



2026:AHC:50246-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 1722 of 2026

Smt. Geeta Devi and another

.....Petitioner(s)

Versus

State of U.P. and 5 others

.....Respondent(s)

Counsel for Petitioner(s)	: Dinesh Kumar Misra, Marghoob Husain
Counsel for Respondent(s)	: Azad Rai, C.S.C.

A.F.R.
Reserved

Court No. - 2

HON'BLE ATUL SREEDHARAN, J.
HON'BLE SIDDHARTH NANDAN, J.

(Per: Hon'ble Siddharth Nandan, J.)

1. Heard Sri Dinesh Kumar Mishra, Advocate along with Sri Marghoob Hussain, Advocate appearing on behalf of the petitioner and the learned Standing Counsel for the State.

2. Since the matter involves, purely a question of law, with the consent of the parties the present writ petition is decided finally at the admission stage itself.

Facts

3. The present writ petition has been filed for issuance of writ of mandamus directing the respondents authorities i.e. respondent.2 (District Magistrate/Collector, Fatehpur) and respondent no.3 (S.D.M. Tehsil Khaga, District Fatehpur), to take appropriate actions against the

encroachers of Gata No.605 in Village Orha, Pargana Ekdala, Tehsil Khaga, District Fatehpur; which was allotted to the petitioner in pursuance of the proposal dated 16.4.2012 and approval dated 24.12.2012 by the respondent no.3.

4. It is an admitted fact that the petitioner was given a residential lease with respect to land as prescribed under Section 63 of the U.P. Revenue Code, 2006 (In short Code, 2006), since he was eligible under Section 64 of the Code, 2006 being an agriculturist labour, belonging to Scheduled Caste category, with no house.

5. It is the specific case of the petitioner that the husband of petitioner no.1 was given the allotment over Gata No.605 and petitioner no.2 is the brother of the said late Ram Lal. Only partial house was constructed, when the husband of the petitioner no.1 died and eventually after she got some compensation from the Motor Accident Claim Tribunal, she mustered resources to resume the construction, which was partially done earlier; and over a period time which was also destroyed due to heavy rains. Thereafter when she started the constructions certain musclemen in the area are not permitting her to raise the construction, so as to make the house inhabitable and are encroaching over the said plot.

6. In view of the aforesaid circumstances he has approached respondent nos. 2 and 3 but till date no action being taken on her application. She has approached this Court to protect her right to shelter, as enshrined under Article 21 of the Constitution of India. It is a specific case that she does not have any shelter over her head and is living in an outhouse, permitted by one of her neighbours.

Issues

(i) Whether Section 65 of the Code, 2006 empowers the Sub-Divisional Magistrate to put the allottee in possession of a land being allotted as provided under Section 64 of the Code, 2006, when “any person other than the allottee” is in occupation especially when the house is to be constructed or not and;

(ii) Whether Section 34 of the Code, 2006 or remedy under the Civil Procedure Code is an efficacious remedy and can act as a bar to power under Section 65 of the Code, 2006.

Arguments (Issue no. 1)

7. Learned counsel for the petitioner has contended that since on account of the death of the husband of the petitioner no.1, the family was in destitute, therefore, they could not complete the construction of the house over the plot allotted to them, being eligible under Section 64 of the Code, 2006; and it is only after that, on account of the accident being the factor for the death of the husband of the petitioner no.1, she got some compensation from the Motor Accident Claim Tribunal, when she made efforts to complete the constructions, but now the private respondents are not permitting to raise the constructions; and in view of the aforesaid, it is onerous duty of the respondent no.3, to exercise his power under Section 65 of the Code, 2006 and put them in possession, so as to enable them to complete the construction of the residential house.

8. Learned counsel for the petitioner has also relied upon Section 65 of the Sub-Clause (1) of the Code, 2006 to submit that where any land referred to under Section 63 of the Code, 2006 has been allotted for building a house under Section 64 of the Code, 2006 and “any person other than an allottee” is an occupation of such land, contrary to the provision of the Code, 2006; the Sub-Divisional Officer, has ample power to put the allottee in possession of such land especially when the object of the allotment has not been achieved i.e. to provide a shelter to the allottee. He has further submitted that the scheme of the Act also provides for summary eviction and penal consequences in case, the land is reoccupied.

9. Per Contra, learned counsel for the respondent has submitted that once an allotment of such land is made and the allottee has been put in possession; and thereafter he is evicted, the remedy available to the petitioner is under Section 134 of the Code, 2006 for the restoration of

his possession. He has relied upon the judgement of a learned Single Judge passed in **Writ-C No.1284 of 2025, Murari Singh Vs. State of U.P. and others** dated 17.1.2025.

10. In reply learned counsel for the petitioner has also relied upon the judgement of a learned Single Judge dated 20.11.2025 in **Writ-C No.13413 of 2024, Hawaldar Yadav Vs. State of U.P. and others** reported in (2025) 12 ADJ 714.

11. It has been contended that the learned Single Judge in the case of **Hawaldar Yadav (Supra)** had the occasion to consider the scope of Section 65 of the Code, 2006 and while interpreting the import of the words “any person other than an allottee” used in Section 134 and Section 129 of the Code, 2006; in consideration of the Principles of Constructive Interpretation, had come to the conclusion that the legislature had consciously enacted Section 65 of the Code, 2006 while provisioning a power to the S.D.M. to put the allottee in possession, in case “any person other than an allottee” is found to be in occupation of such land; and from the conjoint reading of Section 65 and Section 129 of the Code, 2006, applying the “Doctrine of Pith and Substance” had concluded that if the application of Section 65 of the Code, 2006 is confined only for the period, immediately after the allotment; and only towards an encroacher, at the time of allotment, the usage of the word “other than an allottee” shall be rendered superfluous. For the ready reference para 41 and 42 of the judgement in the case of **Hawaldar Yadav (Supra)** is quoted herein below:-

“41. In view of the aforesaid, I find that the words ‘any person other than an allottee is in occupation’ shall be rendered meaning less if the statutory duty of the Sub Divisional Officer is construed, to confine only for the period, after the allotment when the allottee is to be put in possession, he shall take recourse to Section 65. In my opinion, if the said interpretation is taken, the usage of the words ‘other than an allottee’ shall be rendered superfluous and the very purpose for existence of Section 65 shall be redundant.

42. From the conjoint reading of Section 65 and Section 129 of the Code, 2006, applying the “Doctrine of Pith and Substance”, the only plausible interpretation, keeping in mind the objectives of the Code, 2006 itself, is that the Sub Divisional Officer is duty bound to exercise his powers either suo moto area or on an application made by allottee, to give repossession to the allottee.”

Discussion/Conclusion

12. The short question which arises for our consideration is as to whether in the scheme of the “Uttar Pradesh Revenue Code, 2006” once an allotment is made, whether the powers under Section 65 of the Code, 2006 for delivery of possession to allottee, is confined at the stage immediately after the allotment or can it be said to apply at subsequent stages also; and if yes, what would be those stages.

13. In the case of **Murari Singh (Supra)** the learned Single Judge has concluded that under Section 65 of the Code, 2006 the power to put the allottee in possession, is vested only with the criminal court and the provisions of Section 65 of the Code, 2006 read with Section 129 of Sub-Clause (2) of the Code, 2006, will not apply. The said judgement however, does not consider the import of the words “any person other than an allottee” being used not merely under Section 65 (1) of the Code, 2006 but also under Section 129 of the Code, 2006 which deals with the restoration of possession of allottees or a government lease; and had directed filing of an application under Section 134 of the Code, 2006 for restoration of such possession.

14. We are unable to agree with the judgement in the case of **Murari Singh (Supra)** for the reason that the remedy available under Section 134 of the Code, 2006 is with respect to possession of any land forming part of any holding of any “Bhumidhar or Assami” and secondly the principle of harmonious constructions, which envisages that in the given circumstances the usage of the words “restoration of possession to allottee” and the usage of the words “delivery of possession to allottee” has to be harmonised by examining the object and the intent of the legislature, when identical words have been used in Sections 65 and Section 129 of the Code, 2006 i.e., “any person other than the allottee or the lessee.” The power under Section 65 of the Code, 2006 can also be drawn “by necessary implication.”

15. This Court finds, that the construction is not called upon, when the words of statute are clear, plain and unambiguous; but if the contentions of the respondents are accepted that the State liability has to be confined only to the extent at a point in time, which is immediately after the allotment; and thereafter if the said allottee, which undoubtedly belongs to weaker sections of the society, is prevented from raising the constructions, the respondent authorities cannot exercise the powers of summary eviction over the land, which undoubtedly belongs to the State and being entrusted to the Gaon Sabha, then the very object of making provision for a shelter to an agriculturist labour or a member of marginalised section, will be defeated, if for any reason, he is prevented to construct his house. It is for this reason, the limitation within which a house is to be constructed, has not been made applicable to an allottee, belonging to scheduled caste.

16. At this juncture it will be relevant to mention that as far as the allottees' rights over the residential site is concerned, under the provisions of the Code, 2006, he at any stage does not become a Bhumidhar by operation of law, which is the case when the nature of the land is 'agricultural'. As far as the revenue records are concerned, the same is also not prepared in the name of the allottee but it remains entered as 'Abadi' land.

17. In view of the aforesaid facts and circumstances, we are unable to agree with the view of the learned Single Judge in the case of **Murari Singh (Supra)** and find that the view taken by the learned Single Judge in the case of **Hawaldar Yadav (Supra)** apart from the fact being a subsequent judgement, is better in point of law. As we put context, to the text, while interpreting Section 65, we find the ratio of **Hawaldar Yadav (Supra)** more appauling to the object of the U.P. Revenue Code, 2006; for which reason, we also agree to the same.

18. Our view is also fortified by a principle of interpretation, that even if two constructions are reasonably possible, preference should be given to one which help carry out the beneficent purpose of the Act without

duly expanding the scope of provisions and while considering the provision, the intent of the legislature also cannot be lost sight of.

19. The very purpose of the allotment as envisaged under the Code, 2006 with respect to residential plot, is to provide shelter to landless agriculturist belonging to a marginalised section of the society and while doing so, unlike agricultural land, the title of an Abadi land is retained with the State and Gaon Sabha being entrusted with the said land; and accordingly it is an onerous duty of the State/Gaon Sabha that, at all time they are required to protect the land, in case of an encroachment over the same, at least till such time, their right to re-vest is surviving. The State cannot take a stand that in spite of the facts that the title belongs to the State, the onus to protect the same is on the allottee; and at the same time for want of such action, a third persons continues to enjoy the property of the State, in contravention of the provisions of the Code, 2006. It is for this purpose that Section 65 and Section 129 of the Code, 2006 has been incorporated, to ensure that the possession of the allottee who is a landless, marginalised person, is protected; any other interpretation will only lead to futility, of the very purpose of the enactment; and the provision for allotment under Section 64 of the Code, 2006.

20. At this juncture, we may also refer to Rule 64 of the U.P. Revenue Code Rules, 2016 (In short Rules, 2016) which prescribes the conditions of allotment and for ready reference Rules 62, 63 & 64 of the Rules, 2016 are quoted herein below:-

62. Other abadi sites (Sections 63 and 64)

(1) Abadi sites other than those referred to in rule 61 and vested in a Gram Panchayat may be allotted for construction of buildings for residential or charitable purpose or for purposes for cottage industry in the following order of preference:

- (a) a landless agricultural labourer or a village artisan residing in the village;*
- (b) a bhumidhar or asami residing in the village and holding land less than 1.26 hectares (3.125 acres);*
- (c) any other person residing in the village.*

(2) Every allottee under this rule shall be required to deposit an amount equal to five percent of the amount calculated at the circle rate fixed by the Collector from time to time and shall be credited to the Gaon Fund:

Provided that no premium shall be charged in respect of site allotted for charitable purpose.

(3) The allottee to whom the site has been allotted under the provisions of Zamindari Abolition and Land Reforms Act, 1950 or the rules framed thereunder or under this Code or the rules framed thereunder for the purpose of cottage industry may, if the allottee is not successful in the cottage industry for which the site had been allotted, use the site for any other industrial or commercial purpose.

63. Procedure for allotment by Bhumi Prabandhak Samiti (Sections 63 and 64)

(1) Whenever the Land Management Committee proceeds to allot housing sites under rule 61 or 62, it shall announce by beat of drum in the village the exact location of the sites to be allotted, the time, date and venue of the allotment.

(2) All allotments shall be made by the Land Management Committee in a meeting held for the purpose on the date announced under the preceding sub-rule. Where more than one person belonging to the same order of preference express their desire to be allotted the particular site, the said Committee shall draw lots to determine the person to whom the site should be allotted:

Provided that no allotment under rule 61 or rule 62 shall be made without the prior approval of the Sub-Divisional Officer of the Sub-Division.

(3) The allottee of the site shall be given a receipt for the premium, if any, paid by him to the Land Management Committee and a certificate of allotment. The certificate shall be in R.C. Form-18 which shall be prepared in two parts, the main certificate being given to the allottee and its counterpart remaining with the Land Management Committee for record.

64. Maximum area and other conditions of allotment (Sections 63 and 64)

(1) The maximum area of allotment under rule 61 or 62 shall not exceed 200 square meters.

(2) The allottee of an abadi site shall not be liable to pay any premium or ground rent, but he shall hold such abadi site on the following terms and conditions:-

(a) The allottee shall build a house and shall begin to reside in it or use it for the purpose for which the site was allotted within a period of three years from the date of delivery of possession of the site allotted.

(b) If the allottee fails to comply with the terms and conditions incorporated in clause (a) of sub-rule (2) of this rule, the Collector may cancel the allotment in accordance with section 66:

Provided that in the case of the persons belonging to Scheduled Caste or Scheduled Tribe the aforesaid time limit for building of the house shall not apply.

(c) The allottee or his heirs shall not be entitled to transfer the site or the house built thereon by sale within a period of five years from the date of allotment. If the site or house is transferred after the expiry of five years from the date of allotment, the allottee shall not be eligible for re-allotment.

(d) The allottee shall have heritable interest in the land so allotted.

(e) The succession to the land shall be governed by the personal law of the allottee.

(f) Subject to the provisions of section 66, the allottee or his heirs shall not be liable to be ejected from the land allotted or from the house built thereon.

(g) If the land or the house built thereon is abandoned or if the allottee or his heirs die without any heir, the property shall re-vest in the Gram Panchayat.”

21. The perusal of the Rule 62 which provides that Abadi sites which may be allotted for construction of buildings for residential or charitable purpose, as per the order of preference, requires the allottee under this Rule to deposit an amount equal to 5% of the amount calculated at the circle rate fixed by the Collector from time to time and shall be credited to the Gaon fund. The procedure for allotment is prescribed under Rule 63 of the Rules, 2016 which determines that the allottee of the site shall be given a receipt for the premium, if any, paid by him to the Land Management Committee and a certificate of allotment in RC Form 18.

22. Thereafter, Rule 64 of the Rules 2016 deals with the maximum area of allotment under Rule 61 or 62, which shall not be exceed 200 square meter. Rule 64(2) of the Rules, 2016 prescribes the terms and conditions, in which an allottee of an Abadi site shall not be liable to pay any premium or ground rent. A perusal of the conditions clearly states that if a person is belonging to Scheduled Caste or Scheduled Tribes, a timeline for construction of house within a period of three years from the date of delivery of possession of the site allotted, will not be applicable; but however, it imposes restrictions on the entitlement to transfer the site or the house built thereon. No doubt it provides the allottee with heritable interest in the lands so allotted and rights of succession but at the same time it also provides a condition, in which the property shall re-vest in the Gram Panchayat. The Gram Panchayat, in certain circumstances, also holds a right to cancel the allotment; and as such the title does not pass to the allottee; and till such time, the Gram Panchayat, remains liable towards protection of the property, against any misappropriation or encroachment.

23. From the readings of the terms and conditions, it cannot be said that after the allotment, the allottee becomes a Bhumidhar with transferable rights, in all circumstances.

24. A provision for settlement of house sites has been provided under Rule 68 of the Rules, 2016 regarding persons referred to in Section 64(1) of the Code, 2006, who has built a house on any land referred to in Section 63 of the Code, 2006 but the said benefit is only to those persons whose house exists on twenty-ninth day of November, 2012.

25. In the present case since the allottee i.e. petitioner has been dispossessed even prior to building of a house, the liability imposed on the S.D.M. under Section 65 of the Code, 2006 cannot be said to have ceased by merely delivering of the possession.

26. We may also indicate before parting with the issue in hand that the “Right to Shelter” is now a Fundamental Right, guaranteed in Part III of the Constitution of India i.e. under Article 19(1)(e) and Article 21 of the Constitution of India.

27. In view of the aforesaid we conclude that the judgement in the case of **Hawaldar Yadav (Supra)** lays down a correct principle of law and we are in agreement with the same for the reasons stated therein, as well as the observations made herein above; as such Sub-Divisional Magistrate is required to protect the possession of the allottee in exercise of his powers under Section 65 of the Code, 2006, as long as the title vests in the State and Gaon Sabha is entrusted with the property, with conditions for re-vesting, in the terms and conditions of allotment envisaged under Rule 64 of the Rules, 2016.

Issue No.2

28. Learned counsel for the respondents while relying upon the judgement in the case of **Murari Singh (Supra)** has contended that the petitioner can seek remedy while making an application under Section 134 of the Code, 2006 which provides for ejectment of person occupying land without title.

29. Per contra, learned counsel for the petitioner has submitted that Section 134 of the Code, 2006 is applicable in cases where there is occupation of land forming part of holding of any “Bhumidhar or Assami” otherwise than in accordance with the provisions of law; and as such the same shall not be applicable to an allottee under Section 64 of the Act, 2006; as he cannot be termed either a ‘Bhumidhar’ or an ‘Assami’.

Discussion/Conclusion

30. Section 78 of the Code, 2006 defines Asami and Section 79 of the Code, 2006 provides for the right of Bhumidhar to exclusive possession. For ready reference Sections 78 and 79 of the Code, 2006 are quoted herein under:-

“78. Asami.- Every person belonging to any of the following classes, shall be called an asami, and shall have all the rights and be subject to all the liabilities conferred or imposed upon such asami by or under this Code, namely:-

(a) subject to the provisions of clause (dd) of sub-section (1) of section 76 of this Code, every person who was an asami immediately before the date of commencement of this Code;

(b) every person who is admitted as an asami on or after the said date by the Bhumi Prabandhak Samiti to any land under or in accordance with the provisions of this Code;

(c) every person who is admitted as lessee on or after the said date, by a bhumidhar of any land under or in accordance with the provisions of this Code;

(d) every person who in any other manner acquires the rights of an asami under or in accordance with the provisions of this Code or any other law for the time being in force.

79. Right of Bhumidhars to exclusive possession.- (1) A bhumidhar with transferable rights shall, subject to the provision of this Code, have the right to exclusive possession of all land of which he is such a bhumidhar and to use it for any purpose whatsoever.

(2) a bhumidhar with non transferable rights shall, subject to the provisions of this Code, have the right to exclusive possession of all land of which he is such a bhumidhar, and to use such land for any purpose connected with agriculture.”

31. We have already considered herein above that there are no provisions in the Code, for an allottee under Section 64 of the Code, 2006 to have become a deemed Bhumidhar with transferable rights, with

respect to an allotment of a plot for residential house; as is the case in case of an agricultural land. Perusal of the definition of 'Bhumidhar' or an 'Asami' as provided under Sections 78 and 79 of the Code, 2006; does not conclude, in any manner, that an allottee under Section 64, can fall in any of these categories. We also note that in circumstances enumerated under Section 64(3) read-with Rule 64 an allotment can be cancelled or the property may re-vest in State/Gram Panchayat. However, there is an un-escapable conclusion, on harmonising the construction of Section 65 and Section 129 read-with Rule 64; that as long as the State/Gram Panchayat holds an interest, in the property allotted, they are also under an onerous duty to protect the same against any damage or mis-appropriation which includes encroachment, till such time, the object of the allotment i.e. to provide a shelter, to an agriculturist labour, from marginalised section is achieved; and which is also a Constitutional obligation, on a welfare State.

32. As far as the persons, who have been defined as 'Asami' under Section 78 of the Code, 2006 is concerned, are those persons who are tenants with non-permanent, non transferable, but heritable rights to the land. They are allowed to cultivate specific lands, which are public utility land such as pastures etc. Asamies have right to possess and use land for agriculture or allied activities; but can be evicted for violations. They are distinguishable from secured tenure-holders like Bhumidhars.

33. In view of the aforesaid, we find that Section 134 of the Code, 2006 is not attracted to the class of persons who are defined, being allottee under Section 64 of the Code, 2006 for the purposes of allotment for construction of residential house.

34. While examining the aforesaid provisions and the remedy available under Section 134 of the Code, 2006, we find that the natures of remedy under Section 134 of the Code, 2006 and Section 65 of the Code, 2006 are distinct in nature. In case of ejectment, under Section 134 of the Code, 2006, a suit is to be preferred by the 'Bhumidhar' or 'Asami' concerned; and which makes provisions of payment for

damages. The State Government and Gram Panchayat are necessary parties in such proceedings. In case of proceedings under Section 65 of the Code, 2006 primarily, it is a summary proceeding; and secondly it is to be initiated at the behest of the Gram Panchayat. As such, we find that the nature of the said proceedings are materially different and for the said reasons also, it is not a remedy available for allottees under Section 65 of the Code, 2006.

Directions

35. In view of the foregoing discussions, the present Writ Petition stands allowed with the following directions:-

(i) The Respondent no. 3 i.e., S.D.M, Tehsil- Khaga, Disrtrict- Fatehpur is directed to take cognizance of the application of the petitioner, in exercise of its power under Section 65 of the Code, 2006 and proceed as per law.

(ii) It is also provided that the Respondent no. 3 shall provide due opportunity of hearing to Respondent no. 5 and 6 and shall proceed to conclude the proceedings as expeditiously as possible preferably within a period of two months from the date of service of certified copy of this order.

36. It is clarified that this court has not expressed any opinion on the merits of the case and the proceedings under section 65 of the Code, 2006 shall proceed as per law adhering to the Principles of Natural Justice.

(Siddharth Nandan,J.) (Atul Sreedharan,J.)

March 12, 2026
piyush