

dṛṣṭvā 'kṛtāḥ = 'kṛtāḥ; a  
u dṛṣṭvā; kṛtāḥ fu..kṛtāḥ  
; śāghas fopkjā  
/keṭkfū% i t k; rāḥ

Decisions are not to be based on shastras (Codes) only. In trials without imagination miscarriage of justice arises.

*Brihaspati: Cited in Vyayahara Nirnaya.*

## THE MYSTERIES OF LAW

**Pradeep Kumar Mani\***

Little Knowledge is a dangerous thing. Wise men said so. After reaching almost six years of process of learning law, I feel myself standing at the shore with just wet feet and still an ocean to be crossed. With full of confidence and exuberance I stepped out from Bhowali, Nainital, with a thought in my mind that I have gained wisdom but soon realized that I was yet to be acquainted with law. Two manmade wonders “**Code of Civil procedure 1908**” and “**UP ZA &LR Act 1951**” baffled me when I was transferred to Dehradun as First Additional Civil Judge (SD) Dehradun.

These two masterpieces are indeed most comprehensive and self explanatory code of ethics. They operate in different fields and yet, are intermingled and overlapping. There appears a thin line of difference in the operation of the fields of jurisdiction of courts but when we consider the difference, it becomes larger and deeper. It sometimes becomes a mystery regarding the application of UP ZA&LR Act 1951 in holding the jurisdiction of the Civil Courts. The rights over Bhumidhari land are special rights. The UPZA&LR Act provides that an agricultural tenant has no religion and personal law except as expressly provided in the Act. It applies to Hindus, Muslims and Christians etc. regardless of their religion and personal law. It contains its own provisions regarding inheritance and transfers. When the applicability of doctrine of Estoppel and acquiescence

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is seen over the bhumidari land, provisions of Act being special Act have overriding effect over other Acts regarding the adjudication of rights of tenure holders.

Till the year 1956, civil courts were empowered and vested with the jurisdiction to entertain suits with regard to agricultural land including relief of partition and possession. Hon'ble Apex court in the matter of **Fakir vs. Kishori AIR 1995 SC 1569** dealt with the amendment Act of 1956 and its savings thereunder. Hon'ble Apex Court relying upon the Amendment Act of 1958 has held that suit for possession filed over agricultural land on or before 28-05-1956 shall be cognizable by the Civil Courts only.

The law laid down from 1951 to 1995 sometimes really contradicts with my view of jurisdiction. Hence I decided to take the enactment into consideration in view of amendment Act of 1956 and its effect on the jurisdiction of Civil Court. Prior to UPZA & LR Act 1951, UP Tenancy Act 1939 was applicable wherein the definition of land was as defined under Section 3(10) and in the definition it was clearly provided "but does not include land for the time being occupied by building or appurtenant thereto other than building which are improvements." The definition of land as provided under UPZA&LR Act 1951 is made exhaustive. Under Section 3(14) of UPZA &LR Act 1951 'Land' includes all categories of lands except "Abadi" provided under Section 109, 143 and 144. **There is no provision for land automatically ceasing to be "land" if it is covered by building.** On the contrary an elaborate provision has been made in Section 143 whereby the land ceases to be land only after a declaration under the Section. This exhaustive and comprehensive definition of land sometimes really intrigues me. Hon'ble Full Bench of Allahabad high Court in the matter of **Ram Awalamb vs. Jata Shankar AIR 1969 ALL 526** gave landmark and historic judgment on UPZA &LR Act 1951 and its application in Civil Courts. Hon'ble Court discussed the entire law and over ruled the judgment of Division bench in the matter of **Mukteshwari Prasad vs. Ram Wali 1965 ALJ 1137** wherein it was held that civil court cannot take cognizance of a suit for possession of agricultural land and for demolition of unauthorized construction standing thereon but can take cognizance of suit merely for demolition of unauthorized construction made on agricultural land. The Hon'ble Full

bench, overruling the said ratio has held that the Revenue courts have not been empowered to grant the reliefs of injunction of demolition and in case the defendant refuses to take away the materials from the land in dispute after the decree for possession has been passed against him, the main objective of the plaintiff would be frustrated. **A Civil court will therefore, have the power to entertain the suit where the main relief sought by the Plaintiff is that of the injunction and demolition, a relief which could be granted by the civil court only. The relief of possession will be merely ancillary relief which the civil court could grant after having taken cognizance of the suit for injunction and demolition.**

The UPZA&LR Act came into force in 1952 and Schedule II, as it originally existed in the Act, did not contain any entry pertaining to the suits under Section 209 of the Act. This entry was introduced for the first time by the UP Land Reforms (Amendment) Act no. 18 of 1956 with effect from 28-05-1956 which repealed UP Land Reforms (Amendment) (Second) Ordinance 1956. Another entry viz. entry relating to **“Suits for injunction or for the repair or waste or damage”** contemplated by Section 208 of the Act was also introduced in Schedule 11 by the aforesaid Amendment Act, with effect from the same date namely 28-05-1956. Section 23 of the said Amendment Act provides as under:-

“Saving:- (i) Any amendment made by this Act shall not affect the validity, invalidity, effect or consequence of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued, or incurred or any jurisdiction already exercised and any proceeding instituted or commenced before any court or authority prior to the commencement of this Act shall notwithstanding any amendment herein by such court or Authority.

(ii) An Appeal, Review, or Revision from any suit or proceeding instituted or commenced before any court or authority prior to the commencement of this Act shall notwithstanding any amendment herein made lie to the court or Authority to which it would have laid if instituted or commenced before the said commencement.

The above provisions make it clear that the conferment of exclusive jurisdiction on the Revenue courts by the above Act did not affect the

pending suits or right of Appeal, Review or Revision available under the original provisions.

UP amendment Act no. 18 of 1956, no. 37 of 1958 as well as UP amendment Act No. 33 of 1961 provided the present Section 208 of the UPZA & LR Act 1951 which is as under:

**Sect 208:- “Suit for compensation and repair of the waste or damage”. Notwithstanding anything in Section 206 the Gaon Sabha or the land holder may, in lieu of suing for ejectment sue**

**a) for injunction with or without compensation; or**

**b) for the repair of waste or damage caused to the holding.**

The above Section provides suit for compensation could be filed along with the relief of injunction both mandatory and prohibitory. But when I respectfully compare the provision of the above Section with the law laid in between the year 1951 to 1973 I find myself again in dilemma. The division bench of Hon'ble Allahabad High Court in the matter of **Mewa vs. Baldeo AIR 1967All 358** laid down that if the main relief is cognizable in civil court then, the ancillary relief too could be granted by the civil court even if the same ought to be granted by the revenue court and vice versa. The said judgment was relied upon in the matter of **Ram Awalamb**. In **Ram Awalamb** case it was observed by the Hon'ble full bench that revenue court has not been empowered to grant the relief of injunction and demolition in case the defendants refuses to take away materials from the land in dispute after the decree of possession has been passed against him. But after considering the Amendment Act of 1956, 1958 and 1961 of UPZA&LR Act 1951, wherein power to grant injunction and compensation for the repair of waste or damage caused to holding under Section 208 has been granted to the Revenue Courts a query arises in my mind, whether, I should follow the enactment or search for more law regarding jurisdiction of civil courts.

The UPZA&LR Act 1951 is a special Statute as provided under Art 31B of the Constitution and its provisions prevail over all the judgments, decrees or orders of all the courts. The Hon'ble Apex court in the matter of **Chandrika vs. Bhaiya lal AIR 1973 SC 2391** has laid down that in case a person retains possession of land contrary to law, a suit for ejectment

of such person must be filed before the revenue court. The said ratio was further laid down by the Apex court in the matter of **Vishwanath vs. Chadrabhan 1996 (1) Supreme 176** while dealing with ejectment of persons occupying land without title.

A combined reading of Section 3(14), 143, 208, 209 and 331 as applicable in present scenario and the law stated above raises a question in my mind. The question being; if a land does not cease to be agricultural land on account of construction, then, whether in absence of declaration in this respect, the jurisdiction of Civil Court will be ousted to decide a question of ejectment, either against licensee or lessee or against unauthorized occupant or trespasser. The Zamindari law regulate the relationship between the land lord and the tenant in respect of agricultural holdings. It confers exclusive jurisdiction on revenue courts for the same. It also reconciles conflicting jurisdiction of revenue and civil courts. I was enlightened by the Full bench judgment of Apex Court in the matter of **Bhinka vs. Charan Singh AIR 1959 SC 960** wherein it was laid down that “**all disputes between a landlord and his tenant in respect of tenancy are exclusively made triable by revenue courts and all disputes relating to proprietary rights are left to the decision of the Civil Courts.**” Although the said judgment was passed pertaining to U.P Tenancy Act, old law prior to the enforcement of UPZA&LR Act 1951 yet it covers the subject.

Section 331 of UPZA&LR Act 1951, the barring clause, is the boundary line but the said border is sometimes not visible and on the other hand when I am all set to exercise the powers of civil court, the same stands in front of me, asking me to return the file. I was of the thinking that I have learned much from the various judgments and from the language of statute, but to my dismay, countless questions arose in my mind after going through the judgment of the Hon'ble Apex court in the matter of **Kamla Prasad vs. Kishan Kant Pathak 2007 (102) RD378** wherein it was laid down that “**question of title and possession over the agricultural land could be decided by revenue court and a civil court has no jurisdiction to deal with the same.**” On question of deciding fraud and concealment, in the matter of **Horil vs. Keshaw 2012 SCCR 298**, while observing the competence & scope of revenue courts

in the matter of cancellation, the Hon'ble Apex court has observed that **“Revenue courts are neither equipped not competent to adjudicate on allegations of fraud. Courts really skilled and experienced to try such issue are the courts under the Code of Civil procedure.”**

The reason behind the observation was that the intricate question of cancellation of deeds are to be decided by judicially trained mind of civil courts and cannot be left to be decided by Revenue courts which are not well acquainted to try such intricate questions of law.

The more I try to learn, the more queries keep arising. The narrow line draws the boundary line and we being civil courts cannot pass the same. I generally followed the basic rule i.e. to go by the Khautani to adjudge the question of jurisdiction. There has to be some way, permitting the Civil Courts to diminish the gap but the more I go through UPZA &LR Act 1951, I find the gap becoming wider and wider.

I am waiting the above questions be dealt and explained. It is a subject where despite of knowing the right, the truth and sometimes that injustice is happening, we are refrained to exercise jurisdiction. I am of the view that if the clouds of uncertainty are removed and question of jurisdiction is finally decided then the litigant could approach the right forum at the right time to seek the requisite relief.

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