

Court No. - 51

Case :- WRIT - C No. - 3955 of 2022

Petitioner :- Sri Kanhaiya Lal Trust And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Gaurav Singh, Kumar Sreshtha

Counsel for Respondent :- C.S.C., Kaushal Kishore Mani

Hon'ble Dr. Yogendra Kumar Srivastava, J.

1. Heard Sri Gaurav Singh and Sri Kumar Sreshtha, learned counsel for the petitioners; Sri Ajit Kumar Singh, learned Additional Advocate General appearing along with Sri Abhishek Shukla and Sri Amit Manohar, learned Additional Chief Standing Counsel for the State respondents; and Sri Kaushal Kishore Mani, learned counsel for the respondent no.4-Gram Sabha.

2. The present petition has been filed seeking to raise a challenge to an order dated 16.12.2021 passed by the respondent no.2-Sub Divisional Magistrate, Saharanpur whereby the application filed by the petitioners under Section 82 of the Uttar Pradesh Revenue Code, 2006¹ for cancellation of an earlier declaration made under Section 80 of the Code, 2006, has been rejected.

3. As per the facts pleaded in the writ petition, the petitioner has asserted itself to be a registered trust having as its aims and objects to improve educational and social awareness in society. The petitioner no. 2 claims to have

¹ the Code, 2006

purchased land by means of a registered sale deed dated 25.04.2017 from its recorded tenure holders and thereafter got itself mutated in the revenue records.

4. The petitioner trust, thereafter, intending to construct an educational institution moved an application dated 14.07.2017 under Section 80 of the Code, 2006 for getting a declaration that the land in question was being used for non-agricultural purpose. The aforesaid application was allowed by the respondent no.2 by an order dated 08.09.2017 and declaration was made that the land was being used for non-agricultural purpose.

5. After lapse of some time, due to certain constraints, the petitioners failed to establish the educational institution and therefore, filed an application dated 24.10.2019 under Section 82 of the Code, 2006 before the respondent no.2 seeking cancellation of the declaration obtained earlier. Upon the aforesaid application, a report was obtained from the respondent No.3-Tahsildar, Saharanpur which was submitted on 02.03.2020. The report indicated that apart from a boundary wall of height about 4-5 feet, there existed no other construction over the land in question and that the land was not being utilised for any commercial purpose. It was stated that crops of wheat were standing over the land and it was being utilised for agricultural work. A similar report indicating the use of the land for agricultural purpose was submitted by area Lekhpal on 14.08.2020. Since, no orders were passed by the respondent authorities even after

obtaining the requisite reports, the petitioner approached this Court by filing **Writ C No. 10252 of 2021 (Shri Kanhaiya Lal Trust and Another vs. State of U.P. and 3 Others)** which was disposed of by an order dated 19.7.2021/26.07.2021 directing the Sub-Divisional Magistrate to decide the application within stipulated time period.

6. The petitioner, at this stage, submitted a fresh application dated 2.8.2021 upon which the area Lekhpal and the Tehsildar submitted their report dated 25.11.2021 wherein it was stated that the spot inspection indicated that apart from a boundary wall of height 4-5 feet, no other construction was existing over the land in question. It was stated that no school had been constructed over the land and commercial work was being carried out by running a nursery of decorative and timber plants.

7. Relying upon the aforesaid report, the Sub-Divisional Magistrate rejected the application of the petitioner seeking cancellation of declaration under Section 82 of the Code, 2006 by the impugned order dated 16.12.2021. This order was passed in compliance of the direction issued by the High Court in Writ C No.-10252 of 2021.

8. Challenging the aforesaid order, counsel for the petitioners has primarily based his contention on the argument that Section 4(2) of the Code, 2006 defines 'agriculture' as being inclusive of flower farming and

therefore, any activity relating to nursery would be covered within the meaning of the term 'agriculture'. Reference has also been made to the definition of 'agricultural income' under Section 2(1A) of the Income Tax Act, 1961 to submit that agriculture connotes the entire and integrated activity which is performed on land in order to raise its produce and consists of basic and essential operations requiring human skill and labour such as tilling of soil, sowing of seeds, planting and similar operations and also other subsequent operations. In this regard, reliance is placed on the judgement in the case of **Commissioner of Income Tax, West Bengal, Culcutta vs. Benoy Kumar Sahas Roy**².

9. Counsel for the petitioners has further pointed out that the land in question is not being put to any commercial use as mentioned in the report which has been relied upon in the order impugned. It is asserted that the activity being carried out by the petitioners falls within the ambit of agricultural operations and therefore, the order rejecting the application under Section 82 of the Code, 2006, is illegally unsustainable.

10. Learned Additional Advocate General appearing for the State respondents has submitted that the cancellation of declaration under Section 82 of the Code, 2006 can be sought in a case where the holding or part thereof, in respect of which a declaration has been obtained under Section 80 is used for any purpose connected with agriculture. It is pointed

2 AIR 1957 SC 768

out that in the instant case, the report having indicated that the use of the land in question was being made for a commercial purpose, the application seeking declaration under Section 82 has been refused. Counsel for the State respondents has also placed reliance upon the Constitution Bench decision of the Supreme Court in the case of **Benoy Kumar Sahas Roy (supra)** in support of his submission.

11. In order to appreciate the rival contentions, the relevant statutory provisions are required to be adverted and the same are as follows:-

“4. **Definition.**-In this Code,-

(2) ‘*agriculture*’ includes horticulture, animal husbandry, pisciculture, flower farming, bee keeping and poultry farming;

(14) ‘*land*’, except in Chapters VII and VIII and Sections 80, 81 and Section 136, means land held or occupied for purposes connected with agriculture;

80. Use of holding for Industrial, Commercial or Residential purposes.— Where a bhumidhar with transferable rights uses his holding or part thereof, for industrial, commercial or residential purposes, the Sub Divisional Officer may, *suo motu* or on an application moved by such bhumidhar, after making such enquiry as may be prescribed, either make a declaration that the land is being used for the purpose not connected with agriculture or reject the application. The Sub-Divisional Officer shall take a decision on the application within forty five working days from the date of receipt of the application. In case the application is rejected, the Sub-Divisional Officer shall state the reasons in writing for such rejection and inform the applicant of his decision.

(2) Where a bhumidhar with transferable rights proposes to use in future his holding or part thereof, for industrial, commercial or residential purposes, the Sub-Divisional Officer may on an application moved by such bhumidhar, after making such enquiry as may be prescribed, either make a declaration that the land may be used for the purpose not connected with agriculture or reject the application, within forty five working days from the

date of receipt of the application. In case the application is rejected, the Sub-Divisional Officer shall state the reasons in writing of such rejection and inform the applicant of his decision :

Provided further that if the bhumidhar fails to start the proposed non-agricultural activity within a period of five years from the date of declaration under this sub-section, then the declaration under sub-section (2) for the holding or part thereof shall lapse :

Provided also that a declaration under this sub-section (2) shall not amount to change of land use and the land shall continue to be treated as agricultural land only. However, the bhumidhar shall be entitled to obtain loan and other necessary permissions, clearances etc. for the activity or project, proposed on the holding or part thereof, for which declaration under this sub-section has been obtained.

(3) A bhumidhar possessing declaration under sub-section (2) for this holding or part thereof, may apply to Sub-Divisional Officer for converting declaration under sub-section (2) to a declaration under sub-section (1), after completion of construction activity or start of the proposed non-agricultural activity, within a period of five years from declaration under sub-section (2). On receipt of such an application, the Sub-Divisional Officer, after making such enquiry as necessary, shall approve or reject the application within a period of 15 days from the receipt of the application. In case of rejection, he shall record in writing the reasons for such rejection :

Provided that for conversion of declaration under sub-section (2) to a declaration under sub-section (1), the bhumidhar shall be liable to pay only the balance amount of fee payable, calculated at prevailing circle rate, after adjusting the amount already paid by him for declaration under sub-section (2) earlier.

(4) No application for a declaration under sub-section (1) or (2), moved by any co-bhumidhar having undivided interest in bhumidhari land shall be maintainable, unless application is moved by all the co-bhumidhars of such bhumidhari land. In case only one of the co-bhumidhar wants to get a declaration for his share in the land with joint interest, then such an application shall be entertained only after the respective shares of the co-bhumidhars in the land have been divided in accordance with the provisions of law.

(5) The application for declaration under sub-section (1) or sub-section (2) shall contain such particulars and shall be made in such manner as may be prescribed.

(6) Where the application under sub-section (1) or sub-section (2) is made in respect of a part of the holding, the Sub-Divisional Officer may, in the manner prescribed, demarcate such part for purposes of such declaration.

(7) No declaration under this section shall be made by the Sub-Divisional Officer, if he is satisfied that the land or part thereof is being used or is proposed to be used for a purpose which is likely to cause a public nuisance or to affect adversely public order, public health, safety or convenience or which is against the uses proposed in the master plan.

(8) In case the land or part thereof for which a declaration under this section is being sought falls within the area notified under any Urban or Industrial Development Authority, then prior permission of the concerned Development Authority shall be mandatory.

(9) The State Government may fix the scale of fees for declaration under this section and different fees may be fixed for different purposes :

Provided that if the applicant uses the holding or part thereof, for his own residential purpose, no fee shall be charged for the declaration under this section.

81. Consequences of declaration.— Where a declaration has been made under sub-section (1) of Section 80, the following consequences shall, in respect of such holding or part to which it relates ensue :

(a) all restrictions imposed by or under this Chapter in respect of transfer of land shall cease to apply to the Bhumidhar with transferable rights ;

(b) notwithstanding anything contained in Chapter XI, the land shall, with effect from the commencement of the agricultural year following the date of declaration, be exempted from payment of land revenue ;

(c) the Bhumidhar shall, in the matter of devolution be governed by the personal law to which he is subject.

82. Cancellation of declaration.—(1) Whenever any holding or part thereof in respect of which a declaration has been made under Section 80 is used for any purpose connected with agriculture the Sub-Divisional Officer may, of his own motion or on an application made in that behalf and after making such inquiry as may be prescribed, cancel such declaration.

(2) Where a declaration is cancelled under sub-section (1) the following consequences shall, in respect of the holding or part to which it relates ensue namely :

(a) the holding or part shall become subject to all restrictions imposed by or under this Chapter in matters of transfer and devolution;

(b) the holding or part shall become liable to payment of land revenue with effect from the commencement of the agriculture year in which the order for cancellation of the declaration is made :

Provided that until any land revenue is reassessed on such holding or part in accordance with the provisions of this Code, the land revenue payable or deemed to be payable in respect of such holding or part before the grant of declaration under Section 80 shall be deemed to be the land revenue payable in respect of such holding or part.

(c) where the land is in possession of any person other than the Bhumidhar thereof on the basis of a contract or lease, and the terms of such contract or lease are inconsistent with the provisions of this Code, such contract or lease shall to the extent of the inconsistency, become void and the person in possession shall be liable to ejection on the suit of the Bhumidhar :

Provided that a mortgage with possession existing on the date of the cancellation of the declaration shall, to the extent of the amount due and secured on such land, be deemed to be substituted by a simple mortgage carrying such rates of interest as may be prescribed.

83. Recording of declaration or cancellation.—Every declaration under Section 80 or cancellation under Section 82 shall be recorded in Record of Rights in the manner as may be prescribed and, even after declaration under Section 80, the mutation order on the basis of transfer or succession shall be passed in the manner prescribed.

12. Section 80, as it presently stands, was substituted by Section 8 of the U.P. Revenue Code (Amendment) Act, 2019 [Act No. 7 of 2019] (w.e.f. 10.3.2019). Prior to its substitution, Section 80 reads as follows:-

“80. Use of holding for Industrial, Commercial or Residential

purposes.—(1) Where a Bhumidhar with transferable rights uses his holding or part thereof, for industrial, commercial or residential purposes, the Sub Divisional Officer may, *suo motu* or on an application moved by such Bhumidhar, after making such inquiry as may be prescribed, either make a declaration that the land is being used for the purpose not connected with agriculture or reject the application. The Sub-Divisional Officer shall state the reasons in writing of such declaration or rejection and inform the applicant of his decision within forty five working days from the date of receipt of the application :

Provided that no such declaration under this section shall be made merely on the ground that the holding or part thereof is surrounded by boundary wall or is “Parti” on the spot :

Provided further that no application for the declaration under this sub-section moved by any co-bhumidhar having undivided interest in Bhumidhari land shall be maintainable, unless application is moved by all the co-bhumidhars of such bhumidhari land or their interests therein are divided in accordance with provisions of law.

(2) The application for declaration under sub-section (1) shall contain such particulars and shall be made in such manner as may be prescribed.

(3) Where the application under sub-section (1) is made in respect of a part of the holding, the Sub-Divisional Officer may, in the manner prescribed, demarcate such part for purposes of such declaration.

(4) No declaration under this section shall be issued by the Sub-Divisional Officer, if he is satisfied that the land is to be used for a purpose which is likely to cause a public nuisance or to affect adversely public order, public health, safety or convenience or against uses proposed in the Master Plan.

(5) The State Government may fix the scale of fees for declaration under this section and different fees may be fixed for different purposes.

Provided that if the applicant uses the holding or part thereof for his own residential purpose, no fee shall be charged for the declaration under this section.”

13. The relevant rules, as contained in the U.P. Revenue Code Rules, 2016³, relating to the aforesaid statutory

³ Rules, 2016

provisions are also required to be referred and the same are as follows:-

“85. Application for declaration (Section 80).—(1) A bhumidhar with transferable rights using his holding or any part thereof for a purpose not connected with agriculture may apply to the Sub-Divisional Officer for a declaration under Section 80(1) in **R.C. Form-25**.

(2) The applicant shall pay the required amount of declaration fee which shall be one percent of the amount calculated as per the circle rate for agricultural purpose fixed by Collector of the district concerned or as per the rate fixed by State Government from time to time.

(3) On receipt of the application under sub-rule (1), the Sub-Divisional Officer may cause an inquiry to be made through a revenue officer not below the rank of a Revenue Inspector for the purpose of satisfying himself that the holding or part thereof is really being used for a non-agricultural purpose. The concerned officer shall, after spot verification submit his report to the Sub-Divisional Officer indicating the purpose for which the holding or part thereof is being actually used.

86. Notice to the bhumidhar [Section 80].—Where the proceedings under Section 80(1) has been initiated by the Sub-Divisional Officer on his own motion, he shall issue notice to the bhumidhar concerned, and the inquiry referred to in rule 85(3) shall be held after the reply, if any, of the bhumidhar is submitted.

87. Grant of declaration (Section 80).— If after scrutinizing the report of the revenue officer, the Sub-Divisional Officer is satisfied :

(a) that the entire holding is being used for a purpose not connected with agriculture; and

(b) that the conditions specified in Section 80(4) are complied with, he may make a declaration under Section 80(1), in respect of such holding.

88. Apportionment of Land Revenue [Section 80].—(1) If only a part of the holding is being used by a bhumidhar with transferable rights for a non-agricultural purpose, and the Sub-Divisional Officer is satisfied that the provisions of the second proviso to Section 80(1) have not been contravened, he may make a declaration only with respect of such part, provided that

the cost of demarcation as per sub-rule (2) of the rule 22 is deposited by the bhumidhar before such declaration.

(2) Where the proceeding for declaration in respect of a part of the holding is initiated by the Sub-Divisional Officer *suo motu*, the cost of such demarcation shall be recovered by the Sub-Divisional Officer as arrears of land revenue.

(3) In every case of declaration under sub-rule (1) or sub-rule (2), the demarcation shall be made on the basis of the existing survey map, and the Sub-Divisional Officer shall apportion the land revenue payable by such bhumidhar.

(4) The Sub-Divisional Officer shall make an endeavor to conclude the proceeding for declaration under sub-section (1) of Section 80 within the period of 45 days from the date of registration of the application and if the proceeding is not concluded within such period the reasons for the same shall be recorded.

89. Cancellation of declaration [Section 82].—Where any holding or any part thereof has been the subject matter of declaration under Section 80 of the Code or Section 143 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, and such holding or part is again used for a purpose connected with agriculture, necessary application for cancellation of such declaration under Section 82 may be submitted to the Sub-Divisional Officer in R.C. Form-26.

90. Inquiry before cancellation [Section 82].—On receipt of the application under rule 89, the Sub-Divisional Officer shall make an inquiry and follow the procedure laid down in rules 85 to 88 before the declaration is cancelled in accordance with Section 82.

91. Mode of declaration and cancellation [Section 83].—(1) Every declaration made under Section 80 and cancellation thereof under Section 82 shall be duly signed by the Sub-Divisional Officer and shall bear the seal of his Court and shall contain the following particulars:

- (a) Section under which it was made.
- (b) Number and area of the plot in respect of which it was made.
- (c) The land revenue, if any, of the plots in question.
- (d) Name of the village and Tahsil and district where the plot was situate.

(e) Name, parentage and address of the bhumidhar in whose favour the declaration was made.

(f) The date of the declaration.

(2) Such a declaration need not be registered under the Registration Act, 1908, but the same shall be recorded in the record of rights.

92. Rate of interest [Section 82].— When a mortgage with possession is substituted by a simple mortgage under the proviso to clause (c) of Section 82(2), then such simple mortgage shall carry interest at the rate of 4 percent per annum.”

14. It would be apposite to refer to the similar provisions relating to declaration under the repealed Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950. The same are as follows:-

143. Use of holding for industrial or residential purposes. -
 [(1) Where a [bhumidhar with transferable rights] uses his holding or part thereof for a purpose not connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming, the Assistant Collector-in-charge of the sub-division may, suo motu or on an application, after making such enquiry as may be prescribed, make a declaration to that effect.

(1-A) Where a declaration under sub-section (1) has to be made in respect of a part of the holding the Assistant Collector-in-charge of the sub-divisions may in the manner prescribed demarcate such part for the purposes of such declaration.]

(2) Upon the grant of the declaration mentioned in sub-section (1) the provisions of this chapter (other than this section) shall cease to apply to the [bhumidhar with transferable rights] with respect to such land and he shall thereupon be governed in the matter of devolution of the land by personal law to which he is subject.

[(3) Where a bhumidhar with transferable rights has been granted, before or after the commencement of the Uttar Pradesh Land Laws (Amendment) Act, 1978, any loan by the Uttar Pradesh Financial Corporation or by any other Corporation owned or controlled by the State Government, on the security of any land held by such bhumidhar, the provisions of this Chapter (other than this section) shall cease to apply to such bhumidhar

with respect to such land and he shall thereupon be governed in the matter of devolution of the land by personal law to which he is subject.]

144. Use of land for agricultural purposes.- (1) Whenever any land held by a bhumidhar which is not used for the purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming, has become land used for such purposes, the [Assistant Collector-in-charge of the sub-division may *suo motu* or on an application, after making such enquiry as may be prescribed], make a declaration to that effect and thereupon the bhumidhar shall, as respects the land, be subject to the provisions of this chapter.

(2) Upon the grant of the declaration under sub-section (1) in respect of any land any person other than the bhumidhar in possession of the plot shall-

(a) if he holds it under any contract or lease which is inconsistent with any of the provisions of this chapter, be deemed to be an occupant liable to ejection under Section 209; and

(b) if he holds it under any contract or lease which is not inconsistent with any of the provisions of this chapter, be entitled to the rights in the land determined in accordance with the provisions thereof.

(3) Any contract or lease referred to in sub-clause (a) of sub-section (2) which is inconsistent with the provisions of the chapter shall, to the extent of the inconsistency, become void with effect from the date of declaration :

Provided that any mortgage with possession existing on any such land shall, to the extent of the amount due and secured on such land, be deemed to have been substituted by a simple mortgage carrying such rate of interest as may be prescribed.

145. Registration of the declaration granted under Sections 143 and 144. - A copy of every declaration made under Sections 143 and 144 shall be forwarded by the [Assistant Collector-in-charge of the sub-division] to the Sub-Registrar concerned who shall, notwithstanding anything contained in the Indian Registration Act, 1908 (U.P. Act XVI of 1908), register the same free of cost in the manner prescribed.

15. Section 82 of the Code, 2006 relates to cancellation of declaration made under Section 80, and in terms thereof

whenever any holding or any part thereof in respect of which a declaration has been made under section 80 is used for 'any purpose connected with agriculture', the Sub Divisional Officer may, of his own motion or on an application made in that behalf and after making such enquiry as may be prescribed, cancel such declaration.

16. The corresponding provision contained under Rule 89 of the Rules, 2016 provides that where any holding or any part thereof has been the subject matter of declaration under Section 80 of the Code or Section 143 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, and such holding or part is again used for a purpose connected with agriculture, necessary application for cancellation of such declaration under Section 82, may be submitted to the Sub Divisional Officer in the prescribed form, whereupon the Sub Divisional Officer shall make an enquiry and follow the procedure laid down in Rules 85 to 88 before the declaration is cancelled in accordance with Section 82.

17. In the case at hand the application filed by the petitioners under Section 82 of the Code, 2006, seeking cancellation of the declaration made earlier under Section 80, has been rejected by assigning a reason that the land in question was being used as 'nursery', which indicates that the land is being used for a commercial purpose and not for an agricultural purpose. The respondent authority on the said basis has drawn an inference that the land use was non-agricultural and commercial, and as a consequence thereof,

rejected the application.

18. The term 'agriculture' in its root sense is derived from the Latin *ager* (field) and *colo* (cultivate) signifying, when combined the Latin *agricultura* (field or land tillage). The word agriculture, has come to subsume a very wide spectrum of activities that are integral to agriculture and have various descriptive terms assigned to them.

19. Referring to the dictionary meaning of the term 'agriculture' **The New Lexicon Webster's Dictionary**⁴ describes it as:-

“the science or practice of large-scale soil cultivation (cf. HORTICULTURE), farming[F].”

20. In **Bouvier's Law Dictionary**⁵ 'agriculture' is defined as:-

“The cultivation of soil for food products or any other useful or valuable growths of the field or garden; tillage, husbandry; also, by extension, farming including any industry practised by a cultivator of the soil in connection with such cultivation, as breeding and rearing of stock, dairying etc. The science that treats of the cultivation of the soil. Stand. Dict. The term refers to the field or farm, with all its wants, appointments and products, as distinguished from horticulture, which refers to the garden, with its less important though varied products: Dillard Vs. Webb, 55 Ala. 468.

A person is actually engaged in agriculture when he derives the support of himself and family in whole or in part from the cultivation of land; it must be something more than a garden, though it may be less than a field, and the uniting of any other business with this is not inconsistent with the pursuit of agriculture; Springer v. Lewis, 22 Pa.193. See Bachelder v. Bickford, 62 Me. 526;

⁴ The New Lexicon Webster's Dictionary - 1987

⁵ Bouvier's Law Dictionary, A concise Encyclopedia of The Law, Rawle's Revision

Simons v. Lovell, 7 Heisk. (Tenn.) 515.

Within the meaning of an exemption law, one who cultivates a one acre lot and is also a butcher and day laborer is not engaged in agriculture.”

21. Corpus Juris Secundum⁶ defines the term 'agriculture' as :-

“(1) Agriculture is a science that treats of the cultivation of the soil.

(2) Agriculture is the art or science of cultivating the ground, especially in fields or large quantities, including the preparation of the soil, the planting of seeds, the raising and harvesting of crops, and the rearing, feeding, and management of live stock.”

22. The aforesaid meanings ascribed to the term 'agriculture' in various dictionaries indicate that the term has been used both in narrow sense of cultivation of field and wider sense of comprising activities in relation to the land including horticulture, forestry, breeding and rearing of live stock, floriculture etc.

23. The question as to whether the narrower or the wider sense of meaning of the term 'agriculture' is to be adopted in a particular case would depend upon the provision contained in the statute and also upon the facts and circumstances of each case.

24. The term 'agriculture', at one point of time was understood in its primary sense of cultivation of field. However, there was another view which gave to the term 'agriculture' an extended meaning and included within its connotation not only the products raised by the cultivation of

⁶ Corpus Juris Secundum, Vol. 3, 1973

land but also allied activities, thus bringing within its compass not only the basic agricultural operations but also the further operations performed on the products of the land.

25. The central idea which emerges is that there should be tillage of land, sowing of seeds or planting or similar work on the land which invests the operation with the characteristic of agricultural operations and whenever this central idea is fulfilled there is user of land for agricultural purposes. In the wider sense, the term 'agriculture' has been interpreted so as to include all activities in relation to the land, even though they did not comprise these basic agricultural operations.

26. The meaning and connotation of the term 'agriculture' and 'agricultural purposes' came up for consideration before the Privy Council in *Raja Mustafa Ali Khan, Through Special Manager, Court of Wards, Utraula, District Gonda Vs. Commissioner of Income Tax, United Provinces, Ajmer and Ajmer Merwara*⁷, in the context of an exemption being sought under Section 2(1) of the Income Tax Act, 1922, and an opinion was expressed that unless there is some measure of cultivation of land and some expenditure of skill and labour upon it, the land cannot be said to be used for agricultural purposes.

27. The term 'agriculture' was thus in effect held to mean some measure of cultivation of land and some skill and labour upon it and unless the operations conformed with this

⁷ AIR 1949 PC 13

meaning they could not be styled as agricultural operations so as to lead to the inference that the land on which they were performed was being used for agricultural purposes.

28. The test which was laid down for finding out when land is said to be used for agricultural purposes was that there must be some measure of cultivation of land and some expenditure of skill and labour upon it.

29. The meaning of the term 'agriculture' and 'agricultural purposes' was again subject matter of consideration in the context of the definition of term 'agricultural income' under Section 2(1) of the Income Tax Act, in the case of *Commissioner of Income Tax West Bengal, Calcutta Vs. Raja Binoy Kumar Sahas Roy*⁸ and after a detailed discussion of the earlier decisions on the point, it was observed as follows:-

“**95.** We have, therefore, to consider when it can be said that the land is used for agricultural purposes or agricultural operations are performed on it. Agriculture is the basic idea underlying the expressions “agricultural purposes” and “agricultural operations” and it is pertinent therefore to enquire what is the connotation of the term “agriculture”.

As we have noted above, the primary sense in which the term agriculture is understood is agar — field and cultra — cultivation i.e. the cultivation of the field and if the term is understood only in that sense, agriculture would be restricted only to cultivation of the land in the strict sense of the term meaning thereby, tilling of the land, sowing of the seeds, planting and similar operations on the land.

They would be the basic operations and would require the expenditure of human skill and labour upon the

⁸ AIR 1957 SC 768

land itself. There are however other operations which have got to be resorted to by the agriculturist and which are absolutely necessary for the purpose of effectively raising the produce from the land.

They are operations to be performed after the produce sprouts from the land e.g. weeding, digging the soil around the growth, removal of undesirable undergrowths and all operations which foster the growth and preserve the same not only from insects and pests but also from deprecation from outside, tending, pruning, cutting, harvesting, and rendering the produce fit for the market. The latter would all be agricultural operations when taken in conjunction with the basic operations above described, and it would be futile to urge that they are not agricultural operations at all.

But even though these subsequent operations may be assimilated to agricultural operations, when they are in conjunction with these basic operations, could it be said that even though they are divorced from these basic operations they would nevertheless enjoy the characteristic of agricultural operation? Can one eliminate these basic operations altogether and say that even if these basic operations are not performed in a given case the mere performance of these subsequent operations would be tantamount to the performance of these subsequent operations on the land so as to constitute the income derived by the assessee therefrom agricultural income within the definition of that term?

96. We are of opinion that the mere performance of these subsequent operations on the products of the land, where such products have not been raised on the land by the performance of the basic operations which we have described above would not be enough to character them as agricultural operations. In order to invest them with the character of agricultural operations, these subsequent operations must necessarily be in conjunction with and a continuation of the basic operations which are the effective cause of the products being raised from the land.

It is only if the products are raised from the land by the performance of these basic operations that the subsequent operations attach themselves to the products of the land and acquire the characteristic of agricultural operations. The cultivation of the land does not comprise merely of raising the products of the land in the

narrower sense of the term like tilling of the land, sowing of the seeds, planting, and similar work done on the land but also includes the subsequent operations set out above all of which operations, basic as well as subsequent, form one integrated activity of the agriculturist and the term “agriculture” has got to be understood as connoting this integrated activity of the agriculturist.

One cannot dissociate the basic operations from the subsequent operations, and say that the subsequent operations, even though they are divorced from the basic operations can constitute agricultural operations by themselves. If this integrated activity which constitutes agriculture is undertaken and performed integrated to any land that land can be said to have been used for “agricultural purposes” and the income derived therefrom can be said to be “agricultural income” derived from the land by agriculture.

...

101. If the term “agriculture” is thus understood as comprising within its scope the basic as well as subsequent operations in the process of agriculture and the raising on the land of products which have some utility either for consumption or for trade and commerce, it will be seen that the term “agriculture” receives a wider interpretation both in regard to its operations as well as the results of the same.

Nevertheless there is present all throughout the basic idea that there must be at the bottom of it cultivation of land in the sense of tilling of the land, sowing of the seeds, planting, and similar work done on the land itself. This basic conception is the essential sine qua non of any operation performed on the land constituting agricultural operation. If the basic operations are there, the rest of the operations found themselves upon the same.

But if these basic operations are wanting the subsequent operations do not acquire the characteristic of agricultural operations.”

30. The legal position, as noted above, indicates that if the products are raised from the land by performance of the basic

operations which are necessary for the purpose of effectively raising the produce from the land, the subsequent operations attach themselves to the products of the land and acquire the characteristic of agricultural operations. The cultivation of the land has been held to comprise not merely raising the products of the land in the narrower sense of the term like tilling of land, sowing of seeds, planting and similar work done on the land but would also include the subsequent operations. All these operations -- basic as well as subsequent, would form one integrated activity of the agriculturist and the term 'agriculture' would have to be understood as connoting this integrated activity. In a case where this integrated activity which constitutes agriculture is undertaken and performed in regard to any land, that land can be said to have been used for 'agricultural purposes'.

31. The words used in Section 82 on the basis of which cancellation of declaration made under Section 80 may be sought, are 'any purpose connected with agriculture'. The term 'agriculture' has been defined under Section 4(2) of the Code, 2006 to include horticulture, animal husbandry, pisciculture, flower farming, bee keeping and poultry farming.

32. The word 'includes' has often being seen to be used in definition clauses in order to enlarge the meaning of the words or phrases occurring in the body of a statute. When it is so used these words and phrases must be construed as comprehending not only such things as they signify according

to their nature and import but also those things which the definition clause declares that they shall include.

33. In *Dilworth and Others Vs. The Commissioner of Stamps*,⁹ it has been observed as follows:-

“...The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used those words or phrases must be construed as comprehending, not only such things, as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. ...”

34. The term 'include' is used in interpretation clauses where it is intended that while the term which is being defined should retain its ordinary meaning, its scope should be widened by specific enumeration of certain matters which its ordinary meaning may or may not comprise so as to make the definition enumerative and not exhaustive. When they are so used, these words or phrases must be construed as comprehending not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include.

35. *Craies*¹⁰ in *Statute Law (7th edition, 1979)* has opined as follows:-

“There are two forms of interpretation clause. In one, where the word defined is declared to “mean” so and so, the definition is explanatory and prima facie restrictive. In the other, where the word defined is declared to “include” so and so, the definition is extensive,.....”

9 (1899) AC 99

10 Craies, Statute Law (7th Edition 1979)

36. In *Ramala Sahkari Chini Mills Ltd. Uttar Pradesh Vs. Commissioner, Central Excise, Meerut -I*¹¹, the Supreme Court while considering the use of the expression 'include' in Rule 2(g) of the CENVAT Credit Rules, 2002, held that it should be given a wide interpretation and that the legislative intent in this case was to create an extensive legal fiction and that the legislature did not intend to impart restricted meaning to the definition. It was observed as follows:-

“The word “include” should be given a wide interpretation as by employing the said word, the legislature intends to bring in, by legal fiction, something within the accepted connotation of the substantive part. It is also well settled that in order to determine whether the word “includes” has that enlarging effect, regard must be had to the context in which the said word appears.”

37. The ambit of the expression 'includes' occurring in Section 154 of the Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950, came for consideration in *Oswal Fats and Oils Ltd. Vs. Additional Commissioner (Administration), Bareilly Division, Bareilly and Others*¹² and it was stated thus:-

“The word 'includes' is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, those words and phrases must be construed as comprehending not only such things, as they signify according to their nature and import, but also those things which the interpretation clause declares that they shall include.”

38. The use of the word 'include' and its scope and intent

11 (2010) 14 SCC 744

12 (2010) 4 SCC 728

again came up for consideration in *Bharat Diagnostic Center Vs. Commissioner of Custom*¹³, and referring to the earlier decision in *South Gujarat Roofing Tiles Manufacturers Association and Another Vs. State of Gujarat and Another*¹⁴, *ESI Corpn. Vs. High Land Coffee Works*¹⁵, *Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad*¹⁶ and *State of Bombay and Others Vs. Hospital Mazdoor Sabha and Others*¹⁷, it was restated that when the word 'include' is used as such, these words or phrases must be construed as comprehending not only such things as they signify according to their natural import or as per common parlance but also those things which the interpretation or explanation clause declares that they shall include. It was observed as follows:-

“9. While defining or explaining the meaning of a word or phrase in a statute, the word ‘include’ is generally used to enlarge the meaning of those words or phrases. When the word ‘include’ is used as such, those words or phrases must be construed as comprehending not only such things as they signify according to their natural import or as per common parlance, but also those things which the interpretation or explanation clause declares that they shall include. This principle has been enumerated in several decisions of this Court.

10. In the case of *South Gujarat Roofing Tiles Manufacturers Assn. v. State of Gujarat*, (1976) 4 SCC 601, a three-judge Bench of this Court held that:

“... It is true that “includes” is generally used as a word of extension, but the meaning of a word or phrase is extended when it is said to include things

13 2014 (307) ELT 632

14 (1976) 4 SCC 601

15 (1991) 3 SCC 617

16 (1971) 3 SCC 550

17 (1960) 2 SCR 866

that would not properly fall within its ordinary connotation. We may refer to the often quoted observation of Lord Watson in *Dilworth v. Commissioner of Stamps* [1899 AC 99, 105-106] that when the word “include” is used in interpretation clauses to enlarge the meaning of words or phrases in the statute:

“these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include.” Thus where “includes” has an extending force, it adds to the word or phrase a meaning which does not naturally belong to it. ...”

11. Again, in a three-judge Bench decision in the case of *ESI Corpn. v. High Land Coffee Works*, (1991) 3 SCC 617, this Court observed that:

“... The word “include” in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction. The word ‘include’ is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include. [See (i) *Stroud's Judicial Dictionary*, 5 th edn. Vol. 3, p. 1263 and (ii) *C.I.T. v. Taj Mahal Hotel*, (1971) 3 SCC 550, (iii) *State of Bombay v. Hospital Mazdoor Sabha*, (1960) 2 SCR 866.]”

39. It would, therefore, be seen that the word 'include' is generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute and when it is so used, the comprehensive sense is not to be taken as strictly defining what the meaning of the word must be under all circumstances but merely as

declaring how it should be comprehended. Where an interpretation clause defines a word to mean a particular thing, the definition would be explanatory and *prima facie* restrictive and where an interpretation clause defines a term to include something, the definition would be extensive.

40. The word 'include' is thus to be taken as a term of extension which imports addition. It adds to the subject matter already comprised in the definition. A broader meaning ought to be given where an interpretation clause uses the word 'includes' keeping in view the scheme, object and purport of the statute.

41. In ordinary parlance the use of the word 'includes' indicates that what follows it comprises or is contained in or is a part of the whole of the word preceding. In the context of Section 4(2) of the Code, 2006, this would mean that the word 'agriculture' would not be restricted to the group of activities that follow but would only emphasize the attribute which is common to the group. The attribute which is common to the group in this case is that all the activities enumerated are allied to the principle activity of agriculture.

42. It is a settled principle of interpretation that words in a statutory provision are to be read in collocation with their companion words. This principle is based on the maxim *noscitur a sociis* i.e. meaning of a word should be known from its accompanying or companion words. The import of words used in a cognate sense and in reference to activities of an

allied nature can be understood by applying this principle.

43. The rule to be applied for understanding associated words in a common sense, has been stated by **Maxwell**¹⁸, in the following manner:-

“Where two or more words which are susceptible of analogous meaning, are coupled together, *noscitur a sociis*, they are understood to be used in their cognate sense. They take, as it were, their colour from each other, the meaning of the more general being restricted to a sense analogous to that of the less general.”

44. Applying the aforestated principle that when words of analogous meaning are used together they are to be taken in their cognate sense it would follow that the word 'agriculture' as defined under Section 4(2) of the Code, 2006 would have to be understood as being inclusive of its allied activities and by necessary implication, the 'carrying on of an activity relating to nursery' cannot be held to be excluded.

45. Reverting to the facts of the present case, the application dated 24.10.2019 submitted by the petitioner before the concerned authority under Section 82 of the Code, 2006 seeking cancellation of the declaration made under Section 80, states that consequent to the declaration obtained under Section 80 on 08.09.2017 the petitioners had not raised any construction over the land in question nor did they intend to raise any such construction in the future. It was also stated in the application that the land in question was being used for agriculture and crops of wheat were standing over

18 Maxwell, The Interpretation of Statutes, Twelfth Edition, p.289

the same. Accordingly, the earlier declaration that the land was being used for purpose not connected with agriculture, was sought to be cancelled.

46. In support of the aforestated assertion, the petitioners have sought to rely upon the *khasra* entries indicating that the crops of wheat were standing over the land in question at the relevant point of time. A report dated 02.03.2020 submitted by the Area Lekhpal has also been placed on record wherein it is stated that the crops of wheat were standing over the land in question and the same was being used for agricultural purpose and not for any commercial purpose.

47. Since the application of the petitioner remained pending despite the aforementioned reports, the petitioners aggrieved by the inaction on the part of the respondent authority approached this Court by filing Writ – C No. -10252 of 2021, which was disposed of in terms of a judgment dated 19.07.2021/26.07.2021 directing the respondent authorities to decide the application of the petitioner within a stipulated time period of four months.

48. The petitioner thereafter moved an application dated 02.08.2021 before the respondent No. 2 seeking compliance of the order passed in the writ petition, pursuant to which a report dated 25.11.2021 was submitted by the Area Lekhpal wherein it was stated that upon spot inspection, it was found that apart from the boundary wall of height of 4-5 feet which

encloses the land, there existed no construction over the same and the land was being used as a nursery of 'decorative' and 'timber plants'. As per the report, the same was of a commercial use. On the basis of the aforesaid report, the respondent No. 2 passed the order dated 16.12.2021 rejecting the application made by the petitioners by recording a reason that since the land was being used for the purposes of a nursery which was a commercial use and not for an agricultural purpose, the declaration as sought could not be granted.

49. The principal reason which has thus been assigned for rejecting the application filed under Section 82 of the Code, 2006 seeking cancellation of the declaration is that the land was being used for the purposes of a nursery. This, according to the respondent authority, was a commercial use and the same could not be said to be a purpose connected with agriculture.

50. The definition of the term 'agriculture' under sub-section (2) of Section 4 of the Code, 2006, as noticed above, is of expansive nature and specifically includes 'flower farming'. This together with the legal position, as noted above, that cultivation of land is not to be seen as merely raising the products of land in the narrower sense of the term like tilling of the land, sowing of seeds, planting and other similar works but would also include the subsequent operations, would lead to an inference that the use of the land for the purposes of a nursery in the facts of the present

case, cannot be said to be a non-agricultural purpose; rather the same would have to be held to be included under the expression 'purpose connected with agriculture'.

51. This being the factual and the legal position, the reason assigned for rejecting the application under Section 82, would have to be held to be wholly irrelevant for the purposes of consideration of an application seeking cancellation of declaration under Section 80 of the Code, 2006.

52. In exercise of its discretionary power, if the concerned authority ignores or does not take into account considerations which are relevant to the purpose of the statute in question, then its action would be invalid. This would be more so where the statute conferring discretion on the authority has structured the discretion by expressly laying down the consideration which should be taken into account by the authority for exercise of the discretion. In such a case, if the exercise of the discretionary power has been influenced by considerations that cannot lawfully be taken into account or by disregard of the relevant considerations required to be taken into account, the decision arrived at by the authority would be invalid.

53. The 'irrelevant considerations' doctrine was stated by **Lord Esher MR** in **R. vs. St Pancras Vestry**¹⁹ by observing as follows:-

19 (1890) 24 QBD 371

"But they must fairly consider the application and exercise their discretion on it fairly, and not take into account any reason for their decision which is not a legal one. If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion."

54. The scope of interference by Courts in matters relating to exercise of discretion conferred by a statute upon an authority was subject matter of consideration in **Associated Provincial Picture Houses, Ltd. vs. Wednesbury Corporation**²⁰ wherein it was stated by **Lord Greene, M.R.** as follows:-

"... The law recognises certain principles on which the discretion must be exercised ... They are perfectly well understood. The exercise of such a discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found, expressly or by implication, matters to which the authority exercising the discretion ought to have regard, then, in exercising the discretion, they must have regard to those matters. Conversely, if the nature of the subject-matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, they must disregard those matters.

... the court is entitled to investigate the action of the local authority with a view to seeing whether it has taken into account matters which it ought not to take into account, or, conversely, has refused to take into account or neglected to take into account matters which it ought to take into account."

55. The circumstances under which exercise of discretionary powers by a statutory authority may be held to be invalid were stated in **Padfield And Others vs. Minister**

20 [1947] 2 All ER 680

of Agriculture, Fisheries And Food And Others²¹, wherein **Lord Upjohn** observed as follows:-

"Unlawful behaviour by the Minister may be state with sufficient accuracy ... (a) by an outright refusal to consider the relevant matter, or (b) by misdirecting himself in point of law, or (c) by taking into account some wholly irrelevant or extraneous consideration, or (d) by wholly omitting to take into account a relevant consideration."

56. The principle laid down in the decision of the **House of Lords** in **Padfield's case** (supra) was reiterated by **Lord Denning, M.R.** in **Breen vs. Amalamated Engineering Union And Others**²² by stating as follows:-

"The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside."

57. The proposition can thus broadly be laid down by stating that a decision by an authority exercising discretionary power under a statute must be arrived at by taking into account the relevant considerations and eschewing the irrelevant considerations, in the absence of which the action would have to be held as ultra vires and void.

58. The aforestated legal position has been stated in a recent decision of the Court in **Sitaram Vs. State of U.P. And**

21 [1968] 1 All ER 694

22 [1971] 2 QB 175

2 Others²³ and reiterated in **Omwati Vs. State of U.P. And Others²⁴**.

59. The conditions which are required to be satisfied while considering an application under Section 82 of the Code, 2006 seeking cancellation of declaration made under Section 80, having been clearly specified under the section itself, the reference made in the order impugned to any other circumstance and on the basis thereof to reject the application of the petitioner, would therefore render the exercise of the discretionary power conferred on the authority as ultra vires and invalid. The order impugned having thus been passed in the absence of consideration of the relevant provisions and being based on wholly irrelevant consideration, is accordingly held to be legally unsustainable and is, therefore, set aside.

60. The matter is remitted to the respondent No. 3 for passing a fresh order on the basis of the provisions contained under Section 82 of the Code, 2006, in the light of the discussions made hereinabove. The respondent authority would be expected to pass an appropriate order on the application of the petitioner under Section 82 seeking cancellation of the declaration under Section 80, after obtaining a fresh report, expeditiously, and preferably within a period of three months from the date of presentation of a certified copy of this order.

23 2022 (5) ADJ 90

24 2023 (1) ADJ 280

61. The writ petition stands **allowed to the extent indicated above.**

Order Date :- 17.4.2023
Arun K. Singh

[Dr. Y.K. Srivastava, J.]