

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 390 of 2022

Petitioner :- Nanhe Lal Kanaujia

Respondent :- State Of U.P. Thru Addl Chief Secy Revenue Civil Sectt
Lko And 7 Others

Counsel for Petitioner :- Saryu Prasad Tiwari,Alok Kumar Dixit

Counsel for Respondent :- C.S.C.,Ajay Kumar, Sarvesh Kumar
Shukla,Virendra Singh

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Shri Alok Kumar Dixit, learned counsel for the petitioner, Shri Shailendra Kumar Singh, learned Chief Standing Counsel-II, Shri Yogesh Kumar Awasthi, learned Standing Counsel for the State-opposite parties and Shri Virendra Singh, learned counsel for the private opposite party Nos.6, 7 & 8. However, Sri Ajay Kumar, learned counsel has accepted notice on behalf of opposite party No.5 i.e. the District Basic Education Officer, Hardoi.

2. Notably, this Court has passed a detailed and comprehensive order on 19.12.2022 considering the earlier orders passed by this Court on 05.08.2022 and 29.08.2022 wherein the prayer of the present Public Interest Litigation Petition (here-in-after referred to as the 'PIL') has been considered. Therefore, to understand the grievance of the petitioner which has been considered by this Court in earlier orders, the order dated 19.12.2022 is being reproduced here-in-below:-

"Heard learned counsel for the parties.

The present petition has been filed in the nature of Public Interest Litigation in relation to Gata Nos. 256 and 257 recorded as public utility land in revenue records of Village Tendua, Tehsil- Bilgram, District- Hardoi.

In the petition, it has been stated that the private opposite party Nos. 6 to 8 have destroyed the temple situated in the

village as also raised constructions illegally on the said Gatas and also cut certain trees.

Considering the averments made in the writ petition as also the reliefs sought, this Court on 14.07.2022 directed the State counsel to seek instructions in the matter and thereafter, considering the instructions made available by the officer concerned, this Court on 05.08.2022 directed the District Magistrate- Hardoi to file his personal affidavit and in compliance thereof, the District Magistrate, Hardoi filed his personal affidavit, which was taken on record on 29.08.2022 and on the same date, the petitioner also filed supplementary affidavit and after considering the entire facts and circumstances of the case, this Court on 29.08.2022, passed the following order:-

"Heard.

On 05.08.2022, following order was passed:

"1. Written instructions provided by learned Additional Chief Standing Counsel is taken on record.

2. Heard learned counsel for the petitioner and learned Standing Counsel.

3. The present petition in the nature of Public Interest Litigation has been filed with the following main prayer:-

"(i) Issue a writ, order or direction in the nature of mandamus commanding the Opposite Party Nos.2, 3, 4 and 5 to restrain the Opposite Party Nos.6, 7 & 8 from destroying the temple, cutting the green trees and making illegal constructions of Guesthouse and shops on Gata No.256 & 257-Kha, which are recorded as Public utility land in the revenue record.

(ii) Issue a writ, order or direction in the nature of mandamus directing the Opposite Party Nos.2, 3, 4 & 5 to conduct inquiry against the Opposite Party Nos.6, 7 & 8 with regard to occupy of public utility land."

4. In pursuance of the earlier order dated 14.07.2022, instructions are placed by Mr. Upendra Singh, Additional Chief Standing Counsel, duly signed by Sub Divisional Officer, Tehsildar, Revenue Inspector and Area Lekh Pal, Bilgram, District Hardoi. In the said instructions, it is mentioned that temple in question was 150 years old and said temple was constructed on the Abadi land i.e. Gata No.257-Kha. The Gata No.256 was recorded in the name of Ram

Janki Temple and Gata No.257 is recorded as Abadi, Gata No.253 is recorded as public way and Gata No.235-Kha is recorded as Usar Land. In the said instructions, it is also mentioned that temple in question was situated over Gata No.257-Kha, which was recorded as Abadi, therefore, it was demolished by the Village Pradhan with the intention to construct new Ram Janki Temple at Gata No.256. It is also mentioned that any encroachment is being made by the Village Pradhan by raising his personal building at Gata No.257 and one Lord Shiva Temple is situated over Gata No.257 Kha.

5. It is also mentioned in the aforesaid report that illegal construction of Gyanendra Pratap Singh, present Village Pradhan is found in Gata No.235 Kha recorded as Usar Land, hence, the proceeding for removal of the encroachment has been initiated. It is also mentioned that no any illegal cutting of the tree is found from the land recorded in the name of Gram Sabha and village pradhan has removed some tree situated in Gate No.256. The relevant part of the aforesaid report is reproduced as under:-

“माननीय उच्च न्यायालय इलाहाबाद, लखनऊ खण्डपीठ लखनऊ में योजित रिट याचिका संख्या-390/2022 (पी0आई0एल0) नन्हेलाल कनौजिया बनाम उ0प्र0 सरकार एवं अन्य के अनुपालन में स्थलीय एवं अभिलेखीय सत्यापन किया गया। जांच आख्या निम्नप्रकार है।

राजस्व ग्राम तेन्दुआ परगना मल्लावां व तहसील बिलग्राम की गाटा संख्या-256 (रामजानकी मंदिर), 257ख (आबादी), 235ख (ऊसर) , 255(बाग-सं0भू0), 253(मार्ग), 234(नाला मिल्कियत सरकार) के नाम से ग्राम खतौनी में दर्ज भूमियां हैं (संलग्नक-01)। गाटा संख्या 257/0.051 हे0 पर जो आबादी के नाम दर्ज अभिलेख है पर रामजानकी मंदिर लगभग 150 वर्ष पुराना बना हुआ था, जिसे वर्तमान ग्राम प्रधान द्वारा गिराकर रामजानकी मंदिर के नाम गाटा संख्या 256/0.1120 हे0 पर जो रामजानकी मंदिर के नाम दर्ज अभिलेख है, नया रामजानकी मंदिर बनाया गया है। यह भी अवगत कराना है कि पुराना मंदिर जिस आबादी की गाटा संख्या 257 में बना हुआ था। वहां पर वर्तमान ग्राम प्रधान द्वारा कोई अवैध निजी निर्माण नहीं किया जा रहा है। गाटा संख्या 257 की भूमि में छोटा सा महादेव मंदिर बना हुआ है। गाटा संख्या 257 की शेष भूमि में नवनिर्मित मंदिर के सहन में उपयोग की जा रही है। गाटा संख्या 235 ख (ऊसर) में ज्ञानेन्द्र प्रताप सिंह पुत्र रामजी कनौजिया का पक्का अवैध निर्माण पाया गया, जिसके विरुद्ध उ0प्र0रा0सं0 2006 की धारा 67 के तहत कार्यवाही न्यायालय तहसीलदार बिलग्राम जनपद हरदोई के न्यायालय में कर दी गयी है जिसकी वाद संख्या टी0202210330303532 है। इसके अतिरिक्त उक्त सार्वजनिक उपयोग की भूमियों पर कोई अवैध निर्माण नहीं पाया गया। उक्त सुरक्षित गाटों की भूमि से कोई पेड़ का कटान नहीं हुआ है। गाटा संख्या 255 याची व अन्य सहखातेदारों के नाम सं0भू0 दर्ज अभिलेख है, जिसमें खड़े पेड़ों का कटान हुआ है, जो याची व अन्य सहखातेदारों की निजी भूमि है। काटे गये पेड़ सामान्य श्रेणी के थे। गाटा सं0 253/0.2150 हे0 मौके पर रिक्त है

जिस पर आवागमन सुचारु रूप से संचालित है। नजरी नक्शा संलग्न है।
(संलग्नक-02)

अतः योजित रिट-याचिका के सम्बन्ध में यथा न्यायोचित कार्यवाही किये जाने हेतु अनुदेश सेवा में सादर प्रेषित है।”

6. *Considering the arguments of learned counsel for the petitioner as well as going through the contents of the instructions placed by the learned Additional Chief Standing Counsel, the District Magistrate, Hardoi is directed to file his personal affidavit replying the pleading of writ petition, within one week.*

7. *List this case on 29.08.2022 as fresh for further order."*

In compliance of the order of this Court dated 05.08.2022, personal affidavit of the District Magistrate has been filed by the learned counsel for the State, which is taken on record.

Counter affidavit filed by the learned counsel for the opposite party No.5 is also taken on record.

Considering the instructions quoted in the order dated 05.08.2022 and the avements made in the personal affidavit of the District Magistrate related to Gata No. 257 it is provided that till pronouncement of orders, parties are directed to maintain status-quo regarding Gata Nos. 256 and 257.

It is further directed that no construction shall be raised over the aforesaid Gata(s) by the parties to the proceedings and the District Magistrate is directed to ensure compliance of this order."

After the aforesaid order(s), this Court, on a query being put in Public Interest Litigation No. 560 of 2022 (Sukroo And Another v. State of U.P. and Others) related to District- Barabanki, was apprised that 4,675 cases of encroachment are pending in District- Barabanki itself.

Considering the aforesaid as also the pervasive problem of encroachment over public utility land in entire State of U.P., this Court is of the view that the officers of the State should be sensitised and also be apprised regarding the view of the Hon'ble Apex Court as also of this Court on the issue of illegal encroachment and eviction of encroachers from the Government land.

*In the case of **Hinch Lal Tiwari v. Kamala Devi**, [2001 S.C. 3215], the Hon'ble Apex Court observed as under:-*

"12. On this finding, in our view, the High Court ought to have confirmed the order of the Commissioner. However, it proceeded to hold that considering the said report the area of 10 biswas could only be allotted and the remaining five biswas of land which have still the character of a pond, could not be allotted. In our view, it is difficult to sustain the impugned order of the High Court. There is concurrent finding that a pond exists and the area covered by it varies in the rainy season. In such a case no part of it could have been allotted to anybody for construction of house building or any allied purposes.

13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.

14. For the aforementioned reasons, we set aside the order of the High Court, restore the order of the Additional Collector dated 25-2-1999 confirmed by the Commissioner on 12-3-1999. Consequently, Respondents 1 to 10 shall vacate the land, which was allotted to them, within six months from today. They will, however, be permitted to take away the material of the houses which they have constructed on the said land. If Respondents 1 to 10 do not vacate the land within the said period the official respondents i.e. Respondents 11 to 13 shall demolish the construction and get possession of the said land in accordance with law. The State including Respondents 11 to 13 shall restore the pond, develop and maintain the same as a recreational spot which will undoubtedly be in the best interest of the villagers. Further it will also help in maintaining ecological balance and protecting the environment in regard to which this Court has repeatedly expressed its concern. Such measures must

begin at the grass-root level if they were to become the nation's pride."

*In the case of **Panna Lal vs Dm Gautam buddh nagar [2009 (108) S.C. R.D. 481]**, the Hon'ble Apex Court observed as under:-*

"In these circumstances, the Principal Secretary to Government of U.P., Revenue Department, State of U.P. is hereby directed to issue necessary directions to all the District Magistrates of the State of Uttar Pradesh to ensure that the encroachments on Chakroads, Drains and other Public utility lands etc. are removed immediately after Survey and regular spot inspection by the Revenue authorities. The District Magistrates of the Districts shall direct the Sub Divisional Magistrates or the Assistant Collectors to act instantly on receiving the complaints regarding encroachments on Chakroads, Drains and Public utility lands etc. and remove the encroachments on Chakroads, Drains and Public utility lands etc. immediately by making spot inspections and after going through the relevant records. The District Magistrates shall also direct the Sub Divisional Magistrates and Assistant Collectors to decide the disputes/complaints regarding encroachments within a month from the date of receipt of such applications/complaints from any corner and take stringent and strict action with the help of the Police to remove the encroachments. The Sub Divisional Magistrates and the Assistant Collectors shall also make necessary and effective arrangements to stop future encroachments on Chakroads, Drains and Public utility lands by keeping constant vigil."

*In the case of **Jag Pal Singh vs State of Punjab and Others [2011 S.C. 1123]**, the Hon'ble Apex Court observed as under:-*

"22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorised occupants of the Gram Sabha/Gram Panchayat/poramboke/shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show-cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political

connections must not be treated as a justification for condoning this illegal act or for regularising the illegal possession. Regularisation should only be permitted in exceptional cases e.g. where lease has been granted under some government notification to landless labourers or members of the Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land."

*In the case of **Om Prakash Verma v. State of U.P., [2014 (5) A.D.J. 427 (DB)]**, this Court observed as under:-*

"20. Thus, in case of failure by the land management committee or local authority to take action in accordance with Section 112-B, the Collector is duty bound to call upon the person concerned by issuing notice to refrain for causing damage or misappropriation, or to repair the damage, or to make good the loss or remove wrongful occupation and to pay damages in case of illegal occupation. The Collector has been empowered to act under Rule 115-D on an application by the Chairman and Member of Secretary of the Land Management Committee or on a report made by the Lekhpal under sub-rule (3) of Rule 115-C, or on the report of local authority concerned or its official or on facts otherwise coming to his notice. Thus, the provision contained in Rule 115-D (d) is wide enough to permit any person to move application to the Collector for removal of unauthorized occupation from the gaon sabha land.

21. On a combined reading of Section 122-B, Rule 115-C and Rule 115-D, we have no hesitation to hold that U.P.Z.A & L.R. Act and Rules contain an adequate and appropriate procedure and statutory mechanism to take action not only to evict the illegal occupants from gaon sabha land but also to refrain any person from misappropriation and wrongful occupation of all gaon sabha lands.

23. We have also come across in various cases, the fact that even where after conclusion of the proceedings under Section 122-B of U.P.Z.A & L.R. Act, the orders for eviction and recovery of compensation for damages or misappropriation of gaon sabha land have been passed by the authorities concerned, the said orders are lying unattended and the same are not being executed. We cannot appreciate such state of affairs.

24. *In view of the discussions made and reasons given above, the instant bunch of writ petitions is disposed of in the following terms:-*

1. *The District Collectors and other revenue authorities of the district shall ensure that the statutory duty cast on the Land Management Committee and the local authority under Section 122-B (1) of U.P.Z.A. & L.R. Act and Rule 115-C (1) and (2) of the U.P.Z.A & L.R. Rules is attended to in all seriousness.*

2. *The District Collectors shall ensure that Lekhpal of the area concerned attends his duty cast on him under sub-rule (3) of Rule 115-C of U.P.Z.A & L.R. Rules, inasmuch as, the Lekhpal will report to the Collector through Tehsildar all cases of wrongful occupation of damage to; or misappropriation of the wrongful occupation of the gaon sabha property as soon as they come to his notice and in any case after the conclusion of Kharif and Rabi Partal every year.*

3. *The District Collectors shall also ensure that Tehsildar of the area concerned shall satisfy himself in the month of May every year that each Lekhpal has submitted reports as envisaged under sub-rule (3) of Rule 115-C of U.P.Z.A & L.R. Rules.*

4. *The District Collectors are also directed to take action in accordance with the provision of Rule 115-D in case of failure on the part of Land Management Committee or the local authority, as the case may be.*

5. *The Assistant Collector, within whose jurisdiction any illegal occupation or damage or misappropriation of gaon sabha land is reported, shall immediately institute the proceedings and conclude the same in accordance with law. The Assistant Collector (who in accordance with para 315 of Revenue Manual is the Tehsildar of the area concerned) shall not only institute the proceedings on information received/application made under Section 122-B (1) of U.P.Z.A & L.R. Act by Land Management Committee or the local authority concerned but will also act on an application moved otherwise by any person alleging therein illegal occupation on and damage caused to gaon sabha land and will conclude the same in accordance with law with expedition.*

6. *The District Collectors are also directed to ensure that once the order for eviction or payment of compensation as damages is passed, the same is executed at the earliest, in*

appropriate cases by using such force as may be necessary. Realization of the amount of compensation for damage, misappropriation or wrongful occupation of gaon sabha land shall also be made from the person concerned as arrears of land revenue expeditiously.

7. So far as the illegal possession of the housing sites allotted to the individuals is concerned, we may refer to the provision contained in Section 122-D, which provides a complete procedure for restoration of possession of land allotted to any person for the purposes of building of house and on such land any person other than the allottee is in occupation. Under Section 122-D, as well, the Assistant Collector has been empowered to take action for restoration of the possession to the allottee of the land allotted for housing purpose, if the same is in illegal occupation of any other person.

8. Sub-section (2) of Section 122-D of U.P. Z.A. & L.R. Act provides that a person having been once evicted under Section 122-D (1) is liable to be punished with imprisonment for a term which may extend to two years and which shall not be less than three months and also with fine which may extend to three thousand rupees. Thus, in case any person re-occupies the land allotted as housing site, after once being evicted, he can be proceeded against by launching criminal prosecution under Section 122-D (2) of the Act. The District Collectors shall ensure that besides eviction proceedings under Section 122-D, criminal proceedings are also instituted against such persons.

25. In view of aforesaid observations/directions, all the writ petitions are finally disposed of with a further direction to the District Collectors and other revenue authorities of the district to take appropriate action and to act in accordance with the observations made in this judgment and the provisions contained in U.P. Z.A. & L.R. Act and the Rules framed thereunder. The mechanism evolved under the Government Orders referred to hereinabove for monitoring the eviction proceedings and implementation of the orders of eviction shall continue."

*In the case of **Jagat narain and Others vs State of UP and Others [2015 (3) A.W.C. 2579]**, this Court observed as under:-*

"29. With respect, we find that the view of the learned Single Judge holding that an order for eviction can be substituted by

an order for the payment of damages in lieu of eviction is not consistent with law. In Budhaee (supra), the learned Single Judge was of the opinion that if on a "small portion" of 100 to 200 sq. metres of land belonging to the Gaon Sabha, a person has constructed his house and the land is not reserved for any other public purpose and the house is in existence for long time, it would not be proper to direct eviction of the occupant. In Sukhdeo (supra), the learned Judge observed that if a person is in possession for more than 12 years, instead of eviction, an award of damages would be the appropriate relief. In Siya Ram (supra), the view of the learned Single Judge was that if the petitioner or any other person, who is a party to the proceedings, has constructed a house over a small portion of the land ad-measuring about 200 to 300 sq. mts. and the house is in existence for about 10 years, the Court may consider settling of the land over which the house is constructed by the occupant, on payment of market value of the land at the time of occupation. We have already indicated our reasons for disapproving this statement of law in the judgments of the learned Single Judge. The Act has not contemplated any such period nor has the Act carved out any such category in sub-section (4-F) of Section 122-B.

30. For these reasons, we answer 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.

31. 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."

*In the case of **Dayaram Yadav and Others vs State of UP and Others, 2016 (6) A.D.J. 275 (DB)**, this Court observed as under:-*

"5. Hence, we are of the view that within a period of one month from today, the Principal Secretary (Revenue) shall take all necessary steps to circulate a copy of the judgment and order of this Court dated 28 May 2014 and this judgment to all the District Collectors. The problem shall be addressed at various levels. Firstly, where there are complaints of unauthorized encroachments, these complaints must be duly registered by the District Collectors and steps have to be initiated to deal with the encroachments on public utility lands in accordance with law. In order to ensure transparency in administration, the Principal Secretary (Revenue) will formulate guidelines that would ensure that all complaints of unauthorized encroachments are registered. The details of the complaints must be maintained in a manner which is open for public inspection so that citizens are enabled to know the fate of the complaints and the proceedings which have been initiated. Secondly, the process of initiating proceedings under Section 67 must be streamlined so that the complaints are enquired into expeditiously and proceedings are adopted with due process of law and are concluded without delay. The circular shall also make provision for laying down time lines for redressal of complaints, completion of enquiries and steps to be taken for enforcement. The Principal Secretary (Revenue) is directed to highlight the mandate of Rule 67 (6) referred to above. Thirdly, where orders have been passed under Section 67 (or as the case may be in earlier proceedings under Section 122-B), it is necessary that compliance of orders should be duly made under the applicable provisions of law.

6. Non-enforcement of orders under Section 122-B or, as the case may be, under Section 67 is also a serious matter since it

amounts to dereliction of duties on the part of the administration to enforce compliance of the orders for the removal of unauthorized encroachments. Undoubtedly, the persons who are affected by proceedings and orders, are entitled to pursue their rights and remedies in accordance with law. Hence, when these issues repeatedly come before this Court, a direction is issued for the purpose of verifying whether the order continues to hold the field or is subject matter of any other proceedings before a revisional forum. Where stay has been granted and where revisional remedies are pursued, the matter must be brought to expeditious conclusion. These guidelines which we have laid down, in addition to those of the judgment of the Division Bench in Om Prakash Verma (supra), are by way of guidelines to the Principal Secretary (Revenue) who is the head of the administration in such matters and matters pertaining to revenue. We now expect that the Principal Secretary shall duly apply his mind, preferably within a period of two months from today of the need to lay down a complete plan of action to ensure accountability on the part of the district administration and to ensure transparency in governance. The State is passing through a severe drought as a result of depletion of groundwater resources. Much of this situation is a result of rampant encroachments of the spaces which are earmarked for public utility purposes, including green areas, pasture lands and ponds etc. Unless serious steps are taken to remedy the situation, the situation will become more serious than the present.

7. In these circumstances, this Court would be constrained to reiterate the guidelines which were issued in Om Prakash Verma (supra) and to further direct the State to strengthen the procedure for enforcement so as to secure the interest of the public.

8. Insofar as the two lists (Annexure-14 and 15) are concerned, we direct the Collector and District Magistrate to cause a due verification of the facts which are set out in the writ petition. Where proceedings are pending, they shall be concluded expeditiously. Where orders have been passed and are awaiting enforcement, the district administration shall take necessary steps in accordance with law after verifying that the orders continue to hold the field and have not been stayed or modified by any higher forum."

In the case of Ram Laut vs State of U.P. and Others [2016 (34) L.C.D. 2458], this Court observed as under:-

"8. Without entering into merits of the case, am of the considered view that the petitioner being complainant cannot be necessary or proper party in the proceedings initiated under section 122-B U.P.Z.A.&L.R. Act or the revision preferred thereafter and on that basis file the instant writ petition. He cannot be said to be a "person aggrieved"."

In the case of Ram Bihari Dwivedi vs State of U.P. and Others [2017 (135) RD 156], this Court observed as under:-

"15. It is settled law that a valid survey must necessarily be made on the basis of fixed points. No fixed points are mentioned either in the report or in the map prepared after the alleged survey. Moreover, the map does not contain any measurements. The report therefore was not in accordance with law and could not be the basis of the impugned order.

16. Accordingly, I set aside the impugned order dated 02.06.2006 and remand the matter back to the revisional Court, the Chief Revenue Officer to ensure that a proper survey is conducted on the basis of fixed points and after recording the measurements made during the survey, in the map.

21. Writ petition no. 37953 of 2006 is allowed and the matter is remanded to the Chief Revenue Officer to proceed in accordance with the directions contained in the body of the judgment."

In the case of Sri Raju vs State of U.P. and Others [2020 (38) LCD 398], this Court observed as under:-

"14. Merely because a person lower in order of preference has encroached upon Gaon Sabha land, he cannot and should not be granted the benefit of Section 67A unless and until he is in a position to establish categorically that a person higher in preference is not available in the village. Any other interpretation of Section 67A would result in great injustice as an unauthorized occupant would be liable to be granted its benefit only on account of him or her having illegally encroached upon Gaon Sabha property, despite other needier and persons higher in preference being available in the village.

15. Therefore, and for the reasons given above, this Court is constrained to hold that not only is the land in issue in this

writ petitions not land governed by Section 63 of the Code, as it has not been reserved for allotment as abadi site, the petitioners are also, prima facie, not eligible to the benefit of Section 67A as their applications are bereft of necessary pleadings. Therefore on both counts the benefit of Section 67A cannot be extended to the petitioners."

*In the case of **Ghanshyam Verma vs State of U.P. [2021 (39) LCD 2021]**, this Court observed as under:-*

"20. In the present case the proceedings were drawn against the opposite party No. 5 with respect to 'Naveen Parti' land which is vested in Gaon Sabha, however, the notice was withdrawn on the ground that the opposite party No. 5 did not encroach over the land. Every member of Gram Panchayat has a right of user over Gaon Sabha land subject to the provisions of law in this regard, which is for the benefit of its members. It is also the duty of every member not only not to encroach but also to see that it is not encroached upon by others to protect the interest of the Gaon Sabha. The petitioners being members of the Gaon Sabha and the land being 'Naveen Parti' vested in Gaon Sabha, which they allege to have been encroached upon would be 'person aggrieved' from the order of the Assistant Collector by which the notice issued to the alleged encroacher has been withdrawn as by encroachment of Gaon Sabha land the benefits which the members of the Gaon Sabha may be legally entitled to receive, would be deprived of that entitlement."

In view of the aforesaid, the Principal Secretary/Additional Chief Secretary, Revenue, shall file an affidavit within eight weeks on the following points:-

- (i) The number of pendency of cases pertaining to encroachment of Gaon Sabha land in entire state of U.P. and the total area involved therein.*
- (ii) The reasons for not deciding the pending cases, related to encroachment, instituted after enforcement of U.P. Revenue Code, 2006 in stipulated time i.e. 90 days provided under U.P. Revenue Code Rules, 2016 framed under U.P. Revenue Code, 2006 as also the reasons for not concluding the proceedings of cases of the same nature instituted under the provisions of U.P. Z.A.& L.R. Act and Rules made thereunder.*
- (iii) The suggestions related to early disposal of cases pertaining to encroachments.*

(iv) What action has been taken against the erring revenue officials for not taking proper action regarding the encroachments over Gaon Sabha/Public Utility Land in due time.

For the aforesaid, the Principal Secretary/Additional Chief Secretary, Revenue is expected to take note of the relevant statutory provisions viz. Sections 122B(1) and 122D(1) of U.P. Z.A.&L.R. Act; Rule(s) 115A(1), 115C, 115D, 115F and 115J of U.P. Z.A.&L.R. Rules; Rule 47 of Panchayat Raj Rules; Chapter II, Chapter A-V and Chapter XXXVII of Land Record Manual; Section 60, 61 and 67 of U.P. Revenue Code, 2006 read with the Rules framed thereunder, Governments Orders on the issue and also the judgments, referred above.

So far as the interim order dated 29.08.2022 passed by this Court is concerned, the same is modified in following terms:-

(i) No further damage shall be caused to Old Ram Janki Temple.

(ii) Construction of New Ram Janki Temple be completed as per the norms settled under the supervision of Sub Divisional Magistrate, Tehsil- Bilgram, District- Hardoi.

(iii) A detailed enquiry be conducted regarding demolition of Old Ram Janki Temple by District Magistrate and submit the report to this Court by the next date of listing.

(iv) District Magistrate shall also apprise this Court about the feasibility of restoration/construction of Old Ram Janki Temple.

(v) The Revenue Officials shall not permit any encroachment over the Gatas, in issue.

List/put up this case on 15.02.2023 within top five cases.

Senior Registrar of this Court is directed to send a copy of this order to the Chief Secretary, State of U.P."

3. In compliance of the directions of this Court issued in the order dated 05.8.2022, the District Magistrate, Hardoi has filed a personal affidavit on 29.08.2022. Further, the District Magistrate, Hardoi has also filed a short counter affidavit dated 15/16.02.2023 to apprise the Court that the directions being issued by this Court in the present PIL have been followed in its letter and spirit. Besides, the relevant documents/ revenue records and the coloured photographs of the site in question have been

filed to show the bonafide of the Competent Revenue Officers/ Officials. Not only the above, the personal affidavit of the Principal Secretary, Department of Revenue, Government of U.P., Lucknow has been filed on 16.02.2023. Thereafter, one short counter affidavit of the Principal Secretary of the Department of Revenue, U.P., Lucknow has been filed on 22.03.2023 to demonstrate that the Department of Revenue has complied with the directions of this Court issued vide order dated 19.12.2022 in its letter and spirit enclosing therewith the copy of report thereof from all the Districts of Uttar Pradesh, Government Orders and the orders being issued by the Board of Revenue etc.

4. Besides, the District Basic Education Officer, Hardoi has filed counter affidavit on 28.08.2022 and the private opposite party Nos.6, 7 & 8 have also filed their counter affidavit on 14.02.2023.

5. Having perused the PIL, personal affidavits, short counter affidavit and the counter affidavits viz-a-viz enclosures which have been annexed with those affidavits and the contentions of learned counsel for the parties, it would be apt to observe that the prayers prayed in the instant PIL are appearing to have public interest at large but after considering the counter affidavit of the private opposite party Nos.6, 7 & 8 wherein the recital has been given that the present PIL has been filed having ulterior motives and extraneous design inasmuch as having grievance pitches up of private nature the present PIL has been filed, therefore, I would first examine the aforesaid aspect.

6. In para-4 of the PIL, the petitioner has stated that he has no personal or private interest in the matter and the result of the PIL would not lead any undue gain to him or anyone associated with him, but para-22 thereof indicates about Gata No.s234, 256, 257-Kha and 255 which are allegedly the public utility land, however, in the first prayer the Gata Nos. i.e. 256 & 257-Kha have been said to be a public utility land. Therefore, from bare perusal of the contents of the PIL it is not clear that as to why other than Gata Nos.234 & 255 have been indicated in para-22 of the PIL. As per copies of the Khatauni annexed with the PIL as Annexure Nos.3, 4 & 5

which have been indicated in para-22 and the ground No.(viii) of the PIL Gata No.255 is not a public utility land, therefore, it is unable to comprehend as to why the Gata No.255 has been indicated in the PIL.

7. Learned counsel for the private opposite party Nos.6, 7 & 8 has indicated in paras-4 & 5 of the counter affidavit that the present PIL has been filed by the petitioner so as to safeguard his property situated at Gata No.255 enclosing therewith the copy of the civil suit filed for permanent injunction bearing Civil Suit No.32 of 2022,, pending before the court of Civil Judge, Senior Division, Hardoi, therefore, it has been stated that the present PIL may not be treated as PIL but it has been filed in a personal interest of the petitioner. It has also been indicated in the counter affidavit that the Gata No.255 is recorded in the name of the petitioner. The Gata No.256 is recorded as Ramjanki Mandir and Gata No.257-Kha is recorded as Abadi and Purana Mandir in the revenue record.

8. Further attention has been drawn towards copy of the Civil Suit (Annesure No.1 of the SCA) wherein the present petitioner is plaintiff No.2 whereas the private opposite party Nos.6, 7 & 8 of this PIL are the defendant Nos.1, 2 & 3 of the aforesaid suit. The subject matter of the aforesaid suit is Gata No.255 wherein the petitioner and other plaintiffs prayed that the decree be issued against the defendant Nos.1, 2 & 3 (the opposite party Nos. 6, 7 & 8 of the present PIL) restraining them not to cut the old trees standing on the aforesaid gata number and not to demolish the shops constructed on the aforesaid gata.

9. Learned counsel for the private opposite party Nos.6, 7 & 8 has stated that recital to this effect has not been given in the PIL. However, in paras-20 to 22 of the PIL the petitioner has given recital to the effect that the opposite party Nos.6 7 & 8 are illegally cutting down the green trees without any permission of the Competent Authority which were standing on the public utility land. The petitioner has stated that the Gata Nos.234, 256, 257-Kha and 255 are the public utility land. The specific grounds to that effect have been taken in this PIL vide ground Nos. (v) to (vii). Therefore, it is clear that the petitioner has indicated some facts in the PIL

which have been indicated in a civil suit but it has not been indicated in the PIL that he has filed any civil suit which is pending consideration before the Civil Judge, Senior Division, Hardoi. In view of the above, the present PIL may not be said to have been filed in a bonafide manner but it is an outcome of malafide intention of the petitioner having ulterior motives and extraneous design in his mind to file this PIL concealing relevant facts.

10. Having considered the aforesaid facts and circumstances, I would like to refer para-10 of the dictum of Apex Court rendered in the case in re: ***Gurpal Singh vs. State of Punjab and others*** reported in (2005) 5 SCC 136, which reads as under:-

"10. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

11. Further, the Apex Court in its very well celebrated judgment rendered in re: ***State of Uttaranchal vs Balwant Singh Chauhal and others*** reported in (2020) 3 SCC 402 has considered the finer aspects relating to the PIL and has observed that the PIL which has been filed

having ulterior motives and extraneous design must be dismissed. Paras-143, 144, 145, 170 & 180 are being reproduced here-in-below.

"143. Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure its abuse on the basis of monetary and non-monetary directions by the courts.

"144. In BALCO Employees' Union (Retd.) v. Union of India & Others, (2002) 2 SCC 333: AIR 2002 SC 350, this Court recognized that there have been, in recent times, increasing instances of abuse of public interest litigation. Accordingly, the court has devised a number of strategies to ensure that the attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. Firstly, the Supreme Court has limited standing in PIL to individuals "acting bonafide." Secondly, the Supreme Court has sanctioned the imposition of "exemplary costs" as a deterrent against frivolous and vexatious public interest litigations. Thirdly, the Supreme Court has instructed the High Courts to be more selective in entertaining the public interest litigations.

145. In S. P. Gupta v. Union of India, 1981 Supp SCC 87, this Court has found that this liberal standard makes it critical to limit standing to individuals "acting bona fide. To avoid entertaining frivolous and vexatious petitions under the guise of PIL, the Court has excluded two groups of persons from obtaining standing in PIL petitions. First, the Supreme Court has rejected awarding standing to "meddlesome interlopers". Second, the Court has denied standing to interveners bringing public interest litigation for personal gain.

170. In Dattaraj Nathuji Thaware v. State of Maharashtra (2005) 1 SCC 590, this court again cautioned and observed that the court must look into the petition carefully and ensure that there is genuine public interest involved in the case before invoking its jurisdiction. The court should be careful

that its jurisdiction is not abused by a person or a body of persons to further his or their personal causes or to satisfy his or their personal grudge or grudges. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

180. In our considered view, now it has become imperative to streamline the PIL."

12. In view of the facts and circumstances of the present PIL as considered above as well as the dictums of Apex Court in re: Gurpal Singh (supra) and Balwant Singh Chaufal (supra), I find that the present PIL has not been filed in a bonafide manner inasmuch as the relevant facts have been concealed and it appears that so as to settled the private score with the private opposite parties the petitioner has filed the present PIL, therefore, the present PIL is liable to be dismissed on the aforesaid ground alone. However, before filing the counter affidavit by the private opposite parties on 14.02.2023 this Court has passed a detailed order on 19.12.2022 (supra). Not only the above, in a personal affidavit of the District Magistrate, Hardoi dated 29.08.2022 the fact that any civil suit between the petitioner and the private opposite parties is pending consideration has not come into the notice of this Court, however, it has been indicated that Gata No.255 is not a public utility land but the aforesaid gata is recorded in the name of the petitioner and other co-tenure holders in the revenue record and this fact may be ascertained from Form CH-41 & CH-45 also. Therefore, the fact that one civil suit between the petitioner and the private opposite parties is pending consideration has come to the notice of this Court when the private opposite parties have filed their counter affidavit on 14.02.2023.

13. Since the aforesaid relevant fact was concealed, therefore, this Court has not observed anything regarding the aforesaid fact in its detailed orders dated 05.08.2022, 29.08.2022 and 19.12.2022. However, in compliance of the orders of this Court the appropriate steps have been taken by the Competent Revenue Officers i.e. the Principal Secretary, Revenue and the District Magistrate, Hardoi and those proper steps being taken by the Principal Secretary, Revenue are, of course, in the public

interest and those steps would definitely be beneficial for the public interest at large viz-a-viz for the public utility land of the Gaon Sabhas of the entire Uttar Pradesh. Therefore, those proper steps would necessarily be made part of this order so that any illegal encroachment on any public utility land of the Gaon Sabha concerned be vacated/ removed in the light of those modalities and if any Competent Revenue Officer/ Official does not discharge his/ her duties strictly in terms of law as prescribed under the U.P. Revenue Code, rules thereof and the other statutory prescriptions relating to revenue / land laws, suitable and appropriate action may be taken against those erring officers/ officials.

14. Even though the malafide conduct of the petitioner of the PIL concealing the relevant fact convinces the Court to dismiss the PIL with the costs but if the present PIL is dismissed with costs, the appropriate and needful steps which have been taken by the State of U.P. to ensure that the public utility land of the Gaon Sabhas of the entire Uttar Pradesh is free from the encroachments and the same be existed in a same manner as has been indicated in the revenue record, would be frustrated and the Competent concerning Revenue Officers/ Officials would think that the PIL in question has already been dismissed, therefore, there is no need to abide by any of the directions issued in the aforesaid PIL. Therefore, instead of dismissing the instant PIL with costs for the reasons indicated here-in-above, I am finally disposing of this PIL considering the proper and appropriate steps which have been taken on behalf of the State of U.P. making those steps, modalities and informations as a part of this order so that in future those steps etc. be considered as an example and instances. Besides, further directions which are being issued in this order shall also be followed in its letter and spirit.

15. In the short counter affidavit of the District Magistrate, Hardoi dated 15/16.02.2023, it has been categorically indicated that in compliance of the order dated 19.12.2022 the District Magistrate, Hardoi constituted a Team on 23.12.2022 under the Chairmanship of the City Magistrate, Hardoi with other members i.e. the Sub-Divisional Magistrate,

Bilgram, Additional/ Incharge Officer Record Room, Consolidation Officer, Hardoi and the Circle Officer, Bilgram. The aforesaid team submitted the consolidated report on 08.02.2023. During investigation/ inquiry by the aforesaid team, the petitioner was asked to remain present at the time of investigation/ inquiry on 27.01.2023 and 06.02.2023 and the petitioner was present before the aforesaid Team. The aforesaid Team has submitted their exhaustive report on 08.02.2023. As per the aforesaid report, during spot inspection it was found that the said temple was already completely destroyed before filing the instant PIL for the reason that there was one huge Baniyan tree near the wall of the temple and huge branch of the aforesaid tree fell on the roof of the temple two years ago, resultant thereof, the roof and wall of the temple were damaged and an attempt was made to repair and improve the same but due to excessive damage the temple might collapse at any time. Therefore, due to fear of any loss of life a new temple was constructed after a meeting of Gaon Sabha and on suggestions of many villagers all of Idols and Deities were repaired. The aforesaid temple completely belongs to the Gaon Sabha. No illegal possession over the temple or any part of the temple or any part of gata over which the temple is situated has been found. There are some shops constructed on such gata to sell out the 'Prasad and Puja Samagri' which were being tried to be encroached by the petitioner for the reason that the temple fence and the petitioner's garden are one in fence. Therefore, it was easy for the petitioner to encroach the shops of the temple. However, after the order passed by this Court the status-quo has been maintained on the spot.

16. As per the report dated 08.02.2023, at present the Gata No.256/0.122 hectare is recorded as Ram Janki Temple. On partial part of the said land i.e. 0.0270 hectare (15 mts. in North, 15 mts. in South, 15 mts. East and 25 mts. West) the new building and Dharmshala are partially built. Rest of the Raqba is being used as Temple.

17. In the same way, the Gata No.257-Kha/0.051 hectare is recorded as abadi land. On 6x3 mts.=0.001 hectare of the said land there is Shiv

Temple (Old Shiv Temple) and on 4.40x1.5 mts = 0.0006 hectare there is new platform built and on which idols of deities are installed. Adjacent to this, there is a room of area 5.50 x 4.40 mts. = 0.0024 hectare. Rest of the raqba is in use as Temple building. In addition to this, on 0.0165 hectare (12 mts. West, 16 mts. East, 15 mts. North and 8.5 mts. South) of Gata No.257-Ka/0.0510 hectare, new building of Ram Janki Temple and Dharamshala are partially built. Rest of raqba is in use as Temple building.

18. As per the aforesaid report, the petitioner gave his statement during inspection on 27.01.2023 and 06.02.2023, as copies of his statement have been enclosed with the short counter affidavit. He has stated that the old Ram Janki Temple is 150-200 years old and the said Temple was encroached by the Gram Pradhan and his brother and they raised constructions also by raising shops etc. The said constructions were stopped after the order of this Court. The new Temple has been build on the land of Shri Ram Janki Temple which has been named after death of his father late Ramji. This Ram Janki Temple was 150-200 years old and the Temple was built in a strong condition, which was demolished by the present Village Pradhan Satyendra Pratap Singh S/o late Ramji Kanojia and his two brothers, namely, Ramendra Pratap Singh and Gyanendra Pratap Singh from March, 2022. It has been demolished, its debris has been deposited in Gata No.258 of the pond and all the tree in Gata No.257 have been cut. The private shops and other walls have been erected by the Village Head and his two brothers for their selfishness, should be removed from here on the said land of the old Temple and after recovering money from these people, the government money will be used for the same. The Temple should be constructed accordingly.

19. During inspection, it came to notice that the old dilapidated Temple was demolished by the Village Head without obtaining permission from the government and a new Temple was constructed without informing the District Administration. The aforesaid act of the Village Head was considered against the provisions of U.P. Panchayat Raj Act, 1947,

therefore, the Government Order issued in this regard, for which notices under Section 95 of the U.P. Panchayat Raj Act has been issued against Sri Sachendra Singh. Copy of the notice has been annexed with the short counter affidavit.

20. Gata No.256/0.1120 hectare and Gata No.257-Kha/0.0510 hectare are a public utility land. Without the proposal of Land Management Committee it was completely unfair to do the constructions work on them and the then Area Lekhpal and the Revenue Inspector did not provide any information in his regard to the Tehsildar, Bilgram and the Sub-Divisional Magistrate, Bilgram for which the then Lekhpal and Revenue Inspector have been found guilty and adverse entry was given to the then Area Lekhpal Mr. Bandhu Lal and stern warning was given to the then Incharge Revenue Inspector Mr. Makrand Prasad Verma. The show cause notice has been issued to the Tehsildar, Bilgram and Sub-Divisional Magistrate, Bilgram for laxity and discharging the supervisory responsibility.

21. As per the aforesaid report, after 29.08.2022 no new construction has been done on the aforesaid gata numbers. Since some part of Gata No.234 has been illegally encroached by the son of opposite party No.8, the Tehsildar, Bilgram has initiated proceedings against him under Section 67 of the U.P. Revenue Code, 2006 and the order has been passed on 06.02.2023 on merits. Further, in the entire district of Hardoi the required exercised under Section 67 of the Code, 2006 and Section 122-B of U.P. Zamindari Abolition & Land Reforms Act, 1950 has been undertaken by instituting total 1529 cases for removal of illegal encroachment on 137.1665 hectare land of Gaon Sabha and strict directions have been issued to all the Tehsildars to decide those cases within the prescribed time of 90 days. Photographs are annexed with the short counter affidavit.

22. Therefore, learned Chief Standing Counsel has stated that in fact the prayers so prayed in the present PIL have been satisfied and the instant PIL has now been rendered infructuous.

23. However, further attention has been drawn towards the personal affidavit and short counter affidavit of the Principal Secretary, Department of Revenue, U.P. dated 16.02.2023 and 22.03.2023 respectively to apprise that some more decisions have been taken in compliance of order of this Court dated 19.12.2022 (*supra*) to streamline the Competent Revenue Officers/ Officials to discharge their respective duties to removed the illegal encroachments over the public utility land of Gaon Sabhas of entire Uttar Pradesh. Those modalities and required steps are made part of order as under:-

"7. So far as the early disposal of the cases pertaining to encroachments are concerned, the State Government and the Board of Revenue Authorities are reviewing the pending revenue cases for their expeditious disposal on merits. Also several directions have been given to the Commissions and the District Magistrates to monthly review the case status in various revenue Courts under their jurisdiction.

A. The Government Order dated 27.03.2018, copy of which is being annexed as Annexure No.CA-5 to this affidavit. Commissioners and the District Magistrates to review the case status in various revenue courts coming under their jurisdiction.

B. Board of Revenue order dated 18.09.2018 and Government Order dated 28.12.2021, copy of which are being annexed as Annexure No.CA-6 & CA-7 to this affidavit. Direction to all the District Magistrates for expeditious disposal and review of matters pertaining to Section 67 and Section 34 of the U.P. Revenue Code, 2006.

C. Board of Revenue order dated 09.09.2022, copy of which is being annexed as Annexure No.CA-8 to this affidavit. Direction to the Commissioners and the District Magistrates of all the districts to review the case status in various revenue courts coming under their jurisdiction. To identify officers who are not disposing the revenue cases in time bound manner and to give adequate entries in the ACR of the officer concerned.

D. Board of Revenue order dated 18.11.2022, copy of which is being annexed as Annexure No.CA-9 to this affidavit and the Government Order dated 26.12.2022, copy of which is being annexed as Annexure No.CA-10 to this affidavit.

Direction to the Commissioners and the District Magistrates of all the districts to inspect revenue courts in their jurisdiction.

E. Board of Revenue order dated 12.12.2022, copy of which is being annexed as Annexure No.CA-11 to this affidavit. Direction to the District Magistrates of all the districts to review in the end of November, 2022 and to ensure the expeditious disposal of cases on merits by Presiding Officer.

8. So far as the action taken against the erring Revenue Officials is concerned, it is submitted that the Commissioners and the District Magistrates of all the districts have been directed for expeditious disposal of revenue cases on merits. It is also submitted that required information regarding the erring Revenue Officials has been sought vide letter dated 19.01.2023 and so far information from 14 districts have been received, detailed information from each district has been enclosed with this affidavit. Reminder letter dated 10.02.2023 has also been sent to all the districts for providing required information in pursuance of the order dated 19.12.2022."

24. The aforesaid information has been supplied through personal affidavit of the Principal Secretary, Department of Revenue, U.P., Lucknow and some further time has been prayed to apprise some more information in respect of other districts.

25. In continuation to the personal affidavit of the Principal Secretary, Department of Revenue, U.P., Lucknow he has also filed short counter affidavit on 22.03.2023 indicating therein the reason as to why the illegal encroachments are not removed promptly and the modalities and directions being issued for entire U.P. to do the needful exercise for removing illegal encroachment with promptness. Paras-4 to 7 of the short counter affidavit dated 22.03.2023 are being reproduced here-in-below:-

"4. That in pursuance thereof report was sought from all the districts vide letter dated 19.01.2023. This letter asking for relevant information was sent by the Board of Revenue, U.P., Lucknow. Information sought has been supplied to the petitioner by way of a report dated 15.03.2023 and the copy of the same is being annexed as Annexure No.SCA-1 to this affidavit.

5. *As far as the reasons for not deciding the pending cases are concerned, it is respectfully submitted as under:-*

(a) *Due to the strike of the learned advocates and Bar Councils.*

(b) *Because Presiding Officers of the Court concerned are busy with administrative duties.*

(c) *Because the parties concerned don't argue the case on the date fixed and time for filing objections, evidence etc. are being taken by them.*

(d) *A lot of time was taken up by the COVID-19.*

6. *So far as the early disposal of the cases pertaining to encroachments is concerned, State Government and the Board of Revenue Authorities are reviewing the pending revenue cases for their expeditious disposal on merits. Also several directions have been given to the Commissioners and the District Magistrates to monthly review the case status in various revenue courts under their jurisdiction:-*

A. *Government Order dated 27.03.2018, copy of which is being annexed as Annexure No.SCA-2 to this affidavit. The Commissioners and the District Magistrates to review the case status in various revenue courts coming under their jurisdiction.*

B. *Board of Revenue order dated 18.09.2018 and the Government Order dated 28.12.2021, copy of which are being annexed as Annexure Nos.SCA-3 & SCA-4 to this affidavit. Direction to all the District Magistrates for expeditious disposal and review of matters pertaining to Section 67 and Section 37 of the Revenue Code, 2006.*

C. *Board of Revenue order dated 09.09.2022, copy of which is being annexed as Annexure No.SCA-5 to this affidavit. Direction to Commissioners and the District Magistrates of all the districts to review the case status in various revenue courts coming under their jurisdiction. To identify officers who are not disposing of the revenue cases in time bound manner and to give adequate entries in the ACR of the officer concerned.*

D. *Board of Revenue order dated 18.11.2022, copy of which is being annexed as Annexure No.SCA-6 to this affidavit and the Government Order dated 26.12.2022, copy of which is being annexed as Annexure No.SCA-7 to this affidavit. Direction to Commissioners and the District Magistrates of*

all the districts to inspect the revenue courts in their jurisdiction.

E. Board of Revenue order dated 12.12.2022, copy of which is being annexed as Annexure No.SCA-8 to this affidavit. Direction to the District Magistrates of all the districts to review in the end of November, 2022 and to ensure the expeditious disposal of cases on merits by the Presiding Officer.

7. So far as the action taken against the erring Revenue Officials who have failed to take proper action regarding removal of encroachment from Gaon Sabha/ Public Utility Land in due time is concerned, the following is submitted:-

A. Show cause notice has been issued against 05 Sub-Divisional Magistrates and charge-sheet against one Sub-Divisional Magistrate has been sent to the State Government for approval.

B. 'Kathor Chetavani' has been given to 11 Tehsildars.

C. F.I.R. has been registered against one Naib Tehsildar.

D. F.I.R. has been registered against one Revenue Inspector. One Revenue Inspector has been given 'Kathor Chetavani'. Departmental proceedings have been initiated against 06 Revenue Inspectors and one Revenue Inspector has been suspended.

E. F.I.R. has been registered against 06 Lekhpals. 29 Lekhpals have been given 'Kathor Chetavani'. Departmental proceedings have been initiated against 13 Lekhpals, adverse entry has been awarded to 18 Lekhpals and 29 Lekhpals have been suspended.

F. One Beet Incharge, one Executive Engineer, Irrigation Department have been given 'Kathor Chetavani'.

Copy of the report provided by all the districts regarding action taken against the erring officials is being annexed as Annexure No.SCA-9 to this affidavit."

26. In the order dated 19.12.2022 (supra), this Court has issued certain directions having regard to the specific mandate being issued by the Apex Court in certain cases e.g. **Hinch Lal Tiwari** (supra), **Panna Lal** (supra), **Jag Pal Singh** (supra) as well as the decisions of this Court in re: **Om Prakash Verma** (supra), **Jagat Narayan** (supra), **Daya Ram Yadav**

(supra), *Ram Laut* (supra), *Ram Bihari Dwivedi* (supra), *Sri Raju* (supra) and *Ghanshyam Verma* (supra) and the Competent Revenue Authority has issued certain guidelines and the directions for all the Competent Revenue Officers/ Officials of the State of U.P., as considered here-in-above. Therefore, it is directed that all the Competent Revenue Officers/ Officials of the State of U.P. shall abide by the mandate and the directions being issued by the Apex Court, by this Court as well as by the Department of Revenue, U.P. in its letter and spirit, failing which, the strict and stringent action may be taken against those erring Officers/ Officials.

27. Further, it is reiterated that while following the aforesaid directions, the Competent Revenue Officers/ Officials shall also abide by the specific mandate, modalities and the legal formalities as has been issued/ mandated under the U.P. Revenue Code, 2006, rules thereof 2016, U.P. Land Revenue Act, 1901 and ancillary rules etc. thereof, U.P. Zamindari Abolition & Land Reforms Act, 1950 and ancillary rules etc. thereof and the U.P. Consolidation of Holdings Act, 1953 and ancillary rules thereof as well as all other rules, regulations, manuals etc. dealing with the affairs relating to the revenue and consolidation matters in its letter and spirit. Those guidelines, circulars and government orders, which have been issued by the Revenue Department of the State of U.P which have been considered in this order, shall be part of this order. Therefore, all the Competent Revenue Officers/ Officials are directed to treat those guidelines etc. as a mandamus being issued by this Court.

28. Sometimes it has been noticed that appropriate exercise/ steps are undertaken by the Competent Revenue Authority to remove the illegal encroachments from the public utility land of Gaon Sabha within a reasonable time and appropriate orders are also passed within a time prescribed under the law but no serious and appropriate steps are taken to execute those orders well in time, resultant thereof, the illegal encroachments etc. persist for quite long time and the very purpose to take prompt steps is frustrated. In some cases, I have seen that appropriate orders to remove the illegal encroachment are passed in the year 2000 or

2001 or 2002 or 2003 so on so forth as per rules but those orders have not been executed till the year 2023 and when any PIL or other writ petitions are filed then those facts are ascertained and verified. It not only gives pain to the Court but it results into anguish and in those cases an appropriate and suitable action is required against the erring Officers/ Officials. The excuse so taken by the concerning Officers/ Officials is that, an application for recall of earlier order is pending consideration but when the specific instructions to that effect is called, the fact emerges that if the order was passed in the year 2000 or later on, the recall application is filed in the year 2022 or 2023 and on account of non disposal of such application the illegal encroachment is not removed. Notably, no proper steps have been taken immediately after the first order having been passed by the Tehsildar concerned.

29. Sometimes those applications are disposed of, thereafter the illegal encroacher avails a legal remedy to file appeal and on account of pendency of such appeal the illegal encroachment is not removed. To meet out the aforesaid unwarranted situation the Competent Revenue Officer i.e. the Assistant Collector, Ist Class / Officials must execute the first order being passed for removal/ vacation of illegal encroachment at the earliest as prescribed under the law so that if any person is aggrieved from such order either he would file an application for recall of order or he may challenge that order before the Appellate Authority and both the aforesaid applications/ appeal, as the case may be, should be decided at the earliest so that just after attaining finality of the proceedings the appropriate steps may be taken to remove the illegal encroachment over the public utility land. In that way, not much time would be consumed in removing the illegal encroachment.

30. It appears that keeping the appropriate steps pending for unlimited period or for substantially long period, the concerning Revenue Officers/ Officials might be having some ulterior motives and extraneous design in their mind or they are so callous or casual in discharging their duties as per law and in both the cases the appropriate and suitable action must be taken against those erring Officers/ Officials. Therefore, the Sub-

Divisional Officer, or District Magistrate, or Commissioner or the Board of Revenue, as the case may be, must be vigilant on this aspect and those officers must develop a mechanism to notice the aforesaid casual or callous approach of erring Officers/ Officials with promptness and as soon as such fact comes into notice of those Competent Officers, the required exercise to take appropriate and suitable action against the erring Officers/ Officials should be initiated strictly as per law.

31. The sense of deterrence is must inasmuch as unless and until the concerning Revenue Officers/ Officials are warned that if they commit any misconduct or show their callous approach in discharging their legal duty they shall be subjected to appropriate action/ punishment, the sense of responsibility towards discharging their duties as per law would not be improved and increased. At the same time, if the concerning Revenue Officers/ Officials discharge their duties as per law with promptness and the illegal encroachment etc. is removed well in time, those officers should be appreciated so that the other Revenue Officers/ Officials could aware that in case of good conduct they shall be appreciated and in case of misconduct they shall be punished. If the proper modalities are formulated on the aforesaid aspect, the work culture would definitely be improved which is necessary for betterment of not only affairs of all the villages of the State of U.P. but also for the country inasmuch as the soul of the country lives in the villages. Besides, in a democratic set up of the country where the three tier system of governance is applicable, the affairs of the villages etc. is an integral part of that three tier system.

32. This Court noticed the judgment and order dated 02.12.2022 passed by this Court in the bunch of writ petitions bearing leading writ petition *Writ-C No.6658 of 2022; Rishipal Singh vs. State of U.P. & others and other connected writ petitions reported in 2022 SCC OnLine All 829*, wherein almost similar question has been adjudicated and proper guidelines have been issued, which are necessary to be adhered by the competent Revenue Authorities in its letter and spirit besides the directions so issued in this order. In para-3 the question has been cropped

up and in para-75 the guidelines have been issued, which are being reproduced here-in-below:-

“3. The common question of law that arises for consideration relates to the procedure to be adopted by the revenue authorities in exercise of their power under Section 67 of the U.P. Revenue Code, 2006 (hereinafter referred to as “Revenue Code”) and Section 26 thereof.

75. Thus, in my view, following guidelines be adopted as procedure to be applied to proceedings under Sections 67, 67A and 26 of the U.P. Revenue Code. It is all aimed at ensuring transparency in the procedure, judiciousness in approach by the authorities and to thwart every complaint made with ulterior and oblique motive to dislodge a long settled possession and causing of unnecessary harassment to an innocent villager:

(i) In case of complaint made on RC Form 19, the official making it shall ensure that proper survey is done in the light of observations made in this judgment; the land, occupation of which has stood identified to be unauthorized is in exact measurement and so also shown in the survey map prepared on scale, as per the Land Revenue Survey Regulations, 1978; the exact assessment of damages on the basis of circle rate with details of calculation made on that basis.

(ii) In a case of suo motu action, before issuing RC Form 20, the authority will ensure that proper report upon RC Form 19 is submitted as per para (i) above on parameters of sub rule 1 Rule 67.

(iii) RC Form 20 must be accompanied by a copy of report and spot survey submitted alongwith RC Form 19 to the person against whom proceedings have been instituted, or even otherwise submitted in case of suo motu action vide para (ii) above.

(iv) Upon reply being filed to the notice, if authority finds that spot survey/explanation report is not satisfactory, it may order for a fresh spot report to be prepared in presence of the party aggrieved.

(v) In the event, objection includes a plea of statutory protection/ benefit under Section 67-A, the authority should invite the objection from the Gaon Sabha, and will decide the same alongwith the matter under Section 67, without

requiring aggrieved party to move separate application under Section 67-A.

(vi) If the report is admitted on record, may be in case no objection is filed, the authority must ensure presence of the person preparing the report before it, to prove the report by his statement, with a right to aggrieved party to cross question him.

(vii) The authority must endeavour to decide the case within time framed provided under the relevant Act and the Rules and should desist from granting adjournment to the parties in a routine manner.

(viii) In case of appeal under Section 67(5) of the U.P. Revenue Code, 2006, preferred/ filed within the time prescribed alongwith interim relief application, the interim relief application as far as possible should be decided within two weeks' time with prior notice to other side and where plea of settlement under Section 67-A has been taken before Assistant Collector-1st Class, and damages to the tune of 25% at-least of the total damages are paid and an affidavit of undertaking is filed for not raising any further construction upon the land in question, the authorities including civil administration should avoid taking any coercive measure pursuant to the order appealed against until the disposal of interim relief application. The Appellate authority may also consider granting interim relief on the very first day of filing of appeal with stay application if above conditions are fulfilled by the appellant.

(ix) The appellate authority should as far as possible decide the appeal within a period of two months of its presentation.”

33. So far as the present PIL is concerned, the perusal of all the material which have been considered above make it crystal clear that the prayers prayed in the instant PIL have been addressed, rather, some more positive steps have been taken by the Revenue Department of the State of U.P.. Some further directions have been issued here-in-above and those directions shall be followed in its letter and spirit. Further, the guidelines and directions so issued by the Revenue Department of U.P. shall be treated as directions being issued by this Court and the Competent/

concerning Revenue Officers/ Officials shall abide by all the aforesaid directions in its letter and spirit, failing which, the responsibility should be fixed not only upon the senior most Revenue Officer of the State of U.P. but also upon the Competent / concerning Revenue Officer/ Official of U.P. who is/ are in the down line of the Revenue Officers.

34. Let copy of this order be provided to the Additional Chief Secretary/ Principal Secretary, Department of Revenue, State of U.P. by the Senior Registrar of this Court within seven working days and the aforesaid officer shall circulate this order to the Board of Revenue as well as to all the District Magistrates of State of U.P. for its compliance.

35. It is needless to say that for making compliance of the directions of this order, further government order/ circular etc., if need be, may be issued strictly in accordance with law. In any case, all the Competent/ concerning Revenue Officers / Officials of the State of U.P. shall ensure that the public utility land of the Gaon Sabhas is free from illegal encroachment and as soon as the illegal encroachment is noticed, such encroachment shall be removed forthwith by adopting the due process of law inasmuch as any illegal encroachment over the public utility land of the Gaon Sabha does not only create hindrance in utilizing such land in a manner as has been prescribed in the revenue records but it also causes serious prejudice to the villagers at large who genuinely and seriously bank upon on that public utility land, e.g. pond, pasture land, Chakmarg, Khad Gaddha, Khalihan, Banjar land etc. which are beneficial for the entire village in question.

36. In view of the aforesaid directions and observations, the present Public Interest Litigation Petition (PIL) is *disposed of finally*.

Date : 05.07.2023.

[Rajesh Singh Chauhan,J.]

Suresh/