

Court No. - 5/ In Chamber**Case :-** WRIT - C No. - 3000090 of 1996**Petitioner :-** Shiv Nath Saran Singh And Others**Respondent :-** Ist.Additional Commissioner Lucknow
Div.Lko.And Othe**Counsel for Petitioner :-** Nirmal Tewari,Girish Chandra
Sinha,Nirmit Srivastava,U.K. Srivastava**Counsel for Respondent :-** C.S.C.,S. Akhlaq Husain,S.S.
Imam Rizvi**Hon'ble Irshad Ali,J.**

1. Heard Sri G.C. Sinha, learned counsel for the petitioners, Sri Rajiv Srivastava and Sri Shatrughan Chaudhary, learned Additional Chief Standing Counsel for the respondent-State.

2. By means of the present writ petition, the petitioners have prayed for the following reliefs :-

"A. A writ, order or directions in the nature of Certiorari quashing the impugned orders dated 31.7.1996 passed by Irst Additional Commissioner, Lucknow Division, Lucknow i.e. opposite party No.1 as contained in Annexure No.16 to the Writ Petition, the order dated 26.2.1992 passed by the Prescribed Authority contained in Annexure No.11 to the Writ Petition and order dated 01 March 1995 as contained in Annexure No.14 to the Writ Petition, declaring the entire proceedings being illegal and without jurisdiction.

B. A writ, order or direction in the nature of Mandamus commanding the opposite parties to not to implement the impugned orders as contained in Annexures No.16, 14 and 11 to the Writ Petition passed by the opposite party No.1 and 2 respectively, during pendency of the Writ Petition and not to take over the land from the petitioners in lieu of aforesaid orders.

C....

D...."

3. Brief fact of the case is that in the year 1971, village Khajoorgaon District Raebareli, which was Zamindari of Rana Shiv Ambar Singh was notified for ceiling. Notice under Section 10(2) was issued to Shiv Ambar Singh but could not be served as he was residing in Lucknow. Rana Shiv Ambar Singh filed his objection on 6.6.1974 under Section 10 (2) and

willingly surrendered some of his land. The proceeding before the prescribed authority was stayed due to the order dated 6.6.1975 passed in Writ Petition No.1433 of 1975 (Rani Mahendra Kumari Vs. State of U.P.).

4. After vacation of stay order on 8.1.1978, proceeding under Section 10(2) was restarted and for which notice was issued for hearing on 1.5.1978. On 24.5.1978, Rana Shiv Ambar Singh replied to the notice. On 25.9.1978, reminder notice was sent by the prescribed authority and sought affidavit under Section 35.

5. The prescribed authority passed an order under Section 12 (1) on 29.3.1979, but in gross violation of Section 12-A, it is the submission of learned counsel for the petitioners. Thereafter, Rana Shiv Ambar Singh filed Appeal No.49/1979 and arrayed Shiv Nath Saran Singh and others as respondents. It is however clarified by learned counsel for the petitioners that in this appeal Shiv Mohan Bux Singh was not a party although his mother Rani Mahendra Raj Laxmi was party.

6. On 21.5.1979, Shiv Nath Saran Singh and his brothers preferred separate Appeal No.50 of 1979 against the order of the prescribed authority dated 29.3.1979, however, this appeal was dismissed on behest of the order passed in Appeal No.49 of 1979. The Appeal No.49 of 1979 was partly allowed and the matter was remitted back to the prescribed authority for re-determination on 22.2.1980.

7. Rana Shiv Ambar Singh challenged the order of the District Judge by way of Writ Petition No.1930 of 1980 and during pendency of the writ petition, Rana Shiv Ambar Singh died and Shiv Mohan Bux Singh got himself substituted. On 14.4.1980, Shiv Nath Saran Singh and his brothers filed Review Petition No.18 of 1980, regarding their Appeal No.50 of 1979. The review petition was allowed and the order dated 29.3.1979 was set aside and the matter was remitted back to the prescribed authority to redetermine the surplus land as per the finding of the appellate court.

8. On 6.1.1981, the State Government challenged the order of the District Judge dated 15.10.1980 by way of Writ Petition No.3170 of 1981. The Writ Petition No.1930 of 1980 of Rana Shiv Ambar Singh/ Shiv Mohan Bux Singh was allowed and the

order of prescribed authority dated 29.3.1979 and order of District Judge dated 22.2.1980 was set aside and the matter was remitted back with specific direction. It is submitted by learned counsel for the petitioners that the Writ Petition No.3170 of 1980 was dismissed on 1.8.2003 as in Writ Petition No.1930 of 1980, the impugned orders were already quashed.

9. After the order of remand of the case, the original tenure holder Shiv Ambar Singh was not alive but no any substitution was drawn to implead the heirs of Rana Shiv Ambar Singh i.e. Shiv Nath Saran Singh, Amaresh Singh, Devendra Singh and Anantesh Singh, the sons of Late Shiv Ambar Singh. Although the Appeal No.50 of 1979 (Review Petition No.18 of 1980 of Shiv Nath Saran Singh and others were allowed and they were necessary party).

10. Shiv Mohan Bux Singh who has got himself substituted in Writ Petition No.1930 of 1980 also died when the prescribed authority reopened the file and mentioned in his order that he has issued notice to the heirs of Shiv Mohan Bux Singh (only) who did not turn up, hence, he is deciding the case ex-parte.

11. It is submitted that the prescribed authority totally ignored the order of District Judge passed in Appeal No.50 of 1979 (Review Petition No.19 of 1980) as it did not call upon the review petitioners and passed orders, ignoring the directions of District Judge dated 15.10.1980 on whimsical ground and declared 92.71 Hectare of land to be surplus in which land of other claimants were also included. In fact, the order of the prescribed authority was carbon copy of the order dated 29.3.1979, it is submitted by learned counsel for the petitioners.

12. Shiv Nath Saran Singh and his brothers (present petitioners) moved an application to recall the ex-parte order dated 26.2.1992. The prescribed authority rejected the application of Shiv Nath Saran Singh and others for recall of the ex-parte order dated 26.2.1992. On 23.3.1995, Shiv Nath Saran Singh challenged the order dated 1.3.1995, by way of Appeal No.9/94-95. After amendment in the Act, the power of appeal before the District Judge was taken away and Divisional Commissioner was empowered to hear the appeal and decide the same. Thereafter, vide order dated 31.7.1996, the Commissioner rejected the appeal.

13. Submission of learned counsel for the petitioners in two-fold is that the proceedings were drawn against Rana Shiv Ambar Singh in the year 1971 under Section 10 (2), however the land recorded in the name of his erstwhile wives and sons were included in the account of Rana Shiv Ambar Singh. No notice under Section 10 (2) was issued to any other person in the format of Form CL-3 although all such persons independently recorded, filed their objections and one such objection filed by Rani Mahendra Kumari, some orders have been passed in the year 1974 and Rani Mahendra Kumari challenged the order before the High Court by way of Writ Petition No.1433 of 1975 and an interim order by which the proceedings in the case of Rana Shiv Ambar Singh was stayed vide order dated 6.6.1975.

14. This writ petition kept pending till 8.1.1978, thus, the proceeding pending against Rana Shiv Ambar Singh kept in abeyance and restarted after disposal of Writ Petition No.1433 of 1975, in which information notice was sent by prescribed authority on 1.5.1978 to Shiv Ambar Singh and the prescribed authority passed the order on 29.3.1979 under Section 12 (1) of the Act.

15. The first issue is that whether the proceeding restarted on 1.5.1978 was without jurisdiction as per :-

(a) amendment of Section 9 (Act No.18 of 1973 and Act No.2 of 1975)

(b) amendment made in subsection (2) of Section 9 by adding the proviso in it by Act No.20 of 1976 and has been abated as per Section 19 of the Act No.18 of 1973 and amendment under Section 9 (2) by the Act No.20 of 1976.

16. It is submitted that firstly, the proceedings have been abated as per Act No.18 of 1973 and secondly as per amendment made by adding the proviso in Section 9 (2) of the Act in 1976.

16. The second issue is that whether the prescribed authority has ignored the direction made by the District Judge vide order dated 15.10.1980 and order of this Court dated 15.11.1988 and passed a mechanical order on 26.2.1992 by verbatim reproduction of his predecessors order dated 29.3.1979 and failed to exercise its authority to recall the ex-parte order.

17. In support of his submission, learned counsel for the petitioners placed reliance upon following judgments :-

(i) **State of U.P. Vs. Mithilesh Kumari, Nahar Singh (Dead by LRs) [AIR ONLINE 1986 SC 46]**

(ii) **Randhir Varma Vs. State of U.P. [1985 All.L.J. 423]**

(iii) **Govind Narain Verma Vs. State of U.P. & Others [2008 (3) ALJ 80]**

(iv) **Mansoor Ali Khan & others Vs. State of U.P. & Others [AIR 1992 Supreme Court 245]**

18. On the other hand, Sri Rajiv Srivastava and Sri Shatrughan Chaudhary, learned Additional Chief Standing Counsel for the respondent-State submitted that the wife of Rana Shiv Ambar Singh include in the family, therefore, there is no requirement to issue notice under Section 9 (2) of the Act separately. He next submitted that the affidavit was filed by the *Mukhtar-e-aam* of the petitioner and in the objection, as required under Section 9 (2) of the Act, which is mentioned in paragraph-8 of the counter affidavit. Last submission is that there is no requirement of issuing notice as per the provision of the Act and the order passed by the appellate court as well as prescribed authority are just and valid order and do not suffer from any infirmity or illegality.

19. After having heard rival contention of learned counsel for the parties, I perused the material on record and the law report cited by learned counsel for the petitioners.

20. For deciding the case, relevant paragraphs of the judgment relied upon by learned counsel for the petitioner is being quoted below :-

State of U.P. Vs. Mithilesh Kumari (Supra). Relevant paragraphs-4 and 5 are being quoted below :-

"4. A plain reading of this transitory provision alongwith proviso to Section 9(2) of the principal Act (as amended) makes it clear that what was contemplated by Section 31(3) of the Amendment Act was the redetermination of the surplus land, that is to say, the conclusions of the proceeding initiated by the notice issued under the proviso to Section 9(2) of the principal Act.

5. We do not see how any other conclusion is possible. Obviously, the legislature took notice of the fact that 17 years had already passed since

the passing of the original Act, and therefore, the legislature was particular that the proceedings for redetermination of surplus land should conclude as expeditiously as possible. This was the view taken by the High Court and we see no reason to depart from it. The appeals are dismissed. There will be no order as to costs."

Randhir Varma (Supra). Relevant paragraphs-8, 10 and 17 are being quoted below :-

"8. The original Act was drastically amended by the U.P Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 (U.P Act No. 18 of 1973), for short Amending Act 18 of 1973. Through this Act drastic changes were made in the original Act. The ceiling area instead of being determined in terms of "Fair Quality Land" was now required to be determined in terms of irrigated land" which term was defined through newly added cl. (11) of S. 3. Under amended S. 5(3) the ceiling area of a tenure holder, whose family comprised of not more than five persons, was prescribed to be 7.30 hectares of irrigated land. Additional land was prescribed if the strength of the family increased. The date with reference to which the ceiling area was to be determined also changed. It became the date on which the Amending Act was enforced. The Amending Act was enforced with effect from 8-6-1973 when it was published in the U.P Gazette Extra ordinary. These amendments and other amendments made it necessary to re-determine the ceiling and surplus areas of those tenure holders also whose such areas had already been determined under the original Act. Therefore, by the amended sub-sec. (2) of S. 9 the Prescribed Authority was required to get the general notice published in the gazette as soon as may be after the enforcement of the Amending Act. The provisions of Section 10 became applicable as a consequence and therefore the Prescribed Authority became entitled to issue a fresh notice under S. 10(2). The finality of the orders passed in pursuance of the amended provisions was retained through Ss. 11(3), 12(2) and 13(2). Under the amended Act also, there were certain provisions under which the ceiling area or surplus area already determined could be varied. These are Ss. 13-A, 29, 30 and 31. Section 13-A authorised the Prescribed Authority to rectify mistakes apparent on the face of the record, but there is a limitation prescribed; the rectification has to be done within two years of the notification of the surplus land under S. 14(1). Section 29 contemplates re-determination where the area of the holding increases by virtue of the tenure holder acquiring land after the enforcement of the amending Act, under a decree or order of a Court, or as a result of succession or transfer, or by prescription in consequence of adverse possession, or any unirrigated land becoming irrigated or any grove land losing its character as a grove land or any land exempted under the Act ceasing to fall under any of the excepted categories. Section 30 merely prescribes the procedure to be followed when re-determination was required under S. 29. Section 31 dealt with land gained by recess of river. These are the only provisions in the Act as amended by the

Amending Act under which the ceiling and surplus areas of a tenure holder could be varied once the said areas had been determined under the amended provisions. None of these provisions authorised the Prescribed Authority to issue fresh notice under S. 10(2) on the basis that in earlier proceedings there had been collusion between the tenure holder and the ceiling authorities and therefore the ceiling and surplus areas could not properly be determined. It may be mentioned that notice under S. 10(2) was issued to the petitioner on 9-4-1974 and obviously the determination of ceiling and surplus areas by the Prescribed Authority by its order D/-24-12-1974 was made under the amended provisions. Amendments after determination of surplus area.

10. While the appeal was still pending the Act was again amended by the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Ordinance, 1975, (U.P. Ordinance No.31 of 1975). This Ordinance was promulgated and published in the U.P. Gazette Extra-ordinary on 10-10-1975. Apart from other Sections, it amended Ss.5, 6, 9, 12A and 14. By amendment of S. 14, the right of third party objection after notification of surplus land under S. 14 (1) was taken away.

To sub-sec. (2) of S. 9 the following proviso was added -

"Provided that at any time after the enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Ordinance, 1975, the Prescribed Authority may notice, call upon any tenure-holder holding land in excess of the ceiling area applicable to him in the enforcement of the said Act, to submit to him within thirty days from the date of service of such notice a statement referred to in sub-sec. (1) or any information pertaining thereto."

17. The learned counsel for the State however submits that the provisions for re-determination of surplus land contained in the amending Ordinances and Acts are irrelevant as the right of re-determination is available under the amended S. 9 itself which does not prescribe any period of limitation for such re-determination. Relevant provisions of S. 9 as they existed, on the date of issue of the second notice are as follows:-

"9.(1). As soon as may be, after the date of enforcement of this Act. the Prescribed Authority shall, by general notice, published in the Official Gazette, call upon every tenure-holder holding land in excess of the ceiling area applicable to him on the date of enforcement of this Act. to submit to him within 30 days of the date of publication of this notice, a statement in respect of all his holdings in such form and giving such particulars as may be prescribed. The statement shall also indicate the plot or plots for which he claims exemption and also those which he would like to retain as part of the ceiling area applicable to him under the provisions of this Act.

(2) As soon as may be after the enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, the Prescribed Authority shall by a like general notice. call upon every

tenure-holder holding land in excess of the ceiling area applicable to him on the enforcement of said Act. to submit to him within 30 days of publication of such notice a statement referred to in sub-sec. (1).

(2-A). Every tenure-holder holding land in excess of the ceiling area on Jan. 24, 1971. or at any time thereafter who has not submitted the statement referred to in sub-sec. (2) and in respect of whom no proceeding under this Act impending on Oct. 10, 1975 shall, within thirty days from the said date furnish to the Prescribed Authority a statement containing particulars of all land.

(3)....."

S. 9 as originally enacted did not have any sub-section. By the Amending Act No. 18 of 1973 the original S. 9 was re-numbered as sub-sec. (1) and sub-secs. (2) and (3) were added. By this Amending Act, as already noticed, drastic changes were effected. Therefore by S. 19 of the Act it was provided that pending proceedings shall abate and fresh notices shall be issued under sub-sec. (2) of S. 9. No period of limitation was provided for issue of this notice, either in S. 19 or in sub-sec. (2) of S. 9 as inserted by the Amending Act. In the case on hand neither S. 9(2) is applicable nor S. 19 as the petitioner's surplus area was determined under the Act as amended by this Amending Act. U.P Act No. 2 of 1975 did not bring about any amendment in S. 9. All the same it contained a specific provision for re-determination of surplus area if a re-determination was required because of the amendments made by this Act and it also fixed a period of limitation for such re-determination, the same being two years from the commencement of the Amending Act Ordinance No. 31 of 1975 added a Proviso to sub-sec. (2) of S. 9 and also added sub-sec. (2A) after sub-sec. (2). This amending Ordinance also contains a specific provision for re-determination of surplus land and by sub-sec. (3) of S. 27 a period of two years is fixed therefor. Ordinance No. 11 of 1976 and Act No. 20 of 1976 carry forward the same amendments in S. 9 and as already noticed these amending ordinance and Act also contain specific provisions for re-determination of surplus land consequent to the amendments made by them and they fix time limit for doing the same. In view of these specific provisions for re-determination contained in the amending Ordinances and the Acts reliance cannot be placed upon the general provision contained in S. 9 for determination or re-determination of surplus land. It is true that in the proviso to sub-sec. (2) of S. 9 the words "at any time after October 10, 1975" have been used but these words have to be read along with the words "within a period of two years from the said date" contained in sub-sec. (3) of S. 31 of U.P Act No. 20 of 1976. Both, the Proviso relied upon by the State counsel and S. 31(3) are parts of the same statute and they have to be given harmonious consideration. If the submission of the learned counsel for the State is accepted the period of two years prescribed by sub-sec. (3) of S. 31 will become redundant. The words "at any time" in the Proviso will, therefore, in the case of re-determination, be controlled by the period of two years prescribed in S.31

(3). Where there has been no determination earlier, there is no way to harmonise the provisions of the proviso to sub-sec. (2) of S. (9) as amended by U.P. Act No.20 of 1976 and S. 31 (3) of the said Act."

Govind Narain Verma (Supra). Paragraph-12 is being quoted below :-

"12. After hearing the learned counsel for the parties at length and perusal of the record, I find that in the present case the basic question for deciding the matter in issue is, firstly, who is the tenure holder proceeded against and secondly, the date on which the ceiling i.e. surplus land is to be calculated. While dealing with the first question I am of the view that it is Sri Brij Narain against whom the proceedings were started vide notice dated 19-8-1974 under Section 10 (2) of the Act, and he is the only tenure holder proceeded against but in the statement of his holdings his ancestral sir and khudkasht land in which his five sons having equal share with him by birth under law were included. In case the proceedings are drawn under Section 10 of the Act then the date of the application of the Act would be 8-6-1973 since as per the memorandum of family settlement prepared on 13-1-1968 the names of the sons had already been mutated in revenue record in 1380 Fasli. Section 29 of the Act comes into play when certain land comes to the tenure holder by transfer, succession or otherwise then the date of application of Ceiling Act is the date on which such transfer took place. If the proceedings are initiated under Section 29 of the Act then the date 8-6-1973 will not be the relevant date. Once the matter has been finally settled by the law Courts till the stage of High Court where it has been held that apart from the family settlement allegedly held in 1963 all the sons of Brij Narain had equal 1/6th separate and distinct share in the ancestral property being sir and khudkasht land, the Prescribed Authority could not club the same treating it as undivided land between the co-parceners and accordingly declared surplus land under the Ceiling Act. More so, the notices issued to Brij Narain under Section 10(2) of the Act were only for determining the excess ceiling land with Brij Narain and cannot be taken into account as notices issued to the other co-parceners sons of Brij Narain were under the proviso of Rule 8 of the Rules. Even on the fresh notice dated 25-6-1987 issued to sons of Brij Narain can be taken into account in respect with each distinct person independently but cannot be relegated back to 1974. The calculation cannot be made by clubbing all the separate holdings of the sons of Brij Narain after the date of mutation of their names in revenue record. On the question of fresh notices being barred by limitation, I find that the notices have not been sent beyond three years. Since it is admitted by the petitioners that the notices could be issued within two years which can be counted from the date order and Judgment of the appellate authority dated 21-2-1984 the notices were issued on 25-6-1987 after communication of the said order and time taken in the Departmental proceedings would be well within time and since there had been no specific objections or grounds raised by the petitioners before the Court below, the respondents-

authority had no opportunity of explaining the same and thus the question is decided against the petitioners. I also find that the appellate authority following track of the Prescribed Authority wrongly passed the order dated 12-8-1992 while dismissing the appeal of the petitioners."

Mansoor Ali Khan (Supra). Relevant paragraph-3 is being quoted as under :-

"3. We are, however, not inclined to accept the contention of Mr. Satish Chandra that the proceeding for re-determination of ceiling land could not have been initiated by the Prescribed Authority until Notice under Section 9(2) was issued by him to all the heirs and he could only assume jurisdiction for initiation of a proceeding for redetermination of ceiling land after serving such notices to all the heirs of late Wadood Ali Khan. Section 31 (3) of U.P. Act 20 of 1976, in our view, authorises the Prescribed Authority to redetermine the surplus land in relation to the tenure holder if initiated within two years from October 10, 1975. Admittedly, the previous determination of ceiling was made before tenth of October, 1975. Accordingly, under sub- Section (3) of Section 31 of the said U.P. Act 20 of 1976, the Prescribed Authority had jurisdiction to initiate the said proceeding and such jurisdiction did not depend on issuance of notice under Section 9(2) of the Ceiling Act to the tenure holder and/or the successors-in-interest of the tenure holder. It, however, appears to us that although the Prescribed Authority had jurisdiction to initiate the proceeding for redetermination of surplus land and he had in fact initiated such proceeding within two years as referred to in sub-section (3) of Section 31 of U.P. Act 20 of 1976, such determination could not have been made without affording to the heirs and legal representatives of Wadood Ali Khan an opportunity of being heard and showing cause before the Prescribed Authority. Admittedly, Wadood Ali Khan had died in 1974 and he said fact was made known to the Prescribed Authority when the initial determination of surplus lands was made. It is unfortunate that in spite of said fact, the Prescribed Authority failed and neglected to ascertain the names of all the legal heirs and representatives of Wadood Ali Khan, and did not issue notices to such heirs for redetermination of surplus land. The High Court of Allahabad has directed to issue notice to other brothers of Wadood Ali Khan. The High Court has also remanded the case to the appellate authority so that other brothers get opportunity to appear and make submissions. The High Court has, however, not directed to issue notices to other heirs and legal representatives. Moreover, in our view, without giving other heirs and legal representatives an opportunity of being heard, adjudication of the case on merits by the concerned authorities or by the High Court was not warranted. In the aforesaid facts, we dispose of this appeal by setting aside the order passed by the Prescribed Authority on 22nd December, 1976 and the impugned appellate orders passed by the learned Additional District Judge on 26th May, 1976 and also the impugned decision of Allahabad High Court in Writ Petition No. 2955/77. Mr. Satish Chandra

has contended that in view of subsequent changes of the Ceiling Act by the Amend- ing Act 20 of 1976, there is no surplus land liable to be vested in the State of Uttar Pradesh. It is not necessary to express any opinion on such contention of Mr. Satish Chandra in view of the fact that the Prescribed Authority will have to redetermine the case of surplus land on the basis of existing provisions of the Ceiling Act applicable on the relevant date and the parties will get opportunity to make appropriate submissions on fact and law. The Prescribed Authority is directed to issue notices to all the heirs and legal representatives of late Wadood Ali Khan including the appellants herein and the other heirs and legal representatives referred to in this judgment. The Prescribed Authority will decide the question of surplus land in accordance with the provisions of the Ceiling Act after issuing such notices to the heirs and legal representatives of late Wadood Ali Khan and giving such heirs and legal representatives a reasonable opportunity of being heard. In order to avoid any difficulty and any attempt to delay the disposal of redeter- mination of surplus land by the appellants or the other heirs of Wadood Ali Khan, it is directed that if there has been any change in the survivorship of legal representatives of late Wadood Ali Khan or devolution of interest of such heirs by lapse of time, the appellants should inform the Prescribed Authority within a month from today the names and other particulars including the addresses of all such heirs and legal representatives of late Wadood Ali Khan so that appropriate notices may be issued by the Prescribed Authority. If the names and particulars of the legal representa- tives are not furnished within a month from today by the appellants to the Prescribed Authority in terms of this direction, liberty is given to the Prescribed Authority to serve the notices to the appellants and to the other heirs mentioned in this judgment by sending such notices under the care of the appellant No. 1, Mansoor Ali Khan, village Kailashpur, Pargana Haraura, Tehsil and P.O. Saharanpur, UP., and it will be deemed that he is representing the interest of other heirs and legal representatives. The Prescribed Authority is directed to dispose of the proceeding for redetermination of surplus land as early as possible in view of the fact that the matter is pending determination for long. In the facts of the case, there will be no order as to costs. "

21. This Court has carefully considered the submissions made by learned counsel for the parties as well as the judgments relied upon by learned counsel for the petitioners. The petitioners have challenged the impugned action of the respondent on the ground that no separate notice was given under Section 10(2) of the Act, which is a mandatory requirement, thereby rendering the proceeding void. The matter was remanded back to the prescribed authority, which totally ignored the order of District Judge passed in Appeal No.50 of 1979 (Review Petition No.19 of 1980) as it did not call upon

the review petitioners and passed orders, ignoring the directions of District Judge dated 15.10.1980.

22. The judgments relied upon, which are reproduced above, totally support the case of the petitioners, whereby it has been held that separate notices are mandate under Section 10 (2) of the Act.

23. In view of the foregoing discussion as well as the judgments relied upon by learned counsel for the petitioners, the Court is of the opinion that the impugned orders dated 31.7.1996 and 26.2.1992 cannot be sustained in the eyes of law, thus, they are hereby quashed. The writ petitions succeeds and is **allowed**.

24. The matter is remanded back to the prescribed authority to decide the issue afresh after providing opportunity of hearing to the concerned parties in accordance with law within a period of three months from the date of production of a certified copy of this order.

Order Date :- 27.8.2024

Gautam