

Use of holding for industrial or residential purpose

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 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 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-division 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 provision 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.

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1. Legislative changes - The original sub-section (1) was "(1) A bhumidhar, who uses his holding or a part thereof for industrial or residential purposes, may apply to the Assistant Collector-in-charge of the sub-division for a declaration to the effect, and the Assistant Collector-in-charge of the sub-division shall, on being satisfied after making such enquiry as he may consider necessary, make a declaration accordingly."

This sub-section was submitted by same sub-section and sub-section (1-A) was added by Section 32 of the U.P. Amending Act, XXXVII of 1958.

In sub-section (1) by Section 33 of the U.P. Amending Act XVI of 1953 the words "Assistant Collector-in-charge" of the sub-division" were substituted for "Collector".

Words with transferable rights have been added after Bhumidhar wherever they occur in sub-sections (1) and (2) by U.P. Act 24 of 1986.

By Section 2 of U.P. Land Laws (Amendment) Act (U.P. Act No.6 of 1978) the sub-section (3) has been inserted.

2. Summary - Section 142 of the Act provides that a bhumidhar has the right to use his land for any purpose whatsoever. This right is peculiar to a bhumidhar alone. He can use his holding or part thereof for a purpose not connected with agriculture, horticulture or animal husbandry etc., and instead may use it for industrial or residential purpose. When the land is being used for such purposes, the Assistant Collector-in-charge of the sub-division may, suo moto or on an application, after making any inquiry make a declaration to that effect. On result of such declaration is that such land ceases to be governed by the provisions of this Act except by this section. Another consequence is that such demarcated land is then in the matter of devolution governed by personal law to which he is subject.

3. Rules framed by the State Government:

Rule 135 - (1) On an application made by a bhumidhar under Section 143 or on facts coming to his notice otherwise, the Assistance Collector-in-charge of the sub-division may cause enquiry being made through the Tahsildar or any other officer not below thye rank of a Supervisor Kanungo, for the purpose of satisfying himself that the bhumidhar's holding or a part thereof is really being

used for a purpose not connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming. The enquiry shall be made on the spot and the enquiry officer shall, alongwith his report also furnish information in the Performa given below:-

(2) Where the proceedings have been started by the Assistant Collector-in-charge of the Sub-division on his own motion he shall issue notice to the Bhumidhar concerned. Otherwise also he shall give him an opportunity of being heard before coming to a decision in the matter.

Name of Village	Name of Bhumidhar with parentage and residence	Khata Kahatuni number	Area of the holding	Land Revenue	Area of the holding used for non-agricultural purpose		The specific non-agricultural use to which the holding or part thereof is put to	Remark
					Plot No. (a)	Area (b)		
1	2	3	4	5	6	7	8	9

(3) Where the entire holding of the Bhumidhar has been put to use 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 make a declaration to that effect.

(4) Where only part of the holding of the Bhumidhar has been put to use 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 shall make a declaration to that effect accordingly and get the said part demarcated on the basis of existing survey maps and actual user of the land.

(5) The Assistant Collector-in-charge of the Sub-division shall get prepared and placed on record a map showing in different colors the plots put to use for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming and for purposes not so connected. He shall also apportion the land revenue payable for each part of holding. The land revenue payable for each part shall bear the same proportion to the total land revenue as the valuation of part bears to the total valuation of the holding calculated on the basis of rent rates applicable. An entry shall also be ordered to be made accordingly in the Khatauni.

(6) The cost of the demarcation shall be realized from the Bhumidhar

concerned as an arrear of land revenue unless it has been deposited during the course of the proceedings. For the services of the Government servants deputed for carrying out the demarcation the cost shall be calculated according to the time taken in the work at the rates laid down in the paragraph 405 of the Revenue Court Manual. The cost so calculated shall be deposited in the treasury under the head "DII - Miscellaneous-9-Collection of payments of services rendered".

4. Application of this section to Bhumidhar - It is the application of this section and grant of declaration thereunder that a Bhumidhar gains two rights:

- (1) to use their holding or part thereof for industrial or residential purposes; and
- (2) of devolution of such demarcated land by personal law to which he is subject.

It may be said that but for this section has the two rights granted by it would not be consistent with the provisions of this Act.

It must be sound odd that when a Bhumidhari land is used for industrial or residential purposes it would still remain Bhumidhari. It is Bhumidharu land and it is because of Bhumidhari rights that the Bhumidhari can use it to such purposes. The Bhumidhari rights will continue even if one Bhumidhar transfers it by sale or in any other manner to another. It is also not necessary that the Bhumidhar should use the land for industrial or residential purposes himself. He may take a partner or let it out on lease. He may grant lease of it for building purposes and the land will be governed by the provisions of the Transfer of Property Act, in the matter of eviction of the tenant etc.

5. Jurisdiction of Consolidation Courts on non-agricultural land- Where the area in question was being used for the purpose of making bricks, it was a purpose unconnected with agriculture and such area did not come under the term land and the Consolidation Courts would have no jurisdiction to adjudicate upon the rights of the parties to such land. *Triloki Nath v. Ram Gopal*, 1974 RD 5. In such case the revenue or civil court will have jurisdiction.

6. Declaration - Jurisdiction to grant of- The question whether certain land has ceased to be used for agricultural purposes is raised before a Civil Court it is bound to refer the question to Revenue Court vide Section 331-A of U.P.Z.A. & L.R. Act. Jurisdiction to grant a declaration under Section 143 vested exclusively in Revenue Court. *Magnu Ahir v. Mahabir*, 1988 RD 301 (HC).

7. Who can apply for declaration- The order of declaration under Section 143 can be made only on the application of the Bhumidhar himself and not on the application of any other person. *Chandra Pal v. Hind Bricks Association*, 1989

RD 402 (BR): 1989 RR 302 (BR).

8. Devolution according to declaration- It would have been an anomaly if a Bhumidhar using the land as stated would also be governed by same provisions of inheritance as one using the land to a purpose connected with agriculture etc. There would be no rational *differentia* for the application of such provisions. On the contrary, the use of Bhumidhar land for residential or industrial purposes may be such land tied for a very long period. The change of lands may cause embarrassment in determining the heirs of each deceased tenant. It has therefore, been provided that personal law will apply to such holder of Bhumidhari rights.

In spite of such provisions and possibilities of the land being under use for a very long period it was not considered impossible that the land could also revert to its old use for agriculture and other purposes connected with agriculture and Section 144 is enacted to govern the case when the land reverts to agricultural purposes, etc.

9. Effect of declaration- It will appear from Section 143 that till such time that a declaration is not granted under sub-section (2) the results set out in that sub-section do not follow. Until the declaration the Bhumidhar continues to be governed by the provisions of this Act. In a suit by a Bhumidhar plaintiff for ejectment of the defendant on ground of non-payment of rent for three years instituted in the civil court an issue as to whether it was land within the meaning of the term was referred to the Assistant Collector-in-charge of the Sub-Division. It was held that the finding on such issue could not amount to a declaration under Section 143 and that while the land cease to be land the Bhumidhar continued to be governed by the provisions of the Act until declaration. *Alauddin alias Makki v. Hamid Khan*, 1971 RD 160 (HC). Another point is as to jurisdiction of the Civil Court. The revenue court has power to evict a person from Bhumidhari land. And it is presumed to be land within the meaning of the term as defined in Section 3 (14) of the Act. *Jhanda etc. v. Mithan Singh*, 1969 RD 149.

10. Purpose of declaration- The country is fast moving towards mechanisation and industrialisation and tenancy land is also intended to be machanised for better yield and more profitable use. These section opens the tenancy land to use it to any purpose. A Sirdar may also acquire Bhumidhari rights and put his land to any purpose. The declaration granted under this section has the effect of setting apart theland which is intended to be used for purposes other than agriculture. The entire land or any p[ortion of it may be used for agriculture or residential purpose. Here the use of the land has been classified as agricultural and industrial purposes.

11. Devolution by personal law- Thought a Bhumidhar has been given power to transfer and bequeath by will so long as the land is used for agricultural

purposes he is governed by the various provisions of this Act yet the order of succession is governed by this Act. But when the land is used to a purpose unconnected with agriculture and a declaration is sought under Section 143 of the Act he has been granted by a privilege that the succession will be governed by the personal law applicable in this case. Such provision is made with a view that the Bhumidhari land may be continued to be used as it had been for industrial purposes. It may be that a portion of the holding is used for industrial purposes and the remaining land for agricultural purposes. In respect of the land used for agricultural purposes the land would be governed by the provisions of this Act and for the area used for industrial purposes by personal law. Such change in the matter of devolution of Bhumidhari land is found necessary to ensure security to a Bhumidhar in the enjoyment of land directed towards better utilisation of it in a developing country. It fills the tenant with no recourse if he changes his mind and directs it to be used again for purposes connected with agriculture and then the entire provisions of the Act become applicable to the land. In truth such right to use the land to any purpose without fear of losing it is one right of ownership.

The use of the land for baking bricks is a purpose unconnected with agriculture and until a declaration under Section 143 is sought it is still land within the definition of the term. See *Allaudin alias Makki v. Hamid Khan*, 1971 AWR 193. A similar provision is found in the Consolidation of Holdings Act also because the Act is intended to be self-contained and during consolidation operation no other court has got the jurisdiction to decide matters exclusively within its jurisdiction. Where the area is under consolidation operation, the tenure-holder desiring the land to be used for non-agricultural purposes the tenure-holder desiring the land to be used for non-agricultural purposes can only do so with the permission of the Settlement Officer (Consolidation). Once such Officer grants the permission the area will cease to be land within the meaning of the term. The proviso to Section 5 clearly provides that an agricultural holding can be used for agricultural purposes. *Triloki Nath v. Rfam Gopal*, 1974 RD 5.

There can be no dispute that a Bhumidhar can use the land to any purpose whatsoever and this does not depend on the grant of declaration under Section 143 of Act 1 of 1951. Even without a declaration he can so use his land the only difference it makes is that the devolution in that case will be governed by the provisions of the Act. *Allauddin alias Makki v Hamid Khan*, 1971 AWR 193.

In a suit for declaration under Section 59 of the U.P. Tenancy Act it was found that the land was taken for industrial purposes e.g., construction of houses and setting up a flour mill and lime mill. It was held that it was not land and not amenable to the jurisdiction of the revenue court. *Phool Chand v. Jagannath Pd.*, 1961 ALJ (Rev) 27.

Land let for planting grove was not land under the U.P. Tenancy Act. Therefore the plaintiff could not acquire hereditary rights in it. The facts of the case were

that the land was primarily given for building a house or shop, pucca or kachcha or for planting grove or for sinking well. Thus the land given being to be used for any purpose it was not land. *Jagannath Pd. v. (Smt.) Chunki*, 1959 ALJ (Rev) 73.

12. Residential building- The expression residential building implies any building which is non-residential building. A non-residential building is that which is used solely for the purpose of business or trade. *(Smt.) Narayan Kuer v. Dr. Sri Ram Joshi*, 1969 RCJ 652. A bhumidhar has got a right to build houses on his land or he may let the land for construction so that a construction may be raised by a lease with consent of the bhumidhar or terms as may be agreed upon. *Krishnapasuda v. Dattaraya*, AIR 1966 SC 1024.

Structure involves something permanent. It is made for use as a residential building or for industrial purposes. The minimum thing to make an open land a building in any roofed structure. *Mohd. Sami v. Savitri Devi* 1957 ALJ 435. A shop without roof is not building. *Paltandin v. Sardar Karam Singh*, 1967 ALJ 395. A brick-kiln is not a building. *Newand Ram v. Gaon Samaj*, 1961 RD 299, overruling *Debi Pd. v Ghanshyam Das*, 1961 ALJ 193: 1961 RD 366; See *Ghanshyam Das v. Debi Pd.*, 1966 RD 310 (SC).

The purpose of residence is different from the industrial purpose. To make it residential the premises must be meant as a place of dwelling which term includes the normal activities of life like sleeping, cooking and feeding. In the case of a non-residential building, the predominant or dominant user of the building is the deciding factor to determine its character.

The question again is not even a building but the user of the land hitherto used as tenancy land. It is conceivable that an open land with a tin shed may be used for industrial purpose. Business of manufacturing camphor, *Nagamanickam Chettiar v. Nallakammu Servat* (1957) 1 MLJ 182, conversion of logs of wood into beams, planks etc., *Abdul Gafoor v. Mushir Ali Khan*, 1969 ALJ 724, husking of rice, *Zahur Ahmad Abdul Sattar v. State of U.P.*, AIR 1965 All 326: 1965 ALJ 375, the grinding of wheat into flour, *Bihari Lal v. (Smt.) Chandrawati*, AIR 1966 All 541: 1966 ALJ 368, and turning cotton sheets into articles of hosiery. *Jayanti Hosiery Mills v. Upendra Chandra Das*, AIR 1916 Cal 317:59 CWN 741, are some of the instances of manufacturing of articles.

13. Land- Land does not cease to be agricultural, so long as it is held or occupied for the purposes of Agriculture, and even if a Bhumidhar raises constructions on the land held by him as such, it cannot be said that the provisions of U.P.Z.A. & L.R. Act cease to have an application thereto. A Bhumidhar could use land for any purpose other than agriculture, but so long a declaration under Section 143 is not obtained by him, it continues to be governed by the provisions of the U.P.Z.A. & L.R. Act. He could not make a transfer of the land or deal with it otherwise on the ground that land has become

Abadi and he could deal with it in any manner he liked. *Mangu Ahir v. Mahabir*, 1988 RD 301 (HC).

14. Inquiry and demarcation of land- Under Rule 136 an inquiry is made either on the application of the bhumidhar or on the facts coming to the knowledge of the Assistant Collector-in-charge of the sub-division, suo motu the inquiry may be made by Tahsildar who has to send his report alongwith particulars in the proforma prescribed. The Sub-Divisional Officer then grants a declaration.

Under Rule 136 an enquiry into the allegations is made by the Sub-divisional Officer-in-charge of the sub-division in the application or suo moto or he may send the same to the Tehsildar for enquiry and report.

An application was made under Section 143 that the plots in question were not connected with any agricultural purposes. The application was dismissed by the Assistant Collector-in-charge of the sub-division. The learned Collector in appeal upheld the finding. A revision was filed before the learned Additional Commissioner. He observed that for declaration under Section 143, it is not necessary to determine who was the bhumidhar of the disputed land. It was held that the learned Additional Commissioner was correct and the trial court failed to exercise the jurisdiction vested in it by law. *Hirday Narain v. Ram Kishore*, 1976 AWC (Rev) 84: 1976 RD 265.

A bhumidhar can use the land to any purpose and where an application is made to the effect that the land is being used to a purpose inconsistent with the purpose for which it is let he is not liable to ejection. He is not liable to ejection if there is no transfer. Only the land may be demarcated if the whole or any part thereof ceases to be agricultural land.

It is land even though Section 143 applies. *Pratap Rai v. Board of Revenue*, 1980 Rd 322.

15. Section 143 and reference- Where a suit was filed for declaration of co-tenancy rights and it was decided without framing issues as to the land ever being raised under Section 143 a reference was accepted. *Ramesh Chandra Singh v. Sukhendra Singh*, 198u1 RD 53.

16. Section 143 & Section 191- Difference- The extinction of Bhumidhari rights under Section 191 are different from non-applicability of the Act to any land. *Pratap Rai v. Board of Revenue*, 1980 RD 322 (HC).

17. Application of Chapter X of the Z.A. Act to land covered under Section 143- Chapter X of Z.A. Act deals with land revenue. It applies to land held by a person who is or is deemed to be Bhumidhar. It does not apply to a person who is not Bhumidhar or the land is such which does not come within the definition of

sub-section (14) of Section 2. A person who obtains loan from corporations described under sub-section (3) or declaration granted in his favour under preceding two sub-section ceases to be Bhumidhar and the land is also not land for purposes of Z.A. Act therefore, provision for recovery of land under Chapter X cannot be applied for recovery of loan. *Pratap Rai v. Board of Revenue*, 1980 RD 322 (HC).

18. 'Held' used in Section 331-A-Meaning of - In Section 331-A the word held is used in the same sense that it refers to title that had been legal and original. It was so held in *Budhan Singh v. Nabi Bux*, 1961 Rd 22-0 (SC).

19. Procedure - An application under this section governed by the provisions of Serial No.11 of Schedule II and Serial No.15 of Appendix III of the Rules.

Forum - Assistant Collector-in-charge of Sub-Division.

Court fee - One rupee

Limitation - Three years from the commencement of the user

Appeal - First appeal will lie to the Collector under Section 331 (3) but no second appeal.

Revision - A revision will lie to the Board under Section 333.

20. Sub-sections (1), (2) and (3) - Scope of - under the other two sub-sections if any land is used for industrial purpose and a declaration is granted by the Assistant Collector thus provisions of Chapter VIII cease to apply and succession to it is governed by personal law and land falls beyond the purview of Z.A. Act. The result is the same in respect of land under sub-section (3) on loan taken on it. No declaration is required as in preceding sub-sections. A person who takes the loan ceases to be bhumidhar who obtain loan from Financial Corporation or by any other corporation owned or controlled by the State Government ceases to be Bhumidhar and land is not land for purposes of Z.A. Act. *Pratap Rai v Board of Revenue*, 1980 Rd 122 (HC).

21. Industrial purpose - The words "industrial purpose" have not been defined anywhere in the Act but they are taken in a sense opposed to agricultural purpose. For the land used for industrial purposes at least one thing is established. If the object of using the land is to raise agricultural produce it will amount to a purpose connected with agriculture. The use does not change the object of the user of the land which was used for an agricultural purpose. The circumstances that the ultimate produce is not being consumed by human beings or beasts but by a factory is irrelevant for determining the purpose for which the land is being used. *Kesar Sugar Works Ltd, v. State of U.P.*, 1967 RD

157.

In *Commissioner of Income Tax v. B.K.S. Roy*, AIR 1957 SC 768, it was held that the term agriculture cannot be confined merely to production of grain and food products meant for human beings and beast but must be understood as comprising all products of land which have some utility either for consumption or for trade and commerce.