



A.F.R

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HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 47383 of 2003

Rajeshwar Pratap Sahi

..... Petitioner(s)

Versus

Addl. Commissioner Gorakhpur And Others

.....Respondent(s)

Counsel for Petitioner(s) : Anil Kumar Rai,Kartikeya Saran,Om Prakash
Yadav,S.N. Singh,Sankalp Narain, Srivats Narain

Counsel for Respondent(s) : Alok Singh,Bala Nath Mishra,Hausihla
Prasad Mishra,Pavan Kumar Yadav,Ram
Vishal Mishra,Vivekanand Yadav

Court No.6

Hon'ble Prakash Padia,J.

1. Heard Sri G.K. Singh, learned Senior Counsel assisted by Sri Sankalp Narain, learned counsel for the petitioner and Sri Vijay Shankar Prasad, learned counsel for the State-respondents and the counsel for the applicant who moved an application for impleadment. .

2. The present petition has been filed by the petitioner as a result of proceedings under the UP Imposition of Ceiling on Land Holdings Act, 1960 whereby Land treated to be the holding of the petitioner has been

declared surplus under the impugned orders passed by the prescribed authority dated 19.07.1993 (Annexure 16, pg 191) and 31.03.1995 (Annexure 13, pg 128) as well as the impugned appellate order dated 14.10.2003 (Annexure 15, pg 172).

3. The challenge raised is broadly on the ground that the impugned orders overlook the impact of the earlier judgments of the High Court dated 07.11.1969 (Annexure 1, pg 40) and 21.08.1997 (Annexure 14, pg 166) as well as relevant and material evidence which proves the fact of a substantial area of the land having been transferred much prior to the cut-off date of 24.01.1971 that were bonafide transactions as well as the orders passed by the Revenue / Consolidation Authorities evidencing and confirming the transactions which establish that the ceiling authorities have erroneously proceeded to issue notices that were invalid and had also been held as such in the Judgement of the High Court dated 07.11.1969. The Impugned Orders have therefore been questioned contending that they are in teeth of the Judgment and orders that have intervened as well as suffer from perversity on account of non-consideration of relevant material evidence or ignoring the impact thereof. Other submissions oral and written have also been raised that shall be dealt with in detail hereinafter.

4. At the very outset, learned counsel for the Petitioner argued that one of the issues relating to the transfer of a substantial area of land by the Original Tenure Holder through registered sale deed for consideration had taken place in 1961 or even before that and the first ceiling notice that was issued to the tenure holder 21.08.1962 (Annexure SA-1, pg 12) did not include the land which had already been sold and transferred was all prior to the issuance of the ceiling notice.

5. Objections to the said notice had also been filed by the tenure holder and in between some rank outsider gave an application before the prescribed authority on 17.11.1962 informing the prescribed authority to also include the land that had been transferred by the original tenure

holder who was the petitioner's late father. The Prescribed authority entertained the said application and called upon the Naib Tehsildar to prepare a fresh notice that was served on the Original Tenure Holder and which included the land which has been transferred.

6. This amended / revised Notice pursuant to the Order of Prescribed Authority dated 4.10.1963 were both challenged by the Original Tenure Holder in Civil Writ Petition No. 4772/1963 wherein further proceedings were initially stayed and the writ petition was ultimately allowed on 07.11.1969 (Annexure 1, pg 40) by the High Court.

7. Learned counsel for the petitioner argued that a perusal of the said judgement would leave no room for doubt that the issuance of the Notice by the Prescribed Authority impugned in the writ petition was without jurisdiction as it had been initiated at the instance of a person who had no locus in the matter. The High Court further called upon the State to explain by filing a supplementary counter affidavit as to the nature of the land as to whether it was a grove or not on the relevant date. The State failed to file any counter affidavit to that effect as desired but the affidavit which was brought on record on behalf of the State was disbelieved as it was based on personal knowledge. It was accordingly held that the revenue records reflected the correct position and therefore, the notice initially issued to the Original Tenure Holder where the said lands had not been included, was correctly prepared.

8. It was argued that under the original ceiling act of 1960 under section 6(1), grove land was totally exempt and could not be subjected to inclusion for ceiling purposes in the holding of a Tenure Holder. The judgment dated 7.11.69 therefore, acknowledged the revenue records to that effect and to that extent it was held that prescribed authority had no jurisdiction to issue a fresh notice on the basis of alleged revised statement. The order of the prescribed authority dated 04.10.1963 initiating the fresh notice was held to be without jurisdiction and was accordingly quashed and directions were issued to dispose of the

objections filed by the Original Tenure Holder on the basis of the original CLH Form 3.

9. It was next argued that the fresh notice seems to have been issued on 12-11-1974 and further notices had been issued in the name of one Rani Jagdiswari Kunwari who had died more than two decades ago. The notices relating to the land that was proposed surplus in the holding of Rani Jagdiswari Kunwari was not served on the Original Tenure Holder Bisheshwar Pratap Sahi and his two brothers Khagendra Pratap Sahi and Novendra Pratap Sahi and without affording any opportunity of hearing an order was passed by the prescribed authority on 13.03.1975, 25.03.1975 and 29.03.1975. All three orders of the prescribed authority were challenged in appeal before the Ld. Second Additional District Judge in Ceiling Appeal No. 478, 479 and 480 of 1975. Appeal No. 478/1975 was allowed on 09.07.1979 (Annexure 2, pg 48) holding that notice could not have been sent to a dead person and without affording any opportunity to Original Tenure Holder, the matter could not have proceeded and accordingly all the orders were set aside remanding the matter back for recalculating the share of each of the brothers in the said holding. The other two appeals being Appeal Nos. 479 and 480/1975 were allowed in terms of Appeal No. 478/1975.

10. Mr. Singh counsel for the Petitioner has drawn the attention of this Court to the effect that consolidation process had set commenced under the U.P. Consolidation of Land Holdings Act, 1960 and a large number of objections by third parties were filed in respect of the holdings of village Pipra by Individuals claiming that the revenue entries reflected their title and possession over the respective plots as against the recorded tenure holders in possession who were the transferees of the Petitioner's late father, the Original Tenure Holder. As noted above the transfers had been made in favour of the purchasers between 1959 and 1961 However, in all these proceedings objections had been filed in relation to some of the land in Village Pipra that stood recorded in the name of the Original

Tenure Holder, the Petitioner's late father and his two brothers as well as over the holdings that stood recorded in the name of the transferees of the original tenure holder. Accordingly, the Original Tenure Holder namely the Petitioner's late father was arrayed as a Party and all the objections filed by those third parties were consolidated and heard by the Consolidation Officer exercising jurisdiction under section 9(a)(2) under UP CH Act, 1953. The aforesaid decision of the Consolidation Officer deciding the objections on 09.02.1983 (Annexure 8, pg 80) was filed before the prescribed authority and has also been filed in this Petition as evidence. The decision disposed of the objections in relation to the entire land of village Pipra transferred between 1959 and 1961 by the Original Tenure Holder and was contested before the Consolidation Officer. The claim of the objectors was rejected on the ground that they had relied on extracts of revenue records which were fake and forged and further the entries in the relevant khataunis beginning from 1359 Fasli had been tampered and interpolated.

11. While dealing with the evidence and the facts relating to the revenue entries in the recorded tenure holders it was also noted that the Tenure Holders alleged that the land had been sold by the erstwhile proprietors. The references to the orders passed by Revenue Authorities by the Objectors were found to be fake and their endorsement were held to be forged thereby maintaining the entries in favour of the recorded tenure holders which included the transferees from the Petitioner's late Father between 1959 and 1961.

12. During the proceedings, it was recorded by the Consolidation Officer that the Naib Tehsildar (Ceiling) had also filed a response in these proceedings and then findings were recorded evidencing the fact of the quashing of the notice by the High Court through its Judgment dated 07.11.1969 (Annexure 1, pg 40). The Consolidation Officer therefore, also relied on this evidence and reaffirmed the evidence regarding the transfer of the land between 1959 and 1961 through registered sale deeds.

13. To further support its conclusion the Consolidation officer also referred to the photocopies of the sale-deeds that had been filed on behalf of the recorded Tenure Holders that were also verified by the Consolidation Officer and which was further corroborated by the record of rights the certified copies whereof were filed on record and are described in the Land Record Manual as Register Malikan (Annexure SA-2,3,4,5, pg. 22, 24, 26, 28). The relevant khasra of possession was the same as that had been produced before the Celling Authorities and before the High Court in W.P. No. 4772 of 1963 decided on 7.11.69, and therefore its veracity and probative value was confirmed by the consolidation officer.

14. It was also held that the recorded Tenure Holders who were the transferees had participated in the proceedings and were represented and evidence was filed on their behalf and accordingly all the objections filed by the strangers to the land on the basis of fake entries were rejected.

15. It was submitted that the order of the consolidation officer has attained finality as the same had been upheld by the Settlement Officer in appeal vide judgement and order dated 20.06.1989, as stated in paragraph 36 of the writ petition, and was therefore, a valid piece of evidence reckoning and acknowledging the past transactions of transfers of the land in village Pipra that stood confirmed by the corroborative evidence of the revenue entries as well as its culmination in the decision of the High Court dated 07.11.1969.

16. Meanwhile, the Original Tenure Holder, namely, Bisheshwar Pratap Sahi, father of the Petitioner, who had been contesting all the proceedings before died on 09.04.1989.

17. It was then pointed out that a fresh notice had been prepared in the name of the Original Tenure Holder and a fresh CLH Form 3 was also prepared in his name on 23.06.1986. The said notice was never served on the Petitioner's late father and on the basis of an unsubstantiated report of

service by the process server, the prescribed authority passed an exparte order on 2.05.1990 (Annexure 3, pg. 52). It was argued that this order simply in three pages proceeds to to declare land surplus without referring to any of these proceedings and orders referred to above. The order was without any notice to the Original Tenure Holder or to his heirs after his death in 1989. There is no proof of service recorded in the order dated 02.05.1990. The order incorrectly recorded that in spite of substitution, and dispatch and service of notice the heirs had not responded and consequently, it was presumed that they had no objections to the notice that was the basis of the proceedings. The said assumptions were wrong and against the facts and consequently the petitioner moved an application on 1990 to set aside the ex-parte order.

18. It has been stated by the petitioner that initially an order of status quo was passed on 27.03.1991 and applications had been moved by the Petitioner pointing out that the proceedings were concluded without complying with the earlier orders and also the objections taken regarding the separation that had taken place between the family members of the Original Tenure Holder but none of these applications were considered Requests were made through applications for continuing the status quo but all these applications were rejected on 14.02.1992 and a direction was issued for enforcement of the exparte order dated 02.05.1990 (Annexure 3, pg 52).

19. Aggrieved against the same the Petitioner filed an Appeal before the Ld. Commissioner, which was allowed on 17.04.1993 (Annexure 4, pg 66) holding that there had been no service of notice by the Prescribed Authority on the Petitioner or the legal heirs and accordingly the exparte order dated 02.05.1990 and order dated 14.02.1992 were set aside. While allowing the appeal the appellate authority categorically directed for issuance of separate notices to the appellants and the others and to give full opportunity to them to file objections and lead evidence. The plea of separation between the family members had been noted by the Appellate

Authority while issuing the direction and, therefore, the said objections could not be ignored.

20. The right of the family members to file their objections even if their names-were not entered in the revenue records is further countenanced by the full bench of this Court in *Upper Ganges Sugar Mills Ltd. Vs. Civil Judge, Bijnor and Ors. reported in 1969 RD202*, wherein in paragraph 38, it has been specifically held that, the fact that even if a tenure holder is not recorded as such in the revenue records it will not be relevant for determining whether he is entitled to file an objection to the statement prepared under Section 10(1) of the Act and issued to another person under Section 10(2) of the Act and the above fact will not disentitle him to file an objection if he is otherwise entitled to do so.

21. It has been mentioned that the notices to the transferees are stated to have been sent earlier in 1991 and 1992 that were returned without service and apparently because they were sent to all the transferees on the same address of the Petitioner's late father at Allahabad. It is contended that this service itself was ridiculous and a mere formality and it is for the said reason that order was passed on 17.04.1993 (Annexure 4, pg 66) setting aside orders dated 02.05.1990 and 14.02.1992 by the Appellate Authority directing service of notice afresh on the petitioner and all others.

22. It is argued that the said order dated 17.04.1993 has not complied with and without referring to the same, the Prescribed Authority in haste proceeded to institute an altogether new ceiling proceedings against the petitioner being Ceiling Case No.45 and the surprising aspect of the matter is that the land which was made the subject matter of the said ceiling case was the same land which the Prescribed Authority had earlier included vide order dated 4.10.1963 to be surplus that was quashed as being without jurisdiction vide judgement and order dated 7.11.1969. In the newly instituted Ceiling Case no.45 the Prescribed Authority in haste,

recording the despatch of the previous notices, without issuing any fresh notice, passed an order on 19th July 1993 (Annexure 16. pg 191), which is impugned herein whereby 146.06 acres of land of Village Pipra was declared surplus by assuming that the transferees appear to be benami Tenure Holders. The prescribed authority approved CLH Form 3 as sent by the sub divisional officer to be correct. The order has been passed in undue haste and in clear violation of the principles of natural justice completely overlooking all the objections that had been taken as well as the evidence on record including the order of the High Court dated 07.11.1969 and the evidence corroborating the transfers of the land of village Pipra as discussed in detail in the order of the Consolidation Officer dated 09.02.1983.

23. The order does not refer to any law and as would be evident from the submissions narrated hereinafter and the relevant decisions on the issues relied on by the counsel for the petitioner.

24. The Petitioner filed a recall application contending that the ceiling cases could not be proceeded separately as the original proceedings being proceedings in Ceiling Case No. 48/18 against the Petitioner's late Father pursuant to the notice dated 21.08.1962 had not been finalised. No order was passed on this recall application as a result whereof an appeal being Appeal. No. 102/53/323/70/D-1993 (Annexure SA-13, pg 63) was filed challenging the said order 19.07.1993 and a stay order was passed on 30.08.1993 (Annexure 9. pg 117) which is to the following effect-

"Heard the learned counsel for the appellant.

D.G.C.R. appeared for State. Let the execution of the P.A. be stayed till further orders. Subject to confirmation by P.O. issue notice. Fix early date. Call for the records. Sd/-

Additional Commissioner (J)

GKP 30.08.1993."

25. During the pendency of the Appeal the petitioner had also moved other applications on 17.02.1995, 28.02.1995 (Annexure 11. pg 121) and

24.03.1995 (Annexure 12, pg 124) before the Prescribed Authority where the recall application was pending, again requesting the Prescribed Authority to consolidate the cases together and proceed with the matter after notice to all the tenure holders and after verifying the correct statement under CLH Form 3. The applications dated 17.02.1995 and 28.02.1995 were rejected by the Prescribed Authority on 28.02.1995 (Annexure 10, pg 119) and application dated 24.03.1995 was rejected on 31.03.1995 (Annexure 13, pg 127) by the Prescribed Authority who disposed off all other objections by rejecting them.

26. Three appeals were filed by the Petitioner. Appeal No. 34/P-1995 against the order dated 28.02.1995 in reference to the applications dated 17.02 1995 and 28.02.1995. Appeal No. 113/31/49/P-1995 was filed against the order dated 24.03.1995 that were interlocutory orders referred to hereinabove and Appeal No. 103/48/70/N-1995 (Annexure SA-16, pg 97) was filed against the order dated 31.03.1995. These appeals alongwith appeal No. 102/53/323/70/D-1993 that was filed in 1993 against the order of Prescribed Authority dated 19.07.1993 and were pending were consolidated and heard together and was finally disposed of on 7.11.1996 (Annexure SA-15, pg 80).

28. This order of the appellate authority came to be challenged in Writ Petition No. 36434 of 1996 before the High Court which was ultimately allowed vide judgment dated 21.08.1997 (Annexure 14, pg 166) setting aside the order of the Commissioner in appeal and remanding the matter for fresh consideration alongwith the observations made therein. Consequently, the Appeals were restored and were directed to be decided once again by the Appellate Authority, categorically holding that reasonable opportunity had not been given to the petitioner who was seriously prejudiced because of his independent right which he was claiming as a share-holder and it was further observed that the transactions of the sale-deeds that have been effected prior to the relevant date could not be treated as a sham transaction in as much as the burden

had been wrongly placed on the Petitioner and it was for the State to have established the same by leading cogent evidence.

29. Learned counsel for the petitioner argued that the Appellate Authority once again has proceeded to decide the appeal vide impugned order dated 14-10-2003 (Annexure 15, Pg. 172) recording the findings that the petitioner is not entitled to any separate share as claimed by him on the basis of his date of birth and further the transfers made in 1961 were in teeth of the 1960 Act that had restrained the transfer from 20.08.1959 onwards. This order it is urged was passed without going through the original records that have been summoned by the Commissioner himself vide letter dated 22-24.07.03 (Annexure 17, pg 196). The matter was heard in the absence of original records and was decided accordingly without perusal of the original record which contained the evidence on which reliance has been placed.

30. It is submitted that the impugned orders suffer from procedural irregularities, non-consideration of the relevant material rendering them perverse and not in conformity with the legal provisions and the law, the principles whereof have been ignored and incorrect findings have been recorded which are inconsistent with the weight of evidence on record.

31. It was vehemently urged that the impact of the first judgment of the High Court dated 07.11.1969 holding that the revised statement had proceeded on an incorrect basis and that the original CLH Form 3 could not have been revised has been completely ignored. The second finding recorded in the Judgment dated 7.11.69 upholding the contention of the Petitioner that the revenue records indicated that the land to be grove has been completely omitted to be considered in all the impugned orders. This omission is vital and seriously prejudicial in as much as the State had been called upon to respond to the said allegation but its failure to do so by simply swearing an affidavit on personal knowledge was categorically rejected and recorded and the conclusion therefore drawn was that the notice at the initial stage in CLH Form 3 had been correctly

prepared. The High Court held that the prescribed authority had no jurisdiction to issue a fresh notice. It is, therefore, evident that the Judgment dated 7.11.69 was binding on clear issues of fact relating to the nature of the land and holding the action of the Prescribed Authority to be without jurisdiction in issuing a fresh notice and including the land of village Pipra.

32. It is contended that as per the Ceiling Act as then existed, under section 6(1) grove was totally exempt and in this background there was no legal bar for the transfer of the land that was sold by the Tenure Holder and the registered sale-deeds were executed between 1959 and 1961. The acceptance of the contention of the Ld. Addl. DGC (Revenue) that the transfers have been restricted after 20.08.1959, has, therefore, no substance as the said contention was accepted ignoring the aforesaid aspect of the case and the binding impact of the Judgement dated 7.11.69 that has attained finality.

33. The findings that have been recorded in treating the transfers to be benami, the Appellate Authority has overlooked the fact that a benami transacted property held by a person is one in respect whereof consideration has been provided by some other person as held by the Hon'ble Supreme Court in ***Smt. Shaifali Gupta Vs. Smt. Vidyadevi Gupta and others in SLP (C) No. 4673 of 2023*** in paragraph 26, where it has been specifically defined as to what would constitute a benami transaction. To prove the same, no evidence has been led to that effect except an allegation that in spite of registered notices having been sent the purchasers did not appear before the Prescribed Authority. This finding on notice of the transferees as contended is perverse in as much as it is evident that all the notices were dispatched to the transferees at the address of the original tenure holder i.e. the late deceased father of the Petitioner at his residence at Allahabad. It is argued that there is no material to establish nor any evidence was led by the State that the address of the transferees was in the city of Allahabad as reported by the

Revenue Officials and placed on record before the Prescribed Authority. The Appellate Authority has completely ignored this aspect and has based its findings only on the strength of the order of the Prescribed Authority and without perusing the records or summoning them even though the Appellate Authority itself had sent a letter on 22 / 24.07.2003.

34. The conclusion of the Appellate Authority that there is clarity in the order of the Prescribed Authority on this aspect is absolutely misplaced and contrary to the facts and evidence on record.

35. In this regard it is argued that what is further noticeable are the findings on the evidence relating to the transactions as recorded by the Consolidation Officer in the order dated 09.02.83: The Appellate authority has held that the Order dated 9.02.83 is a decision after the cut-off date under the Ceiling Act, which is 24.01.1971 and has discarded the impact of the order as it was delivered after 24.01.71.

36. It was vehemently contested by the learned counsel for the petitioner that the Appellate Authority has ignored the fact that the dispute raised before the Consolidation Officer were objections filed on the basis of revenue entries relating to 1359 fasli (1952) and 1367 fasli (1960). The objectors had attempted to get these revenue entries (record of rights) interpolated and manipulated and on that basis had produced revenue extracts claiming that they were in possession and therefore, the settlement record should be corrected in their favour and their objections should be allowed. petitioner's late father was also a party to the said proceedings and after contest all objections were rejected with findings relating to the evidence and the transfers that were all prior 24.01.71. The order of the Consolidation Officer, therefore, related to pre-existing facts and evidence prior to 1971. The evidence and the facts relating to the transfer were crystallised in the Judgment of the Consolidation Officer that became final after having entertained the affidavit of Naib Tehsildar (Ceiling) and noticing the judgment of the High Court dated 7.11.69. Consequently, neither the judgment of the High Court dated 7.11.69

could be ignored nor the entire evidence corroborating the status of the transferees, supported by the revenue records and the entire material that was discussed by the Consolidation Officer could have been ignored. Non consideration of this vital evidence which are all related to the period prior to 24.01.71 was prejudicial to the petitioner. Therefore, merely because the Consolidation Officer had decided the issues in 1983 the same did not in any way dissolve or dilute the pre-existing evidence or even the judgement of the High Court dated 7.11.69. By omitting to consider the same the Appellate Authority as well as the Prescribed Authority in the impugned orders have arrived at conclusions which are perverse for non-consideration of relevant material available on record. A Judicial review of such orders on the ground of perversity is clearly permissible in view of the full bench decision of the this court in the case of Nanha vs. DDC (1975 AWC Pg. 1).

37. The submission of the State that the judgement of the Consolidation Officer cannot be looked into is further not acceptable in view of the fact that the judgement of the Consolidation Officer does not loses its evidentiary value as has been held by this Court in the case of ***Jhandoo Vs. State of U.P. and others reported in 1977 (3) ALR 418*** specifically in paragraphs 9 & 11.

38. This Hon'ble Court has gone on to interpret Section 38-B as added by U.P Amending Act No. 20 of 1976 in ***Uma Shanker Vs. State of U.P. and others reported in 1980 AWC 487 ALL***, wherein the division has held in paragraphs 10, 11 & 13, that has been relied on by the learned counsel and is quoted herein below:

10. Hence Section 38-B does not obliterate all decisions or findings given by courts of law either under the general law or under the Consolidation Act from being given effect to in ceiling proceedings. Section 38-B makes the provisions of the Ceiling Act to have an overriding effect and so the findings which are in conflict or at variance with the provisions of the Ceiling Act will

not bar retrial of the involved issues in proceedings under the Ceiling Act. But otherwise the decisions are to be recognized even in proceedings under the Ceiling Act. To this effect is the decision of Gopi Nath, J. in Ramlal v state of Uttar Pradesh MANU/UP/0636/1978 1978 AWC 713. In that case, the question was whether after the coming into force of the Amending Act No.2 of 1975 and Act No.20 of 1976 a re-determination of ceiling area of a tenure holder has to follow as a matter of course in respect of cases decided by the Ceiling Authorities or is it confined to cases affected by amendments incorporated in those Amending Acts. It was held that a fresh notice for re-determination of surplus land was to issue not in all cases but only in such of them as were likely to be affected by amendments.

Section 9 of the Act No.2 of 1975 provided:

Where an order determining the surplus land in relation to a tenure holder has been made under the Principal Act, before the commencement of this Act, the Prescribed Authority may at any time within a period of two years from the commencement of this Act, re-determine the surplus land in accordance with the Principal Act as amended by this Act.

11. The learned Judge rightly pointed out that the re-determination was to be done in so far as it was required for the amendments introduced by the Amending Act of 1975.

13. The learned Judge observed that re-determination was required only when it was necessitated by the amendments made in the Principal Act, notwithstanding the existence of a decision determining the surplus land either by the Prescribed Authority or in appeal the learned judge concluded that the general review of the earlier orders was not intended by the aforesaid provisions permitting re-determination. Only such cases are liable to be reopened which required re-determination in view of the amendments incorporated in the Principal Act. Section 38-B was to be interpreted in the light of these provisions of the

Amendment Act by which Section 9 of the Act 2 of 1972 was introduced in the Ceiling Act. Section 38-B facilitated the re-determination directed to be done by Section 9 of Act No.2 of 1975 and Section 31 of Act No.20 of 1976, by specifically providing that the findings or decisions given before October 10, 1975 shall not debar the retrial of the issues governed by the Act as amended.”

39. It is argued that the aforesaid law laid down by this Court has again been followed in paragraphs 4 & 5 in the case of ***Kr. Shiv Mahendra Singh Vs. State of U.P. and others reported in 1982 ALL.L.J. 106.***

40. It has been further argued that in the facts of the instant case the State has failed to point out as to whether any findings or decisions of any authorities or a court of law as has been relied upon by the petitioner including the findings of fact recorded in the order of the Consolidation Officer dated 9.2.1983 are contrary to any of the amendments made in the Principal Act which would warrant a retrial of the same, therefore as per the law laid down by this Court in ***Ram Lal Vs. State of U.P. and others reported in 1978 AWC 713 ALL*** in paragraphs 19, 20 & 21, the ceiling authorities were not justified in ignoring the decisions rendered by competent courts or authorities in respect of matters which were not affected by the changes made in the Principal Act.

41. It is further pointed out that the State has not denied nor has it controverted the findings returned in the order of the Consolidation Officer or the order itself, therefore the law laid down by the Division Bench of this Court in ***Rajendra Prasad Vs. State of U.P. and others reported in 1978 AWC 657 ALL*** in paragraph 10 would also squarely cover the case of the petitioner in as much as the revenue entries made under Section 49 of U.P. Consolidation of Holdings Act would be final as the consolidation order has remained unrebutted in the petitioner's case.

42. Apart from the above, as has been argued earlier and has been reiterated that as is evident from the order of the Consolidation Officer

dated 9.2.1983 itself. the Naib Tehsildar Ceiling had also participated in the consolidation proceedings, therefore the ceiling authorities were unjustified in ignoring the findings of fact returned in the order of the Consolidation Officer that too without providing any reason on the basis of any material evidence available on record that the said findings were in any way contrary to the amendments made in the ceiling law or were perverse.

43. There is yet another legal aspect that has been urged which directly answers the issues raised particularly regarding the cut-off date of 24.01.1971 and any transfers made prior to the said date. Reference was made to the Judgment of the Apex Court in the case of ***Ram Adhar Singh vs. Prescribed Authority and Ors. 1994 (Supp.) (3) SCC Pg. 702.***

44. In spite of this judicial pronouncement and the binding effect thereof learned counsel submits that the Appellate Authority as well as the Prescribed Authority have manifestly breached the same and have recorded findings contrary to law by attempting to enter into the status of the sale-deed that have been executed long before the cut-off date of 24.01.71.

45. It has been then urged that a perusal of the orders impugned it becomes clear that instead of disproving the veracity of the sale deeds the State has tried to shift its burden upon the petitioner requiring him to prove the same. The said action on the part of the ceiling authorities is contrary to the mandate of this Court in ***Mukhtar Singh Vs. The 2nd Additional District Judge Bulandshahar*** and others reported in 1982 ALL.L.J. 1453 wherein this Court in paragraph 8 has specifically held that a sale deed must prevail according to its apparent tenor and the burden of proving that the ostensible is not the actual state of affairs is on the person who alleges that proposition. Even otherwise as urged earlier the petitioner has proved the veracity of the sale deeds on the basis of unrebutted facts including the revenue records and findings of facts returned in the order of Consolidation Officer dated 9.2.1983. The copies

of the Register Malikaan have been pointed out that have been filed alongwith the supplementary affidavit.

46. The aforesaid mandate further finds support from paragraph 10 of an earlier decision of this Court in *Vishwa Nath Singh Vs. State of U.P. and others reported in 1978 ALL.L.J. 1085*.

47. The categorical findings of the High Court in its order dated 7.11.69 have been clearly pleaded in paragraphs 10 and 11 of the Writ Petition.

48. The Counter Affidavit filed on behalf of the State in paragraphs 9 and 10 does not rebut the same.

49. It is therefore contended that there is no question raised by the State about the legality of the order dated 7.11. 69, that has been become final. The State, therefore, is clearly bound by the said judgment and these aspects seem to have been neither construed in accordance with law nor their legal impact has is no question raised by the State about been assessed that renders the impugned orders invalid deserving to be quashed.

50. It has been argued that the proceedings were conducted in violation of principles of natural justice in the manner in which the revised notices were prepared and reissued that have been done without verifying the correct status of the holding of the Petitioner or the Original Tenure Holder and as a matter of fact the State in its anxiety to somehow the other declare land surplus has thrown over-board all procedures as held in the Judgment dated 7.11.69 and then subsequently by the Appellate Authority in the previous round of proceedings in the order dated 17.04.93. Not only this in spite of the remand of the matter by the High Court once again vide Judgment dated 21.08.97, the Appellate Authority has completely omitted to consider that the burden lay on the State to prove the transfer transactions to be benami. This discharge of burden by the State was attempted only by explaining of service of notice and the absence of response by the transferees without indicating as to how the

transfers were benami. The sending of notices has already been indicated above to be a farcical exercise as it was dispatched to the residential address of the Original Tenure Holder in Allahabad City. This was therefore, not sufficient to discharge the burden of proving a benami transaction for which no evidence was led. To the contrary, the Petitioner had furnished all the material regarding the revenue records and the entries made therein, the fact of the transfer made and other related documents discussed above, on record as well as through the Judgment of the High Court dated 7.11.69 and the order of the Consolidation Officer dated 9.02.1983. The contention of the State therefore, was fully rebutted by leading evidence by the Petitioner which could not be dislodged by the State by leading any evidence to the contrary. The presumptive value of the said evidence including judgement of the High Court and that of the Consolidation Officer remained unrebutted. In the said background there was no reason much less a good reason for the Appellate and the Prescribed Authority to have decided the matter which has been done in a perfunctory manner and accordingly they deserve to be quashed.

51. It is then argued that the petitioner had set up a separate claim with regard to an additional share on the ground that he was born prior to the abolition of zamindari and therefore, a separate unit to the extent provided under the Act should be earmarked in his favour. This argument has also been noticed by the High Court in its judgement 21.08.97 regarding the share of a person born before the abolition of zamindari in land which was sir or khudkast. This Court has further held in ***Vishwa Nath Singh Vs. State of U.P. and others (supra)*** in paragraph 12. that a son born before 1.7 1952 has a right and a share in sir and khudkast plots and it is not relevant whether his name was entered in the revenue records of the disputed plot or not or whether he was in actual possession over his share in the plots or not.

52. Furthermore it is urged that the findings in the impugned order is also contrary to the judgement and order dated 9.7.1979 passed by the 2nd

Additional District Judge, wherein it was held that the holding of Smt. Jagdishwari Kunwari would be included in the holdings of her heirs qua their respective shares, who were the petitioner's late father i.e. the original tenure holder as well as the petitioner's two uncles namely Late Khagendra Pratap Sahi and Novendra Pratap Sahi and it is the same holding which has devolved upon the petitioner, therefore there can be no doubt or dispute regarding the land to be ancestral sir and khudkast. Even otherwise relevant pleadings regarding the same have been made in paragraphs 37 & 39 of the writ petition which has been dealt with in paragraph 25 of the counter affidavit, wherein there is no specific denial regarding the same nor has the State produced any evidence or material available on record to rebut the said averments.

53. There was no evidence on record regarding the petitioner having passed graduation or having a post graduate degree. The Appellate Authority concluded that the petitioner ought to have submitted his high school certificate and having not done so a presumption was drawn that he was not bom before the abolition of zamindari. The date of birth of the Petitioner was proved by evidence to be January 17, 1951, which is prior to the date of vesting of zamindari, i.e., 01.07.1952. The State had not adduced any evidence and yet assumptions were drawn by the Appellate Authorities. This has been specifically challenged in the paragraph 37 of the Writ Petition. The same has been denied in paragraph 25 but without any proof or evidence to confirm the finding recorded by the Appellate Authorities. On the other hand, the Petitioner had filed evidence supported by the Affidavit of one Mr. Adya Prasad Dubey and the affidavit of his late mother Smt. Manorama Devi supporting that the date of birth of the petitioner was 17.1.1951. Even though, the Appellate Authority has in the operative part of the order indicated that this claim can be made by the Petitioner before the prescribed authority but has recorded contrary findings presuming the educational qualification of the petitioner as graduate and master of arts that too without there being any

basis. The Petitioner's assertion in para 37 has been met with a bald denial by the state in the counter affidavit. On the other hand, the affidavit of the mother of the petitioner has not been disbelieved nor can it be discarded inasmuch as a mother's evidence is the best piece of evidence. The affidavit of the mother dated 28.08.2003 has also been filed but the Appellate Authority has only mentioned the affidavit of Mr. Adya Prasad Dubey. The Appellate Authority has, therefore, ignored the affidavit of the mother. It is relevant to point out that the averment about the affidavit having been filed of the mother dated 28.08.2003 has been categorically stated on oath in para 36 of the writ petition which has been replied to in the counter affidavit by the State in para 24 wherein there is no denial to the same.

54. The Hon'ble Supreme Court in its judgement between State of *Chattisgarh Vs. Lekh Ram reported in (2006) 5 SCC 736* has emphasized upon the importance of the corroboratory evidence of the statement of a mother. The petitioner has made categorical averments in paragraph 36 of the writ petition regarding the documents and material evidences filed by him to prove his date of birth which has not been rebutted by the State in paragraph 28 of the counter affidavit on the basis of any material evidence available on record and a mere bald denial has been made in the said paragraph by the State. The ceiling authorities while passing the impugned orders have also been unable to dislodge the veracity and validity of the Voter I.D. submitted by the petitioner before them, therefore in the absence of the same the findings regarding the date of birth of the petitioner returned in the impugned order are of no consequence.

55. Even, the filing of the affidavit of the mother and Mr. Adya Prasad Dubey which was filed on 15.09.2003, has not been rebutted in the counter affidavit. The petitioner in his memo of appeal had clearly raised an issue of the separate share of the family members under a family settlement dated 17.08.1969 whereby the Petitioner's brother and his

sister and mother were in possession of the plots allotted to them in the said family settlement. This Issue has been completely ignored even though it has been taken as ground no. 14 & 15 of the memo of appeal that has been filed alongwith with the supplementary affidavit on record. Thus, these issues have also been either considered erroneously or have been omitted to be considered as such the impugned orders are invalid. Furthermore, this fact has been asserted in para 51 of the writ petition to which there is a bald denial in para 31 and there is no other denial in any of the other paragraphs of the counter affidavit. All the facts have once again been reiterated by the Petitioner in his rejoinder coupled with the supplementary Affidavits filed on record.

56. It may be reiterated that the Appellate Authority as noted above in the operative part has observed that in the event the Petitioner provides an affidavit that he has no other land he may be extended the benefit of 2 hectares of land over and above 18.04 acres of the land admissible under the Act. Once the operative part admits the entitlement of additional 2 hectares to the Petitioner over and above the ceiling limit then the findings recorded in the main order becomes inconsistent and for this reason also the impugned orders deserve to be set aside.

57. As pointed out above the impugned appellate order dated 14.10.2003 admits the entitlement of additional two hectares to the petitioner over and above the celing limit, however the appellate authority has not extended the same benefit of Section 5(3)(a) of the Act to the other family members of the petitioner. The pleadings in that regard have been taken in paragraph 38 of the writ petition which has again been met with a bald denial by the State in paragraph 25 of the counter affidavit which shows that in absence of any categorical and specific denial of the same the ceiling authorities were bound to consider the said plea of the petitioner.

58. In view of the above discussion and in the absence of any specific denial by the state in its counter affidavit on the basis of any cogent

evidence it becomes amply clear that the plea of the petitioner regarding his date of birth to be 17-01-1951 and his entitlement of an independent and individual share is liable to be accepted.

59. It has also been pointed out that similar proceedings had been initiated by the Authorities displaying flagrant violation of procedure and ignoring material evidence in the case of the brother of the Original Tenure Holder late Khagendra Pratap Sahi, who during the same period had suffered from the same faulty process and it refers to the same orders passed in 1975 as in the present case. In that petition the order of the Prescribed Authority and the order in appeal dated 19.07.93 and 27.03.1997 respectively had been challenged. The High Court allowed the writ petition no. 12723 of 1997 vide order dated 27.02.2013 (Annexure SA-1, Pg. 10) and came down heavily on the State commenting that the impugned orders have been passed in a manner which deserves to be deprecated strongly.

60. From the facts discussed hereinabove yet another glaring fact comes to light that the impugned orders passed by the ceiling authorities is nothing but sheer arbitrariness in as much as undisputedly the initial ceiling case initiated against the petitioner and against the original tenure holder i.e. his late father was Ceiling Case no. 48/18 and again in between 1990 to 1993 another Ceiling Case was instituted against the petitioner which was Ceiling Case No. 45. It is no more res integra that two separate ceiling cases against the same tenure holder cannot be proceeded with by the ceiling authorities. The continuance of two separate ceiling cases being Ceiling Case No. 48/18 and Ceiling Case No.45 are also admitted to the State which is also evident from the orders impugned.

61. As noted above under identical and almost similar circumstances and by a similar order dated 19.7.1993 a fresh ceiling case was instituted against the petitioner's late uncle namely Khagendra Pratap Sahi, who was also a co-tenure holder and the said order was challenged by him in

Writ-C No. 12723 of 1997, the judgement whereof has been recorded herein above. This court in its judgement dated 27.2.2013 depreciated the action of the ceiling. authorities and altogether quashed the new proceedings initiated against the petitioner's late uncle Khagendra Pratap Sahi. In the instant case also the fresh ceiling case being Ceiling Case No. 45 could not have been instituted nor could it have continued against the petitioner in view of the aforesaid judgement as well as the fact that the land which was the subject matter of Ceiling Case No.45 had earlier also been included in the ceiling notice by holding it to be surplus by the Prescribed Authority vide order dated 4.10.1963 which was held to be without jurisdiction vide judgement and order dated 7.11.1969 in Writ Petition No. 4772 of 1963. Thus the new ceiling case being Ceiling Case No.45 was against the directions issued in the judgement dated 7.11.1969 as well as contrary to the settled principles of law.

62. The aforesaid fact was specifically pleaded in paragraph 3 of the memo of appeal against the order dated 19.7.1993 and in paragraphs 34 & 35 of the memo of appeal against the order dated 31.3.1995 which are part of the record as Annexures SA-13 and SA-16 to the supplementary affidavit, however the impugned orders have failed to record any cogent reasoning to dislodge the same.

63. A similar attempt has been made by the Prescribed Authority as well as by the Appellate Authority while passing the impugned orders whereby they have illegally included the land of one Krishna Murti Singh in the holdings of the petitioner and his late father while determining the land of the petitioner and his late father to be surplus. The authorities while passing the impugned orders have failed to take into consideration the import and the impact of the Judgement and order passed by the Additional Commissioner (Administration) dated 13-10-1995 (Annexure SA-14, Pg 70) in ceiling appeals no. 34/46/P-1995 and 52/71/P-1995 between Krishna Murti Singh and the State of U.P. wherein it was categorically held that plot nos. 12,13,15,17,18 and 20 pertaining to

village Tandwa does not belong to petitioner's late father or his uncle Novendra Pratap Sahi and a further direction was issued by the appellate authority to exclude the said land from land declared as surplus of the petitioner's late father and uncle. Therefore, on this count also the impugned orders are liable to be quashed.

64. It is, therefore, evident that the authorities of the State have proceeded in a manner which is not only unjust but is also illegal and the proceedings deserves to be quashed.

65. The submission of the petitioner that abadi land has also been included in the notice under Section 10(2) of the Act by showing it to be irrigated land and furthermore that there were constructions and houses standing thereon of different persons even prior to the Act which were liable to be exempted under Section 6-F of the Act has been categorically made in paragraph 50 of the writ petition which has again been met with a vague and a bald denial by the State paragraph 31 of its counter affidavit, therefore it is evident that ceiling authorities have either altogether ignored the said submissions or they have not considered the said pleas of the petitioner in accordance with Section 6 of the Act, therefore the said plea of the petitioner has to be decided afresh by taking into consideration the exemptions provided under Section 6 of the Act.

66. Arguments have been advanced with regard to the status of possession pending the proceedings before the prescribed authority after the appeal was allowed on 17.04.93 setting aside the order dated 02.05.1990 After the appeal had been allowed and the matter had been remanded, orders with regard to stay had also been passed after the Prescribed Authority had decided the matter on 19.07.93. An interim stay was granted on 30.08.93 and in between the prescribed authority had passed orders that have been referred to hereinabove as such in order to protect the possession of the land writ petition No. 15960/1995 was filed which was disposed of with observations on 07.06.1995. A photocopy of

the certified copy of the order has been annexed alongwith the written submissions filed by the petitioner.

67. It has been pointed out that the matter was being contested by the Petitioner and prior to the passing of the impugned appellate order dated 14.10.2003, the previous appellate order had been quashed by the High Court on 21.08.97. It is relevant to notice that when the said writ petition 36434/1996 was filed, an interim order was passed on 14.11.1996, which is quoted hereinbelow:-

"The notice on behalf of respondents have been accepted by Ld. Standing Counsel. He prays for and is granted one month time to file counter affidavit. Rejoinder Affidavit may be filed within two weeks thereafter. List for admission on 28.01.1997.

The Petitioner shall not be evicted from the land in dispute and the land shall not be allotted to any one provided the petitioner deposits a sum of Rs.25,000/- with Respondent No. 4 within 3 weeks from today. The amount so deposited shall be subject to the decision of the Writ Petition.

Sd/-(Sudhir Narain) 14.11.96"

68. Thus, there were interim orders which were operating and even after the passing of the impugned Appellate Order challenged in the present writ petition an interim order was passed on 22.10.2003, which is quoted hereinbelow:-

"Issue Notice.

Until further orders of the court, dispossession of the petitioner from the land in dispute shall remain. stayed.

Sd/-(R.P. Misra. J.)

Dt:22.10.2003"

69. In view of the aforesaid facts it is urged that the petitioner as well as the transferees were in actual and physical possession of the plots in view

of the various interim orders passed by the authorities as well as by the High Court.

70. Responding to the aforesaid submissions, the learned standing counsel has argued that the proceedings initiated and the orders passed are in accordance with law and consequently after having considered the entire material on record the Appellate Authority has in compliance of the judgment dated 21.08.1997 proceeded to determine the issues in accordance with law and therefore the findings recorded on all the issues do not suffer from any factual or legal infirmity. The learned standing counsel invited the attention of the court to the contents of the counter affidavit and has urged that the contentions advanced on behalf of the petitioner have no merit and the WP deserves to be dismissed. He has supported the findings recorded by the Prescribed Authority as well as the Appellate Authority contending that the previous judgment and orders in the proceedings have no binding effect and are no impediments for a decision on the basis of the notices issued to the Tenure Holder and to the petitioner and consequently the contention raised are untenable in the eyes of law.

71. Learned counsel for the allottees have asserted their rights claiming possession and as is evident from the impleadment application they claim allotment pursuant to the order dated 19.07.93 passed by the Prescribed authority. They have thus only asserted rights of possession on the strength of the facts stated in the impleadment application regarding consequential allotments on the strength of the impugned order of the Prescribed authority dated 19.07.93. The allottees have not contested the present petition on its merit and have fairly accepted that they only have any right in case the State succeeds.

72. Heard the learned Counsel for the petitioner, learned Standing Counsel for the State as well as all the learned Counsel who have appeared for the subsequent allottees.

73. Having heard learned Counsel for the parties and having perused the records as well as the relevant documents, the pleadings including the counter affidavit of the State and the supplementary affidavits filed on behalf of the Petitioner, the challenge raised in the present proceedings has its genesis in the proceedings that were initiated against the original tenure holder under the 1960 Act. The first notice that was issued on 21.08.1962 is on record as Annexure 1 to the supplementary affidavit. The said notice did not include the land which stood sold and transferred up to 1961. These transfers had been made by the original tenure holder through registered sale deeds and the names of all transferees were accordingly recorded and the revenue records were maintained as per the same. Objections to the said notice had been filed by the tenure holder but in between some rank outsider moved an application for including the said land which has been transferred relating to village Pipra, Tehsil Padrauna then District Deoria (now Kushinagar) and the prescribed authority issued directions for preparation of a fresh notice under his order dated 04.10.1963. This fresh notice was prepared in CLH form 3 of the Ceiling act 1960 which was challenged by the tenure holder contending that the land which had already been sold and transferred through registered sale deeds could not be included in the notice and therefore the notice was bad and without jurisdiction. This gave rise to Writ Petition No.4772 of 1963 filed by the tenure holder (Petitioner's late father) where an interim order was passed and then the Writ Petition was finally allowed after exchange of affidavits on 07.11.1969. The impact of the said order has a direct bearing on the contentions raised and it is therefore essential to reproduce the same and is quoted hereinbelow:-

"The petitioner has come up to this court against this order which is Annexure-6 to the writ petition. It has been contended before me by the learned counsel for the petitioner that the Prescribed Authority had no jurisdiction to allow the fresh notice to be issued with a revised statement to the petitioner. It has been stated by the learned counsel that the Naib Tehsildar Ceiling

prayed that a fresh copy of the revised statement in Form CLH 3 be sent along with the notice to the petitioner to show cause why the revised statements be not taken as correct. According to the learned counsel Form CLH 3 is form prescribed under rule 7 of the rules framed under the Act 7 runs thus:

Soon after the issue of general notice in CLH Form 1, the Prescribed Authority shall, after making necessary inquiries, cause to be prepared a statement in C.L.H Form 3.

In proposing the ceiling area applicable to a tenure holder in Part C of CLH Form 3, the Prescribed Authority shall have regard to the following:

As far as possible, land carrying a superior class of soil or tenure or being under cultivation or specialized valuable crops, such as pan, Keora, Bela, Chamela or Gulab, etc. should be included in the proposed ceiling area. As far as possible sub-division of holdings should be avoided by including in the first instance share of the tenure holder in joint holdings in the proposed ceiling area applicable to the tenure holder.

The ceiling area proposed to be given to the tenure holder should be as compact as possible.

Under Sub-section (2) of Section 10 of the Act, this form prepared under sub-section (1) is to be sent along with the notice in CLH Form 4. According to the learned counsel there is no provision for having the statement prepared under sub-section (1) of Section 10 in CLH Form 3 after the objection had already been filed and on failure of the tenure-holder to dispute the correctness of the statement the statement can be treated as final and on that basis ceiling area applicable to the tenure holder and the surplus land shall be determined. Where the statement prepared is in dispute the Prescribed Authority shall determine the surplus land of the tenure holder. From a reading of Annexure-5 it appears that the Naib Tehsildar took objection that the land specified in the application has wrongly been shown as grove or to have been sold before 20th August 1959, and has been shown

as exempted land in the statement. According to the Naib Tehsildar the land should have been included in the tenure holder's land holding and should have been accounted for at the time of determining the surplus area as it was neither a grove on the spot nor was sold on or before 20th August, 1959. According to the learned counsel the statement prepared in CLH Form 3 is based on the revenue records prepared by the revenue department and it was not possible for Prescribed Authority to revise such a statement and issue a revised notice and call for the petitioner to file objection against the same. To me it appears that the objection taken in this writ petition on behalf of the petitioner is well founded. If a statement has been prepared on the basis of revenue records that statement should be taken to be correct. During the hearing of this writ petition I directed the learned Standing Counsel, appearing for the State, to file a supplementary counter affidavit to show on basis of the revenue record whether the land said to be grove was or was not a grove on the 1st day of May 1959. No supplementary counter affidavit has been filed on the basis of record. Of course supplementary counter affidavit has been filed, but that has been filed on personal knowledge of the person swearing the affidavit. It means that the revenue record speaks things otherwise than contained in the supplementary counter affidavit. The statements, therefore, appear to have been correctly prepared at the initial stage in CLH Form 3 and the Prescribed Authority in my opinion had no jurisdiction to issue a fresh notice on the basis of the alleged revised statement. The order dated 4th October, 1963 based on the application of the Naib Tehsildar Ceiling and that of Gauri Shanker Sahi who has no locus standi to put in appearance in these proceedings is an order passed without jurisdiction and there is an apparent mistake in passing such an order passed by the Prescribed Authority. In my opinion the order should be quashed:

I allow the writ petition, quash the order dated 4.10.1963, passed by the Prescribed Authority, Padrauna, and direct that the objections filed by the

petitioner on the statement prepared in CLH Form 3 be disposed of according to law. I make no order as to costs.

Sd/-C.D. Parekh

Dated: November 7, 1969"

74. A perusal of the said judgment of the High Court clearly indicates that it investigated the contention regarding the nature of the land that was claimed by the Petitioner to have been recorded as grove and recorded as such in the relevant revenue record khasra that was relied on by the Petitioner.

75. As contended by the tenure holder, the land under the said Act which was reflected as a grove in the revenue was exempt and therefore the ceiling statement was examined to which the Naib Tehsildar had taken an objection that it was wrongly shown as a grove and therefore it should have been included in the tenure holder's land. The State therefore was justifying the issuance of the second revised notice contending that the land was not a grove on the spot nor had it been sold prior to 20.08.1959. The tenure holder took a stand that the original CLH form 3 was based on revenue records and the prescribed authority could not have revised the same on the basis of some personal knowledge about the nature of the land. The land therefore could have been transferred and was bonafidely transferred. As is evident from a perusal of the judgment the challenge /objection taken by the tenure holder was held to be well founded and it was categorically recorded that if the statement had been prepared on the basis of revenue records then it has to be taken as correct. However, the High Court in order to satisfy itself seems to have issued a direction to the State Counsel to file a supplementary counter affidavit explaining the status of the land as to whether it was grove or not on the first day of May 1959. The supplementary affidavit was not filed on the basis of any revenue record and to the contrary an affidavit was filed based on personal knowledge. The High Court therefore took exception to the

same and categorically held that the revenue records reflected otherwise than the supplementary counter affidavit filed by the State, and then went on to hold that the ceiling statement prepared at the initial stage in CLH form 3, which was obviously issued on 21.08.1962, had been correctly prepared and the prescribed authority had no jurisdiction to issue a fresh notice which was the notice under challenge dated 04.10.1963 that was held to be without jurisdiction. Accordingly, the initiation of issuance of a fresh notice on 04.10.1963 was held to be without jurisdiction on the basis of the aforesaid findings and the Writ Petition was allowed and the order and notice dated 04.10.1963 was quashed. Directions were issued that the objections filed by the tenure holder/Petitioner on the basis of the original statement prepared in CLH form 3 be disposed of according to law.

76. The said judgment of the High Court became final that has been categorically averred with a copy of the judgment filed on record as Annexure 1 to this Writ Petition with a reference to the same in paragraph 10 with recitals in paragraph 11 of the Writ Petition. The counter affidavit in the present writ Petition filed by the State states in paragraph 9 and 10 as follows:

"9. That the contents of paragraph no. 10 and 11 of the writ petition are related to the order dated 07.11.1969 passed by the Hon'ble High Court in writ petition No. 4772 of 1963 Sri Vishshwar Pratap Shahi Vs. State of U.P. and others, hence need no comments.

10. That the contents of paragraph no. 12, 13 and 14 of the writ petition need no comments."

77. A combined reading of the said paragraphs leaves no room for doubt that the judgment of the High Court dated 07.11.1969 has been admitted in the counter affidavit as a matter of record and needed no comments. In my considered opinion, the finality of the said judgment not having been

disputed, the correctness thereof and the findings recorded therein are clearly binding on the State. The ceiling authorities and its officials therefore being bound by that finding and the judgment of the High Court could not have proceeded contrary to the same or to take any steps for any reassessment for initiating any proceedings of the land as the notice 04.10.1963 itself had been quashed by the High Court after recording findings as indicated above.

78. At this juncture it is appropriate to refer to the status of the transfers. Even otherwise the amended provisions of the Ceiling Act came up for consideration before the Apex Court in the case of Ramdhar Singh Vs. Prescribed Authorities & Ors 1994 Supp 3 SCC 702. In that case, the challenge raised was to a transfer made on 22.04.1969 through a registered sale deed by the tenure holder in favour of his son. The said land was sought to be included in the holding and the sale deed dated 22.04.1969 was put to test wherein the ceiling authorities took the view that the sale deed was not genuine for want of consideration as it was a transaction between father and the son. The Apex Court went on to hold that the ceiling authorities could not have made any enquiry into the sale deeds executed prior to 24.01.1971. The relevant portion of the said judgment reversing the judgment of the High Court and the ceiling authorities is quoted hereinbelow:

"The existence of the sale deed being not disputed and it having taken place, as said before, on February 24, 1969, prior to the appointed day that is January 24, 1971, the inquiry regarding the validity of the sale deed under sub-section (6) of Section 5 was totally misplaced. Thereunder, as it appears to us, the appropriate authority had no jurisdiction to be put the validity of the sale deed to test since his jurisdiction arose only when the deed of transfer had been effected on or after the appointed day. Not only the first and the appellate authority under the Act persisted in that view, but the High Court too proceeded on that basis. The effort of the appellant

to have it declared that the authorities had no jurisdiction to invalidate the sale under sub-section (6) of Section 5 when read with Explanation II to sub-section (1) of Section 5 also was a futile attempt because the High Court followed the path, as did the authorities under the Act, and rejected the writ petition. We are of the view that this was a wholly erroneous approach. Sub-section (6) of Section 5 did not confer jurisdiction on the authorities to determine the validity of the sale and if that is so any finding of theirs as to the contents of the sale is of no assistance. In the result the appeal must succeed. Accordingly, allowing the same we set aside all the orders of the authorities below as also that of the High Court. No costs."

79. A perusal of the same would indicate that such an action was held to be erroneous as the authorities were held to have no jurisdiction to determine the validity of the sale and the appeal was accordingly allowed.

80. This needs to be emphasised that the issuance of the revised notice in the present case was quashed by the High Court which had included the land that had been transferred through sale deeds as indicated above including the land that was transferred in Village Pipra. It is, therefore, evident that there was no determination of any surplus land in the present case by the Authorities prior to 24.01.1971 as the revised notice had been quashed by the High Court on 7.11.69. The Ceiling Act came to be amended with the introduction of new provisions and under the amended act the cut-off date was 24.01.1971 as a result whereof transfers before this cut-off date were held to be beyond scrutiny in the case of **Ramadhar Singh (supra)**. Consequently, the land which stood transferred by the Tenure Holder prior to the said date could not have been included in any fresh notice.

81. Thus, neither the Prescribed Authority could have issued any fresh notice in respect of the said land as per the binding effect of the High

Court judgment nor otherwise any examination of the facts relating to the sale deeds executed prior to 24.01.1971 could have been undertaken by them after the amending act came into force and fresh proceedings were initiated giving rise to the present proceedings.

82. Thus, the land that stood transferred prior to 24.01.1971 could not be made the basis for any fresh notice in any manner whatsoever.

83. There is yet another valid reason for the same which is the evidence relating to the said facts of the transfers and the status of the land confirming the holding to be of the transferees that was thoroughly examined in the settlement proceedings of the U.P. Consolidation of Land Holdings Act 1954 as recorded in the order of the consolidation officer dated 09.02.1983. The said fact has been brought on record and the contentions in this regard have been raised in detail indicating that some land of the original tenure holder and the land which had already been transferred under the sale deeds was made subject matter of a large number of objections filed by third parties on the basis of fake and manipulated revenue entries and fake orders of revenue authorities. These objections were filed in respect of the same land against the tenure holder (the Petitioner's father herein) as well as against his transferees about whom reference has been made hereinabove. The said objections were contested and during the contest the Naib Tehsildar Ceiling was also made to participate along with the revenue records to verify the correctness and the status of the revenue entries relating to the land in Pipra. The Consolidation officer who tried all the objections in terms of the UP CH Act 1954 recorded findings relating to the same pre-existing facts of transfer effected prior to 24.01.1971 and the revenue records indicating the title of the transferees and confirmed the same. A perusal of the findings recorded therein are, therefore, an evidence relating to the facts and status of the land that stood transferred and recorded prior to 24.01.1971, and the said order dated 09.02.1983 that was passed with the participation of the Naib Tehsildar Ceiling and also taking notice of the

judgment of the High Court dated 07.11.1969, became final. Some of the objectors had also preferred an appeal against the said order but the same were dismissed and this fact has also been noticed in the orders passed by the Appellate Authority. The evidence to this effect was filed before the Appellate Authority being the order of the Settlement Officer Consolidation Padrauna dated 20.06.1989. This has been stated in paragraph 36 of the writ petition to which there is no denial on facts in paragraph 24 of the counter affidavit. Thus, the order of the Consolidation Officer is a documentary evidence in relation to the facts as indicated above pertaining to the transfers prior to 24.01.1971.

84. The High Court in the case of ***Jhandoo Vs. State of UP & Ors. 1977 AWC 318-1977 (3) ALR 418*** while considering the impact of Section 38-B as brought by way of an Amendment in 1976 in the Ceiling Act examined this issue in the context of reduction in land during Consolidation proceedings under the UP CH Act 1954 and its impact on ceiling proceedings. The question posed by the High Court in paragraph 5 is as follows:

"5. The answer to the problem raised in the petition shall depend on the question whether order passed by the Consolidation Courts is final regarding the area held by the Petitioner. And the date for determination of ceiling area is 8-6-1973 or the date when the objection is decided."

85. The State took a stand that the finality of any orders passed in terms of Section 38-6 of the Ceiling Act is taken away and therefore the order passed in consolidation proceedings after coming into force of the said provisions will have no binding effect as a combined reading of Section 31 read with Section 38-B lift the bar of the conclusiveness of any judgment. The issue was discussed in detail by the High Court and the finding recorded and the conclusion drawn is quoted hereinbelow:-

"6. The learned Standing Counsel has relied on Section 38B of the Act, added by Act 20 of 1976 and has urged that finality of any order passed by any Court except the

ceiling Court has been taken away. And, therefore, the order passed in consolidation proceedings did not have the force of res judicata. He maintains that a combined reading of Section 31 and its various sub-clauses read with Section 38-B leaves no room for doubt that Section 31 permits reopening of all matters decided earlier, by ceiling authorities and Section 38B lifts the bar of conclusiveness of any judgment, finding or issue given by any Court, tribunal or authority.

7. Sri Verma on the other hand severely criticised the enactment of this section. According to him, the Legislature instead of accepting the interpretation put by the Supreme Court in Agricultural and Industrial Syndicate Ltd. v. State of U.P. MANU/SC/0350/1973: AIR 1974 SC 1920 came out in its usual haste, with an amendment which, if the interpretation of Standing Counsel is accepted, creates a situation of uncertainty and chaos. He argued that such legislations do not only obscure the objective for which the Act was enacted but also bring untold misery and hardship to the agriculturist class who are all the time living on a state of uncertainty. According to him these retrospective enactments are against the spirit of the Act and are responsible for huge arrears in law Courts and denial of justice.

8. Sri Yudhishtir has however, rightly pointed out that these are matters of policy with which this Court is not concerned.

Section 388 of the Act reads as follows.

No finding or decision given before the commencement of this section in any proceedings or on any issue (including any order, decree or judgment) by any Court, tribunal or authority in respect of any matter governed by this Act, shall bar retrial of such proceeding or issue under this Act, in accordance with the provisions of this Act as amended, from time to time.

9. If the interpretation, as suggested by the Standing Counsel is accepted it may create anomaly. The present case demonstrates it in full measure. The total area held by the Petitioner on 8-6-1973, the date after which a tenure holder cannot hold any land in excess of ceiling area, was more than the ceiling area fixed by the Act.

But as a result of the findings recorded by the consolidation Courts the area has been reduced to such an extent that nothing remains to be declared as surplus land. The finding recorded by the Consolidation Courts is binding on the Petitioner. He cannot agitate or challenge in any competent civil or revenue court and urge that the area which has been reduced as a result of consolidation is incorrect and the original area should be restored to him. The effect of Section 38B on the one hand shall to be destroy the finality of an order passed under the Consolidation of Holdings Act for purposes of determination of ceiling area yet the order remains binding on the Petitioner under Section 49 of the Consolidation of Holdings Act. Such an anomaly could not have been intended by the Legislature. The argument, therefore, that any finding of issue recorded by any Court can be reopened does not appear to be sound. As pointed out in Civil Misc. Writ No. 734 of 1977 decided on 18-5-1977, it is the finding recorded in a ceiling case decided before October, 1975 that shall not operate as res-judicata."

86. A perusal of the said judgment would demonstrate that finality of proceedings were judged on a comparison of the provisions of Section 38-B and the binding effect of the orders of the consolidation courts under Section 49 of the Consolidation of Holdings Act 1954. The argument of the State that the finding of issue recorded by any court can be reopened, was rejected.

87. In the present case, the findings recorded by the Consolidation Officer is in relation to those facts of the transfer and status of revenue records that related to the period prior to 24.01.1971. The transfer of land by the tenure holder prior to 24.01.1971 stood reduced from his holdings and was not therefore rightly included in the original ceiling notice dated 21.08.1962. Consequently, the order of Consolidation authority could not have been ignored to the extent of discarding its evidentiary value. It remains an order by a competent authority with regard to the facts of transfer prior to 24.01.1971. It has to be remembered that the Consolidation Officer did not create any new rights of the tenure holder

or the transferees under the order dated 09.02.1983 but held that all objections to the holdings on the basis of fake and manipulated documents deserved to be rejected, and accepted the evidence of transfer through sale deeds and revenue entries in favour of the tenure holder as well as the transferees to be correct.

88. Apart from this, the order of the Consolidation Officer did not record any finding contrary to the provisions of the amended Ceiling Act for the purpose of the reopening of the case under Section 38-B. It only acknowledged and confirmed the status of revenue records as well the transfers already affected and maintained the settlements of the tenure holder and the transfers.

89. The High Court in the judgment of **Jhandoo Vs. State of U.P. & Ors.** in paragraph 11 categorically held that the proceedings under The Consolidation of Holdings Act, even if by virtue of Section 38-B do not operate as *res judicata*, yet it does not lose its evidentiary value. Learned counsel for the petitioner has also relied on Paragraphs 19, 20 and 21 of the decisions in the case of **Ramlal Vs. State of UP 1978 AWC 713** and Paragraph 10 of **Rajendra Prasad Vs. State of UP & Ors. 1978 AWC 657**.

90. Having held as above, proceeding further, there are yet other intervening facts which need to be noticed. Fresh notices were issued in 1974 on 12.11.1974 to the tenure holder (father of the petitioner). Another notice emanated in the name of the deceased predecessor in interest of the tenure holder late Rani Jagdishwari Kunwari, who had died more than two decades ago proposing some more land as surplus. These notices related to the land where the two brothers of the tenure holder had also an interest relating to their respective shares. The said notice was against a dead person and the prescribed authority proceeded to pass three orders on 13.03.1975, 25.03.1975 and 29.03.1975 which were all *ex-parte* and without notice to the heirs of the aforesaid deceased tenure holder. All these three orders were challenged by the petitioner's father

and his two brothers in Ceiling Appeal No.478, 479 and 480 of 1975 before the learned Second Additional District Judge. All the three appeals were allowed on 09.07.1979 holding that the notice had been issued in the name of a dead person and the proceedings have been finalised without affording any opportunity to the existing tenure holders. A copy of the judgment by the learned Second Additional District Judge in Appeal No. 478/1975 against the order dated 13.03.1975 has been filed on record where it was held that the proceedings could not have been undertaken against a dead person and without affording opportunity to the Appellant and his brothers. The same judgment was followed in Appeal Nos. 479 and 480 challenging the orders of the prescribed authority dated 25.03.1975 and 29.03.1975 and the appeals were accordingly, allowed. This fact has been categorically stated in paragraph 14 of the writ petition that has been replied to in paragraph 10 of the counter affidavit of the State that it needs no comments. Paragraph 10 of the counter affidavit is quoted hereinbelow:

“10. That the contents of paragraph no. 12, 13 and 14 of the writ petition need no comments”

91. The aforesaid fact therefore stands confirmed that the ceiling authorities in addition to the earlier notices had adopted a fresh notice for instituting a fresh case that was also set aside and in my opinion could not have been initiated as a tenure holder has to be given a consolidated notice and separate proceedings are not contemplated under the Ceiling Act. The learned standing counsel could not explain as to how a fresh notice was issued and in this regard a similar finding was arrived at by the High Court in the case of the deceased Tenure Holder's brother in Writ Petition No. 12723/1997 decided on 27.02.2013, the judgment whereof has been brought on record through a supplement affidavit. The same issue was raised and answered by this Court in para 21 of the Judgment which is extracted hereinunder:-

"21. When this Court enquired from the learned Standing Counsel as to how a new case could have been registered in 1988-89 when the earlier matters were already pending, he could not reply at all."

92. In the present case also the proceedings arising out of Ceiling Case No. 48/18 was pending and a fresh case was registered being Ceiling Case No 45. No answer was forthcoming on this legal aspect either from the learned standing counsel or even from the learned counsel for the allottees. Neither, the Prescribed Authority nor the Appellate Authority have been able to justify the registration of the fresh case and had failed to accept this contention of the petitioner that has been raised before them as has been noted hereinabove.

93. In this background and with the aforesaid facts what appears is that a fresh notice was prepared without complying with the aforesaid judgment of the learned Second Additional District Judge on 23.06.1986. The said fact has been clearly pleaded in paragraph 15 of the writ petition as follows:

"15. That the judgement of the District Judge was never complied with in its essence and the notices were not prepared accordingly and it is alleged that fresh CLH Form-3 were prepared in the name of the petitioner's late father on 23 June, 1986."

94. Even though the same in the counter affidavit is stated to be not admitted but to the contrary as appears on record, the notices were issued but without service on the tenure holder, the prescribed authority proceeded with the matter. The tenure holder (petitioner's father) died on 08.04.1989. No notice had been served on him nor is there any evidence in rebuttal to that effect.

95. Not only this, in spite of substitution of the heirs of the tenure holder, no notices were served on them. The prescribed authority presuming service of notice on the petitioner and his brother proceeded to pass a cryptic two-page order on 02.05.1990 declaring surplus land without looking to the records or the entire preceding events, judgments and

orders referred to hereinabove. The petitioner, pointing out these facts and the entire background of the litigation, moved an application for recall of the said order wherein initially an order of *status quo* was passed on 27.03.1991. Applications were moved by the petitioner also for compliance of the earlier orders and also to take notice of objections regarding the separation of the family of the petitioner as well as other objections but all the applications were cursorily rejected on 14.02.1992 and instead an order was passed reaffirming the order dated 02.05.1990 and to proceed accordingly. What is noticeable is that the prescribed authority also made an attempt allegedly sending notice to the transferees of the tenure holder with regard to which facts have already been noted hereinabove. This was attempted by sending a consolidated notice to the transferees and a report of the Lekhpal dated 09.02.1991 indicates that a majority of the notices were dispatched on only one address, 11 Kariappa Road Allahabad, which was the address of the residence of the tenure holder and not the transferees. This fact has been categorically stated in paragraph 23 of the writ petition and in paragraph 16 of the counter affidavit, the state has simply narrated that these facts relate to the issuance of notice as per law to the transferees. A perusal of the said report, which has been brought on record as Annexure 5 demonstrates that this dispatch of notice was a mere formality and dispatched on almost a single address. These notices were reported to have remained unserved which was obvious because they were deliberately addressed blind-foldedly at the address of the petitioner's father. Thus, notice having been sent at the wrong address was clearly an empty formality.

96. The *ex-parte* order dated 02.05.1990 and the order dated 14.02.1992 were both challenged before the Appellate Authority. The aforesaid facts of sending notices in a haphazard manner was also challenged before the Appellate Authority. It was held that service of notice was not proved and was insufficient and accordingly both the orders dated 14.02.1992 and 02.05.1990 were set aside on 17.04.1993. This fact has been stated in

paragraph 19 of the writ petition which has not been denied and it has been stated in paragraph 13 of the counter affidavit that it needs no comments. It is thus clear that the prescribed authority had proceeded *ex-parte* without notice to the heirs of the tenure holder and to any of the interested parties and therefore the orders were set aside with directions to proceed on merits.

97. The prescribed authority proceeded once again to pass a cryptic order on 19.07.1993 of two pages relying on the very same service of notice and the reports regarding service of notice in a case that was registered afresh as Ceiling Case No.45 in the name of the deceased tenure holder Mr. Visheshwar Pratap Sahi (petitioner's father) who had died on 09.04.1989. It simply in a cryptic manner records that the notices which were sent to the transferees have been returned back as postal note that there were no such persons available on the given address. As noted above, the notices had been sent to the transferees on the address of the deceased tenure holder in the ceiling proceedings no. 48/18. The same procedure seems to have been adopted once again by the prescribed authority in the newly instituted case Ceiling Case No.45 and then again the holdings of village Pipra to the tune of 146.06 acres was declared surplus. This order dated 19.07.1993 was once again *ex-parte* wrongly recording that the land was being cultivated by Mr. Visheshwar Pratap Sahi. This finding is perverse inasmuch as the tenure holder had already died on 09.04.1989 and there was no question of the land being cultivated by the deceased tenure holder. In my considered opinion, the order is cryptic and unmindful of facts as well as all the previous proceedings and their impact as discussed above again in two pages. The registration of a new ceiling case and then proceeding to declare the land surplus is an exercise contrary to law. The said order dated 19.07.1993 declares the same land as surplus of village Pipra, the notice in respect whereof had already been quashed by the High Court on 07.11.1969 as indicated above. Once, it was held that the notice in respect of the said land was

without jurisdiction, and the same stood confirmed with the evidence discussed in the order of the Consolidation Officer dated 09.02.1983, the prescribed authority could not have overreached the same to pass a fresh order in respect of the same land, that too completely omitting to refer to the judgment and orders. The transfers could not be questioned in the light of the observations made hereinabove. This was a clear jurisdictional error of fact and of law by ignoring the binding effect of the previous proceedings referred to hereinabove. In my opinion, this also amounts to an exercise of authority which can be termed as malice in law. Reference be had to the judgments of the Apex Court where legal malice and malice in law have been explained as something done without lawful excuse being a deliberate act in disregard to the rights of others. The statutory exercise of power by the prescribed authority was therefore for a purpose that was alien to the facts and the law and seems to be a deliberate omission with an intent to defeat the culmination of the earlier proceedings. Reference be had to the judgment in the case of **Ravi Yashwant Bhoir Vs. District Collector, Raigarh & Ors. 2012 (4) SCC 407** and the decision in the case of **Sama Aruna Vs. State of Telangana 2018 (12) SCC 150**. It may also be pointed out that the notice which was issued on 12.11.1974 after the order of the High Court did not include the land of village Pipra that was transferred prior to 24.01.1971, the sale deeds whereof had been discussed by the Consolidation Officer in the order dated 09.02.1983 referred to hereinabove.

98. There is yet another legal issue which seems to have been not noticed by the prescribed authority regarding the applicability of limitation under the provisions of Section 31(2) under the amendment brought about in the amended Act of 1976 under the amended provisions of the Ceiling Act. It may be necessary to point out that amendments in the Ceiling Act were brought about through the U.P. Imposition of Ceiling on Land Holdings Amendment Act 1972 (18) of 1973, the Amendment Act 1974 (2) of 1975 and Amendment Act 1976 (20) of 1976. The 1976 Amending

Act introduced Sections 31(1) to (4). This related to abatement of earlier proceedings and issuance of fresh notices. These provisions came up for consideration before the Apex Court in the case of **Arvind Kumar Vs. State of UP & Ors. 2016(9) SCC 221**. The Apex Court after discussing the legislative history of the Ceiling Act and the provisions aforesaid in that case held that the transitory provisions as contained in Section 31 prescribed a limitation. The argument of the Appellant therein was resisted by the State of UP contending that the redetermination of the ceiling was permissible.

99. There is yet another issue which has been overlooked namely that the Appellate Authority in the orders passed in Appeal No.478, 479 and 480 of 1975 on 09.07.1979 had set aside the orders of the prescribed authority passed on 13.03.1975, 25.03.1975 and 29.03.1975. With regard to these proceedings, nothing seems to have been done till fresh notices were once again initiated on 23.06.1986 which is after seven years of the decision of the Appellate Authority and after 11 to 12 years of the issuance of the notices in 1974. The provisions of the amendments brought about in the Ceiling Act particularly Section 31 (2) of the UP Act No.20 of 1976 has nowhere been referred to or even noticed for which a reference can be made to the decision of the Apex Court in the case of Arvind Kumar (supra).

100. Since, the order dated 19.07.1993 passed by the prescribed authority was erroneous, a recall application was moved by the petitioner contending that with the institution of three cases through three separate notices as narrated by the petitioner was incorrect. A request was made to rehear the matter after consolidating all the proceedings. This recall application was not decided and therefore the order dated 19.07.1993 was challenged in Appeal No.102/53/323/70/D-93. The Appellate Authority passed an interim order dated 30.08.1993 which has been filed as Annexure 9 to the writ petition. Since the recall application had not been decided by the Prescribed Authority while the appeal was pending as

stated above, two applications were moved on 17.02.1995 and 28.02.1995 before the Prescribed Authority requesting that service should be effected appropriately on all interested persons and secondly the revenue records should be summoned for the verification of the status of the land included in the ceiling notice of different villages. These two applications have also been filed on record as Annexure 11 and the same came to be rejected on 28.02.1995, copy whereof is Annexure 10 to the Petition. Another application had been moved before the prescribed authority to consolidate all the proceedings and the same was also rejected on 24.03.1995.

101. The Prescribed Authority proceeded to decide Ceiling Case No.48/18, the original ceiling proceedings that had been initiated against the Petitioner's father and passed an order on 31.03.1995 once again where objections with regard to the status of the shares of the Petitioner and other issues raised by the Petitioner, declared land surplus in the hands of the Petitioner and his brother vide order dated 31.03.1995. Consequently, three more appeals were filed, two against the said rejection of the Applications by the prescribed authority as referred to above and Appeal No. 103/48/70 P-95 against the order dated 31.03.1995. All these appeals were heard simultaneously and were disposed of on 07.11.1996 upholding the declaration of surplus land by the authority in the two orders dated 19.07.1993 and 31.03.1995.

102. The petitioner aggrieved by the improper procedure and incorrect findings recorded by the prescribed authority in the orders, challenged the same in Writ Petition No.36434/1996 before the High Court and the appellate order dated 07.11.1996 was set aside on 21.08.1997 the judgment whereof has been filed as Annexure 14. The High Court once again indicated that the burden regarding the status of the sale deeds and the transfers was on the state which had not been discharged. Other issues with regard to the independent rights of the Petitioner in the holdings was also taken into account and it was ultimately found that the orders passed

by the Appellate Authority arising out of the aforesaid orders of the prescribed authority were not sustainable and consequently the Writ Petition was allowed and the Appeals were restored to their original numbers for decision afresh after taking into consideration all the observations made in the said judgment.

103. The Appellate Authority was requested that since the records are voluminous and the entire pleadings and the proofs as referred to hereinabove is on the record of the prescribed authority, therefore the same may be summoned. The Appellate Authority on 22.07.2003 passed an order for summoning of the records which order has been filed as Annexure 17 to the Petition. The aforesaid fact has been stated in paragraph 46 and 47 of the writ Petition which have not been clearly denied and it has been stated in paragraph 31 of the counter affidavit that suitable reply has been given in the preceding paragraphs whereas no such reply to the same is found in the counter affidavit. Not only this, the denial in paragraph 31 is that the orders have been passed in accordance with law. Thus, the fact of the records having not been summoned has not been denied factually and apparently the swearing clause of the affidavit indicates that paragraph 31 of the counter affidavit has been sworn on legal advice which is obviously not based on record. It is therefore evident that the records of the Prescribed authority do not appear to have been summoned in spite of the Appellate Authority having passed an order to that effect. Where after the impugned order has been passed on 14.10.2003 that has been assailed in the present Writ Petition along with the orders of the prescribed authority dated 19.07.1993 and 31.03.1995

104. It may be indicated that the impugned order records the filing of two affidavits on behalf of the petitioner one of Mr. Adya Prasad Dubey dated 15.09.2003 and the affidavit of the Petitioner's Mother dated 28.08.2003 as additional evidence which stands recorded in the impugned order. These two affidavits relate to the date of birth of the petitioner stated to be 17.01.1951. While recording findings only one of the affidavits of

Adya Prasad Dubey have been referred to and seems to have been cast aside as it was filed during hearing. The contents of the affidavit of the mother of the petitioner that has been totally ignored. The Appellate authority seems to have been carried away by an indication in the family register about the educational qualification of the petitioner being a post-graduate which is alleged as patently incorrect and was vehemently contested which has also been asserted in the paragraph 37 of the Writ Petition. There is a bald denial in the counter affidavit but no proof has been filed to establish that the Petitioner was a post graduate. Once the affidavit of the mother had been filed, the same was of evidentiary value and could not have been ignored. The evidence of the parents particularly the mother was therefore a valid piece of evidence to assert the date of birth as such the impugned order stands vitiated for non-consideration of relevant material in spite of the fact that the said affidavit was admittedly on record. The supplementary affidavit filed by the petitioner is supported by an Aadhar Card of the petitioner that mentions his date of birth as 17.01.1951 which again supports his contention and removes any doubt regarding the same

105. The ceiling authorities in the impugned orders have returned a finding that the petitioner has not been able to demonstrate that the independent share of land being claimed by the petitioner is sir and khudkast land. The said finding is again contrary to the mandate of the judgements cited herein above in as much as the State cannot shift its burden upon the petitioner to prove his case in as much as the burden was upon the State to prove that the land being claimed by the petitioner was not sir or khudkast for which no findings have been returned in the impugned orders nor any averments regarding the same have been made in the counter affidavit.

106. The Appellate Authority then while proceeding to consider the issue with regard to the transfers came to the conclusion that the transfers were suspicious and appeared to be Benami as it was not possible to have

many purchasers in the same year of 1961. He has further recorded that the mutation of the sale deeds had not taken place in 1961 and therefore they had not been mentioned in the earlier notice. This finding also appears to be perverse inasmuch as mutations do not confer title. The transfers were through registered sale deeds and as is evident from the order of the consolidation officer dated 09.02.1983 the execution of the said sale deeds was verified by the consolidation officer and was compared with Register Mallikaan, the extracts whereof had already been filed and have also been filed along with the supplementary affidavit dt. 23.10.2003 in the present proceedings

107. The finding further is that if the said mutations were recorded in 1962 then too also the said sale deeds being after 20.08 1959 were invalid and were Benami. This conclusion is also perverse inasmuch as the first notice was issued on 21.08 1962 and not in 1961. Secondly, the judgment of the High Court dated 07.11.1969 and its impact has been completely overlooked by the Appellate Authority. Thirdly, the legal position as explained by the Apex Court in the case of Ramdhar Singh (Supra) as discussed hereinabove has also been completely overlooked. Thus, the invoking of the provisions of Section 38B was misplaced as neither the impact of the judgment of the High Court dated 07.11.1969 could have taken away nor the findings recorded therein and its evidentiary value could have been ignored. Similarly, the conclusion drawn by the Appellate Authority that the order of the Consolidation officer dated 09.02.1963 was after the appointed day of 24.01.1971 is a misconceived conclusion in view of the discussions hereinabove and the law indicated inasmuch as the said order had only acknowledged the pre-existing rights of the transferees that were transfers through registered sale deeds prior to 24.01.1971 with the revenue records confirming the recording of such transfers. Needless, to repeat as already indicated above the Naib Tehsildar Ceiling had participated before the Consolidation officer and had filed a response therein. These aspects have also been completely

overlooked and as noted above, the said findings recorded have on facts remained unrebutted in the counter affidavit of the State except for saying that the order dated 09.02.1983 was liable to be ignored. The submissions and arguments on behalf of the Petitioners as noted are therefore correct on all the issues raised rendering the proceedings and impugned orders unsustainable. Therefore in view of the finality of the judgement of this court dated 07-11-1969 along with other unrebutted and uncontroverted evidences on record, the Prescribed Authority had acted beyond jurisdiction in declaring the land of village Pipra as surplus and had illegally included the same in the holding of the original tenure holder and the petitioner by instituting the fresh Ceiling Case No. 45 by the impugned order dated 19-07-1993.

108. The Appellate Authority has further recorded the fact that the Appeals filed against the order of the consolidation officer had been dismissed on 26.06.1989 which orders are after 24.01.1971. This again is an erroneous conclusion inasmuch as the fact of dismissal of an appeal after 1971 or even the order of the Consolidation officer does not lose its evidentiary value as already held hereinabove. The order completely ignores these legal propositions and is therefore contrary to law.

109. It is also evident that another tenure holder namely Mr. Krishna Murti Singh had been proceeded against declaring this holding to be part of the holdings of the Petitioner's late father. Mr. Krishna Murti Singh had challenged the same and the Appeal was allowed by the Appellate Authority itself on 13.10.1995. This order has been brought on record in the Writ Petition and the said fact has been categorically stated in paragraph 53 which has not been denied as stated and paragraph 53 of the Writ Petition even though has not been admitted in paragraph 31 but the same has been sworn on the basis of legal advice and not on the basis of record. The order in the case of Mr. Krishna Murti Singh had categorically held that certain land of Village Tandwa did not belong to the Petitioner's father and had been wrongly included in the notice of the

tenure holder. This explains the casual manner in which the ceiling notices were prepared and served on the basis of which the proceedings were initiated.

110. Apart from this, there is yet another relevant fact which has been brought forth through the supplementary affidavit which is a decision of this Court dated 27.02.2013 in ***Civil Miscellaneous Writ Petition No.12723 of 1977 (Mr. Khagendra Pratap Sahi Vs. State of UP & Ors.)***. The Judgment is a matter of record and it recites that notices had been served on the tenure holder along with his two brothers, (including the Petitioner's late father) but it was found that the lands were separately held by the three brothers and had been erroneously clubbed into one and that the notices therefore issued to the tenure holder on 12.04.1989 were erroneous and accordingly the order passed by the prescribed Authority on 19.07.1993 was illegal. It was held therein that a ceiling proceeding had been instituted afresh which was erroneous as purportedly a new case has been registered as Ceiling Case No.44 and then decided on 19.07.1993. It is the said order of the prescribed authority which was challenged in appeal and the Appellate Authority had dismissed the same on 27.03.1997. Both these orders were challenged in the said Writ Petition and were quashed while imposing costs on the state. Apparently, the order of the prescribed authority in the said case appears to be of the same date as in one of the cases in the present proceedings as is evident from the order of the High Court dated 21.08.1997.

111. The judgment dated 27.02.2013 is extracted hereinunder:-

"19. In para 27 of the writ petition that names of certain persons have been given and it is stated that notices were issued to them though those persons had nothing to do with the land in dispute. This averment in paragraph 27 of writ petition has been replied in para 21 of counter affidavit stating that the persons mentioned therein are fabricated and have got no business with the disputed land as they are outsiders.

20. I find facts of this case and the way in which ceiling authorities have proceeded, really strange, startling and shocking. The specific case of petitioner is that against the same holding, earlier fabricated proceedings were initiated, inasmuch as, a ceiling case no. 112 was initiated against a dead person. Obviously, there could not have been any occasion to serve a notice upon the dead person namely Rani Jagdishwari Kunwari. Further, without giving due opportunity to the petitioner and his two brothers, three separate ceiling proceedings were initiated and whimsical orders were passed by Prescribed Authority. The said orders were set aside in appeal vide three judgments of same date, i.e., 9th July, 1979. Despite the fact that the Prescribed Authority was directed to take up all the matters together and after serving copy of statement prepared under Section 10(2) upon the concerned tenure holders namely the petitioner and his two brothers, to pass order in accordance with law but the Prescribed Authority did not pass any order thereupon and kept the matters pending. But abruptly in 1988-89, a new case was registered i.e., ceiling case no. 44 against petitioner and after serving notice upon persons, whom respondents themselves have stated and admitted in para 21 of counter affidavit that they have nothing to do with the land in dispute, order dated 19.07.1993 was passed declaring petitioner's land as surplus. Interesting thing here is that no notice was served upon the petitioner at all. The transaction of sale took place in 1959 treated to be benami without examining the same in the light of statutory requirement under Act, 1960.

21. When this court enquired from the learned Standing Counsel as to how a new case could have been registered in 1988-89 when the earlier matters were already pending, he could not reply at all.

22. In my view, the manner in which ceiling authorities have proceeded in this case and impugned orders have been passed deserve to be deprecated very strongly. It is nothing but a sheer arbitrary show of might and power upon a helpless individual tenure holder so as to deprive him of his valuable property rights in the pretext of passing statutory

orders though patently illegal. This is not according to procedure prescribed in law and beside being in the teeth of the provisions of Act, 1960, it is violative of Article 300-A of the Constitution of India.

23. The writ petition, in view of the above, deserves to be allowed with exemplary cost against erring respondent officials.

24. In view of the above discussion, the writ petition is allowed. The impugned orders dated 19.07.1993 and 27.03.1997 (Annexure 9 and 11 to the writ petition) are hereby quashed.

25. The petitioner shall be entitled to cost which I quantify to Rs.20,000/- which, at the first instance, shall be paid by the respondent no. 1, to the petitioner, but it shall be open to it to recover the same from concerned official i.e.. Prescribed Authority who has caused and forced this avoidable litigation upon petitioner, after making such inquiry as permissible in law."

112. This order only supports the contention of the Petitioner that the notices which have been time and again served and were prepared on Ceiling Forms without appropriately verifying the revenue records and the status of the land mentioned in the Notices were erroneous. Resultantly the calculations and determination was incorrect and hence the findings recorded in the impugned orders in Ceiling Case No. 48/18 and Ceiling Case No 45 are neither sustainable either in fact or in law. Accordingly, the proceedings and the impugned orders deserves to be set aside. The order further supports the contention of the petitioner that a fresh coiling case could not have been instituted against him.

113. Appellate Authority has nowhere taken into account the claims of family settlement, the separate shares claimed as well as all other issues that had been raised before the prescribed authority and were subject matter of appeal before him. The right of the family members to file their objections even if their names were not entered in the revenue records is further countenanced by the full bench of this Court in Upper Ganges

Sugar Mills Ltd. Vs. Civil Judge, Bijnor and Ors. reported in 1969 RD202, wherein in paragraph 38, it has been specifically held that, the fact that even if a tenure holder is not recorded as such in the revenue records it will not be relevant for determining whether he is entitled to file an objection to the statement prepared under Section 10(1) of the Act and issued to another person under Section 10(2) of the Act and the above fact will not disentitle him to file an objection if he is otherwise entitled to do so.

114. The binding effect of the judgment of the High Court referred to above including the entire evidence on record and the contentions related therefore have been summarily omitted to be considered and therefore non-consideration of the contention raised by the Petitioner also vitiates the impugned order. In addition thereto the issues relating to Abadi lands and other issues which could not have been included in terms of the exemptions provided under Section 6 have also not been discussed or considered and for that matter also the impugned order is vitiated. The Appellate Authority has also overlooked the orders passed in Appeal No.478, 479 and 480 dated 09.07.1979 and no consideration appears to have been made in accordance with the said directions as the notices do not appear to have been sent as per the respective shares as claimed by the Petitioner's father as well as his brothers.

115. The Appellate Authority has observed that the Petitioner would be entitled to an additional share of two hectares of land. The aforesaid conclusion drawn in favour of the Petitioner to that extent is therefore to be considered upon acceptance of the shares of the family members in accordance with the personal law as discussed by the High Court in the judgment dated 21.07.1997. This has not been done by the Appellate Authority even though the Ceiling Authorities were bound to act accordingly.

116. It also deserves mention that an application on behalf of the lease holders being impleadment application no.68877/2004 Somari & 7 Ors.

was moved praying for being heard in this Petition contending that they had been allotted land pursuant to the declaration of surplus way back in 1996. When the hearing proceeded an impleadment application was moved on behalf of one Sanjay & 5 Ors. seeking impleadment. A similar application has been moved by one Munna Prasad & 29 Ors. on 10.09.2025 after the hearing had proceeded in the matter. All these applications have been allowed vide order dated 10.09.2025 and all the learned Counsel on their behalf have been heard even though two of the above-noted applications have been moved highly belatedly after 22 years of the filing of the Writ Petition. In the application filed by Munna Prasad & 29 Ors. It is admitted in paragraph 5 that they have not been handed possession till date. Learned Counsel for all the lease holders have advanced the same submissions that they cannot be denied possession over the allotted land as they have been granted lease by the State. Needless to mention that a land unless held to be surplus does not vest in the State and consequently no better rights can be claimed by the Allottees. This legal position could not be disputed and was fairly conceded by both the learned standing counsel for the State as well as the learned Counsel for the allottees. In the present case, what appears from the facts on record is that the first order of the Prescribed authority dated 02.05.1990 was set aside on 17.04.1993 by the Appellate Authority where after once again the Prescribed authority passed orders on 19.07.1993 and in the Appeal filed by the Petitioner a stay order was passed by the Appellate Authority on 30.08.1993. The Prescribed authority passed the other order on 31.03.1995 as narrated above against which an appeal was filed and both the orders dated 19.07.1993 and 31.03.1995 were upheld on 07.11.1996 by the Appellate Authority that was set aside by the High Court on 21.08.1997. These Applicants claim to have been allotted land before 07.11.1996 on the basis of the order dated 19.07.1993 that stood merged with the order dated 07.11.1996 of the Appellate Authority that was ultimately quashed by the High Court on 21.08.1995. In between

while the matter was pending in Appeal before the Appellate Authority in 1993 where an interim order had been passed on 30.08.1993 against the order dated 19.07.1993, the Petitioner had filed Writ Petition No. 15960/1995 that was disposed off on 07.06.1995. A copy of this order has been produced during the course of the arguments along with the written submissions. The same is extracted hereinunder:

"In the High Court of Judicature at Allahabad

Civil Suit

Original Jurisdiction

Allahabad the 7.6.95

Present

The Hon'ble Dr. B.S. Chauhan.....

Judge

Civil Misc. Writ Petition No. 15960 of 1995

The order on the petition of Rajeshwar Pratap Sahi

.....Petitioner

In re

*Rajeshwar Pratap Sahi, son of Late Sri Visheshwar Pratap Sahi,
resident of Tamkohi Raj, Tehsil Tamkohi Raj, District Padrauna*

..... Petitioner

Vs

1. State of Uttar Pradesh, through the Collector, Padrauna,

2. State of Uttar Pradesh, through the Collector, Deoria 3.

Additional Commissioner

Gorakhpur Division Gorakhpur. (Administration),

4. Prescribed Authority (Ceiling), Deoria

5. Sub-Divisional Magistrate, Tamkohi Raj, District Padrauna

6. Sub-Divisional Magistrate, Padrauna, District Padrauna

7. Sub-Divisional Magistrate, Kasya, district Padrauna

.....Respondents

Heard learned counsel for the petitioner and learned Standing Counsel for the Respondents.

The Writ Petition stands allowed in terms of the Judgment dated 06.04.95 passed in Civil (Misc.) Writ Petition No. 8550/1995 with the following orders:-

Learned Counsel for the Petitioner argued that the Prescribed Authority had directed the taking over the possession in violation of section 14(1)(c) of the Act, as appeal has been preferred and is still pending. The argument has force. The petitioner cannot be deprived of the possession of land during the pendency of the appeal. There is a statutory bar for taking over of possession by Prescribed Authority where the appeal is pending. Even if the stay application was not moved, the Prescribed Authority could not direct the taking over of the possession till the appeal is finally disposed off.

For the aforesaid reason, Respondent no. 4 is restrained from taking over the possession till the appeal is decided. The Writ Petition is allowed.

A certified copy of this order may be given to the learned counsel for the parties on payment of usual charges within 3 days.

Dt/-7.06.1995

Sd/-Dr. B.S. Chauhan, J."

117. All the allottees seeking impleadment as noted above have claimed allotment pursuant to the Order of the Prescribed Authority dated 19.07.1993 as noted in the order of this Court dated 10.09.2025 extracted hereinunder:-

"Ref:- Civil Misc. Impleadment Application No.68877 of 2004

1. It is argued by learned counsel for the applicant that the applicants are subsequent allottee in respect of the land which was declared as surplus in the ceiling proceedings initiated against the petitioner vide order dated 19.07.1993 and prays that the applicants are necessary party and be heard.

2. Sri G.K. Singh, learned Senior Counsel assisted by Sri Sankalp Narain, learned counsel for the petitioner has no objection.

3. The application is allowed.

4. Learned counsel for the petitioner is directed to implead Somari son of Rami, Ram Daras son of Jang Bahadur, Shankar son of Jang Bahadur, Kapil Dev son of Bhikhari, Sukhal son of Bhikhoo, Ghrbharan son of Bhikari, Banshi son of Bihari and Shubhawati wife of Amla as respondent Nos.4 to 11 in the array of the writ petition.

Ref:- Civil Misc. Intervention Application No. of 2021

1. It is argued by learned counsel for the applicant that the applicants are subsequent allottee in respect of the land which was declared as surplus in the ceiling proceedings initiated against the petitioner vide order dated 19.07.1993 and prays that the applicants are necessary party and be heard.

2. Sri G.K. Singh, learned Senior Counsel assisted by Sri Sankalp Narain learned counsel for the petitioner has no objection.

3. The application is allowed.

4. Learned counsel for the petitioner is directed to implead applicants name of which mentioned in the memo of application as respondent Nos. 12 to 41 in the array of the writ petition.

Ref:- Civil Misc. Impleadment Application No. of 2025

1. It is argued by learned counsel for the applicant that the applicants are subsequent allottee in respect of the land which was declared as surplus in the ceiling proceedings initiated against the petitioner vide order dated 19.07.1993 and prays that the applicants are necessary party and be heard.

2. Sri G.K. Singh, learned Senior Counsel assisted by Sri Sankalp Narain, learned counsel for the petitioner has no objection.

3. The application is allowed.

4. Learned counsel for the petitioner is directed to implead applicants name of which mentioned in the memo of application as respondent Nos.42 to 47 in the array of the writ petition.

Ref Writ Petition

1. Heard Sri G.K. Singh, learned Senior Counsel assisted by Sri Sankalp Narain, learned counsel for the petitioner and learned counsel for the respondents at length.

2. Sri G.K. Singh, learned Senior Counsel also filed written submission before this Court, the same is taken on record. Counsel for the respondents are also free to submit their written submission within ten days, if so advice.

3. Judgement reserved.

4. Interim order, granted earlier, will continue till the delivery of judgement."

118. The orders were finally passed by the Appellate Authority on 07.11.1996. The orders of allotment if any therefore, were subject to the outcome of Writ Petition No. 36434/1996 that had challenged the Appellate Order dated 07.11.1996 wherein also an interim order was passed staying any allotment as well as eviction of the petitioner which order has already been extracted hereinabove. There was an interim order in appeal on 30.08.1993 as noted above. The said order has already been referred to in the pleadings (Annexure 9) of the writ petition. The allottees claim that they were allotted land as a consequence thereof. It is for this reason that the High Court clarified the position vide judgment dated 7.06.1995 quoted hereinabove.

119. Once again as noted above, the High Court had quashed the orders on 21.08.1997 where after the impugned order was passed on 14.10.2003. This Writ Petition was entertained and interim orders were passed on 22.10.2003 which has continued during the pendency of these proceedings. In view of the aforesaid facts the possession as maintained under the said orders of the High Court cannot be disturbed. The possession of the land has to be maintained in accordance with law in the light of continuity of the interim orders and final orders as referred to above. It is further clarified that this court by allowing the impleadment applications of the allottees has not created any rights in their favour.

120. The Writ Petition with the aforesaid observations and directions and for all the reasons recorded hereinabove is accordingly allowed. The impugned orders of the Prescribed Authority dated 19.07.1993, 31.03.1995 and the impugned order passed by the Appellate Authority

dated 14.10.2003 are hereby quashed and as a consequence whereof proceedings including that of Ceiling Case No. 48/18 and Ceiling Case No. 45 stand annulled.

121. The Prescribed authority therefore will have to, before proceeding any further, comply with the findings recorded hereinabove and thereafter will proceed to carry out any determination in accordance with law in the light of what has been stated hereinabove before taking any other step.

122. It goes without saying that the petitioner as well as any other person claiming rights through the Tenure Holder or independently will have a right to exercise the choice of plots falling in their share with regard to which the Prescribed Authority shall be obliged to give an opportunity for the same as was already indicated by the Prescribed Authority itself in the order dated 28.02.1995.

123. Needless to mention that this order shall stand recorded in the proceedings and shall also be reflected in all the concerned revenue records for compliance. The Petition stands allowed in the above terms with liberty to the Prescribed Authority to proceed as directed above. No order as to costs.

(Prakash Padia, J.)

September 26th , 2025

Arti/Sweety/saqlain