas the applicability of Section 212 depends upon the independent satisfaction of the statutory conditions contained therein.

20. The case of the Gaon Sabha could succeed only upon establishing the statutory conditions necessary for invoking Section 212, notwithstanding the petitioner's adjudicated hereditary tenancy. On the material available on record, the authorities below have not established that the petitioner was admitted as a tenure-holder upon land which, at the relevant time, was recorded as or was a customary tank or other land of public utility within the meaning of Section 212. The subsequent revenue entries describing the plot as a tank, without a satisfactory determination of the nature of the land at the time of the petitioner's admission and the circumstances in which the tank came into existence, were insufficient to sustain the order of ejectment.

21. There is an additional statutory infirmity in the order of ejectment. Section 212 expressly makes ejectment subject to payment of such compensation as may be prescribed. The order of the Sub-Divisional Officer does not disclose any determination or direction regarding such compensation. This constitutes an additional infirmity in the order. However, since the principal conclusion reached herein is that the applicability of Section 212 itself has not been established against the petitioner, it is unnecessary to rest the decision solely on this ground.

22. The Board of Revenue, while allowing the second appeal, failed to examine the aforesaid material aspects and proceeded principally upon the revenue entries describing the disputed plot as a tank. The Board did not adequately consider the legal effect of the earlier decree declaring the petitioner to be a hereditary tenant, the nature of the original settlement, the petitioner's case that the tank was subsequently constructed by him, and the statutory requirements necessary for invoking Section 212. The order dated 1.10.1980 therefore suffers from a material error of law and cannot be sustained.

23. For the foregoing reasons, this Court is of the considered view that the Gaon Sabha failed to establish that the disputed land fell within the mischief of Section 212 of the Act. The petitioner's adjudicated status as hereditary tenant, coupled with the material regarding the nature of the original settlement and his specific case that the tank was subsequently constructed upon the tenancy land, was not displaced by the revenue entries relied upon by the Gaon Sabha.

24. Consequently, the order dated 1.10.1980 passed by the Board of Revenue, U.P. at Allahabad is hereby quashed. The order dated 4.1.1971 passed by the Additional Commissioner, Varanasi Division, Varanasi, allowing the petitioner's appeal is restored. The order dated 29.10.1966 passed by the Sub-Divisional Officer, Varanasi (South), in the proceedings under Section 212 of the Act is set aside. The suit instituted by the Gaon Sabha for ejectment of the petitioner accordingly stands dismissed.

25. The writ petition is, accordingly, allowed.

(Arun Kumar,J.)

August 14, 2026
Anil