2026:AHC-LKO:9282

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

WRIT – C No. - 3000084 of 1993

Himanshu Dhar Singh .....Petitioners(s)

Versus

State of U.P. .....Respondents(s)

Counsel for Petitioners(s)	:	D.C. Mukherjee, Amit Mukerjee, Ananttika Singh, Gopesh Tripathi, Sarvesh Kumar Dubey
Counsel for Respondent(s)	:	CSC, Alok Kumar Mishra

A.F.R.
Judgment Reserved on : 10.11.2025
Judgment Delivered on : 06/02/2026

Court No. - 6

HON'BLE JASPREET SINGH J.

1. By means of the instant writ petition, the petitioner assails the impugned judgment and order dated 27.06.1986, passed by the Prescribed Authority under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as 'the Act of 1960', in short), which has been affirmed in Appeal by the Appellate Authority vide its judgment dated 11.06.1993.

2. Though, this is the first writ petition filed by the petitioner, however, the orders impugned herein, have been passed in the fourth round of litigation between the petitioner and the State Authorities.

3. In this view of the matter, it will be appropriate at this stage to briefly take a glance as to how the dispute between the parties have unfolded. For the sake of convenience, the Court has referred to the parties as they were originally impleaded at the time of filing of the writ petition.

4. With the advent of the Act of 1960, a notice was issued to the petitioner, namely, Himanshu Dhar Singh, under Section 10(2) of the Act of 1960 on 28.07.1962. The petitioner filed his objections to the said notice and the Prescribed Authority after considering the same discharged the notice under Section 10(2) of the Act of 1960, by means of its order dated 24.07.1964. Significantly, this order was not assailed by the State Authorities and with this order the first round of litigation came to an end.

5. A fresh litigation emerged when the State Authorities issued a fresh notice on 15.06.1976, under Section 10(2) of the Act of 1960. This notice was again contested by the petitioner on the ground that the land which was recorded in the name of his wife and adult sons and daughters were clubbed with the land of the petitioner, which was legally not permissible, as the adult sons and daughters were holding the land in their own individual rights in terms of a decree passed in a civil suit decided by the District Judge, Raebareli on 28.08.1954.

6. This issue was considered by the Prescribed Authority, who by means of its order dated 15.11.1978 excluded the land held by the sons and daughters of the petitioner but continued to keep the land of the petitioner’s wife, clubbed with that of the petitioner.

7. This order of the Prescribed Authority dated 15.11.1978 was assailed by the petitioner in an appeal under Section 13 of the Act of 1960, which was registered as Appeal No.16/1978. In the appeal, the petitioner agitated his ground that the land belonging to his wife, in her individual capacity, could not be clubbed with the land of the petitioner. It was also urged that the Prescribed Authority has failed to consider that the son of the petitioner was a co-tenant and erroneously held him not to be a co-tenant. Another ground raised was that the petitioner could not exercise his choice in terms of Section 12-A of the Act of 1960 regarding the land he desired to retain with himself.

8. This Appeal No.16/1978 was decided by the Appellate Authority on 20.03.1979 and the matter was remanded with the observations to re-determine the surplus land after determining the land whether it was irrigated or non-irrigated and also permitted the petitioner to furnish his choice which was directed to be considered by the Prescribed Authority. With this judgment of the Appellate Authority dated 20.03.1979, the second round of litigation came to an end.

9. After remand, vide order dated 20.03.1979 as aforesaid, the third round of litigation commenced and the Prescribed Authority vide its judgment dated 23.04.1982 dismissed the objections of the petitioner and held that the petitioner had given a vague statement relating to the land in village Dadu Tikari and Salon to be retained and the rest may be considered for the purposes of determination of surplus land. The Prescribed Authority found that the said choice had not been made at all, by the petitioner, as it was vague and as far as the claim relating to the

land of his wife to be separated was concerned, it did not find favour with the Prescribed Authority.

10. This order of the Prescribed Authority dated 23.04.1982 was again assailed in appeal by the petitioner before the Appellate Authority which was registered as Appeal No.3/1982.

11. The Appellate Authority once again considering the three issues raised before him noticed that the Prescribed Authority had not considered the Plots bearing No.353, 432, 433, 498 and 503 of Village Dadu Tikari as non-irrigated which was required to be done in terms of the earlier order of remand dated 20.03.1979 passed in Appeal No.16/1978, hence, the matter required a remand again.

12. The Appellate Authority further found that the plea taken by the petitioner that he was entitled to have additional 2 hectares of land on account of his major son Akhileshwari Pratap Singh could not be raised as the said plea had already been turned down in the Rent Appeal No.16/1978 and the said findings at that point of time had not been assailed any further coupled with the fact that the Rent Appeal No.16/1978 was allowed only for a limited purpose of permitting the petitioner to furnish his choice and re-determination of surplus land treating the land of plots number (as mentioned aforesaid) as non-irrigated land.

13. The Appellate Authority also considered that even though the petitioner had given a vague statement regarding his choice but since the matter was being remanded, accordingly, another opportunity was granted to the petitioner to furnish his choice regarding the land he

wanted to retain and by passing this order dated 16.09.1983, it allowed the Appeal No.3/1982 and remitted the matter to the Prescribed Authority for a limited purpose and this brought to an end, the third round of litigation.

14. Once again the matter was before the Prescribed Authority, who taking note of the directions of the Appellate Authority passed a fresh order dated 27.06.1986 wherein 7.3 hectares of land was permitted to be retained, rest was declared surplus and it also noticed that despite specific liberty having been granted by the Appellate Authority, yet the petitioner did not give any clear choice rather a fresh plea was raised that there were proceedings pending under Section 161 of the U.P. Z.A. & L.R. Act, 1950 (hereinafter referred to as 'the Act of 1950', in short) relating to exchange of land and the land which was proposed to be exchanged, as put forward by the daughters of the petitioner, may be the land which may be retained by the petitioner and it may be treated to be his choice. This did not find favour with the Prescribed Authority noticing that the proceedings under Section 161 of the Act of 1950 were different and they had no bearing on the proceedings under the Act of 1960, hence, by means of the judgment dated 27.06.1986, the contention was turned down.

15. Once again in this fourth round of litigation, the petitioner filed an appeal bearing Appeal No.25/85-86 and this appeal also came to be dismissed by means of the order dated 11.06.1993 whereby the findings of the Prescribed Authority dated 27.06.1986 were affirmed. By this appellate order, the fourth round of litigation before the Ceiling

Authorities came to an end. At this stage for the first time the two orders dated 27.06.1986 passed by the Prescribed Authority and the judgment and order dated 11.06.1993 passed by the Appellate Authority were challenged in the instant writ petition.

16. It may also be noticed that the instant writ petition was filed on 27.10.1993 and while entertaining the petition, the operation of the orders passed by the Prescribed Authority and the Appellate Authority were stayed with a further observation that the possession of the petitioner shall not be disturbed. However, after almost two decades, an application for amendment was moved by the petitioner incorporating new grounds and certain new facts. This application for amendment of the writ petition was allowed by a Coordinate Bench of this Court, by means of the order dated 25.05.2023.

17. It is in the aforesaid backdrop that the parties have advanced their submissions based on the amended writ petition. It will also be relevant to notice that during pendency of the writ petition, the original petitioner expired and his son, namely, Akhileshwari Pratap Singh, on the basis of a Will executed by his father, was substituted in his place.

18. Shri Vivek Raj Singh, learned Senior Counsel ably assisted by Shri Shantanu Sharma, learned counsel for the petitioner has submitted that originally the petitioner was served with a notice in the year 1962 which was contested by the original-petitioner and considering the law as it existed at that point of time, the Prescribed Authority vide its judgment and order dated 24.07.1964 discharged the notice.

19. It was urged that again on 15.05.1976 another notice was issued to the petitioner proposing to declare 91.48 hectares of land as surplus land under the Act of 1960. It was contended by the learned Senior Counsel that once by means of the order dated 24.07.1964, the notice under Section 10(2) of the Act of 1960 had been discharged, it was now not open for the State Authorities to have re-initiated the proceedings. Even if at all, the said proceedings were to be initiated, but then it had to be considered in accordance with the Principal Act, as it stood prior to the amendments brought in the Act, in the year 1973 and 1976 respectively.

20. Learned Senior Counsel for the petitioner while elaborating his submissions specifically pointed out that the Principal Act of 1960 was drastically amended vide U.P. Amending Act No.18 of 1973, whereby major changes were brought in the definition clause and more specifically in respect of the word ‘family’ (which is relevant for the instant petition) and also that the ceiling limit had been drastically reduced from 40 acres to 7.3 hectares. It was also pointed out that Section 29 was introduced in the Act of 1960 for the first time by the aforesaid Amending Act and it also brought in a transitory provision in shape of Section 19. The impact of the aforesaid amendment and more particularly the transitory provision brought in would be that in case if any final determination of surplus land had been made in respect of any tenure holder before the commencement of the Amending Act then it was to be continued and concluded in accordance with the provisions of the Principal Act. It was thus contended that as in the instant case, since, the final determination had already been done in terms of the order dated

24.07.1964 then even in context with the subsequent notice dated 15.05.1976, the proceedings were to be concluded in terms of the Principal Act giving the benefit of the transitory provision as provided under Section 19(2) of the Amending Act and this aspect of the matter has not been considered by either of the Authorities, which has vitiated the two judgments under challenge before this Court.

21. Learned Senior counsel for the petitioner has further raised his submission, one notch up, by urging that since the determination of surplus land had been finally concluded on 24.07.1964 and that order was not challenged by the State Authorities, hence, there could have been no re-determination of surplus land against the petitioner especially when there was no addition to the land held by the petitioner. It was also submitted that only contingency in which such further determination could be made, would be in a situation, where the provisions of Section 29 of the Act of 1960 were attracted and as already stated that there was no addition to the land in the hands of the petitioner, hence, the said Section did not empower the Authority to re-determine the land and as such the impugned orders have been passed by the authorities which are without jurisdiction and cannot be sustained in law.

22. Learned Senior Counsel for the petitioner further urged that by the amendments introduced to the Principal Act in the year 1976, Section 38-B was inserted in the Act. It was to be read with the transitory provision i.e. Section 31(3). It was urged that since there was no addition or change in the circumstances nor any land was added either by purchase, succession or by prescription that is to say by adverse

possession, hence, the petitioner was covered by the transitory provision and the provisions of the Principal Act of 1960 would be applicable.

23. Taking his submissions forward, learned Senior Counsel urged that the provisions of Section 38-B were interpreted by the Apex Court in **Devendra Nath Singh v. Civil Judge, Basti and another, 1999 (1) SCC 71** and as per the learned Senior Counsel, the Apex Court held that any finding or decision which was given by any forum prior to the commencement of the Section in respect of a matter governed by the Ceiling Act, then it would operate as res judicata provided the findings given in the ceiling proceedings had not attained finality.

24. It is urged that applying the aforesaid principles to the facts of the instant case, it would be clear that the findings of the ceiling authorities in the instant case had attained finality on 24.07.1964, hence, they would operate as res judicata and the ceiling authorities were not justified in re-agitating the same issue in the fresh round of litigation commenced on issuance of the notice dated 15.05.1976.

25. Learned Senior Counsel further submitted that the transitory provision as introduced in the Amending Act of 1976 and Section 38-B should be construed in a harmonious manner so that it achieves its purpose and can be taken to a logical conclusion. In case if the Section 31(3) i.e. transitory provision is construed in a narrow manner then it would result in complete chaos as that would permit the ceiling authorities to unsettle everything, at their discretion, to the detriment of the tenure holders moreso when the matters may have been settled finally under the Ceiling Act.

26. It is urged that with the aforesaid object, the provisions of the Amending Act of 1976 may be read down to make it prospective in operation, as permitting it to have a retrospective operation, would lead to the said provisions being declared unconstitutional.

27. It was also urged that a right which is vested in a party cannot be divested by making a provision operational, retrospectively. It has been submitted that since the issues involved are purely legal, hence, they can be considered by this Court in this writ petition even though it may not have been cogently raised before the Ceiling Authorities. Since, the impugned orders are per-se, bad in the eyes of law, in light of the aforesaid submissions, hence, they are liable to be quashed and set aside.

28. Learned Senior Counsel in support of his submissions has relied upon the following decisions:-

(a) **Devendra Nath Singh v. Civil Judge, Basti and others, (1999) 1 SCC 71;**

(b) **Arvind Kumar v. State of U.P. and others, (2016) 9 SCC 221**;

(c) **Ram Kali Devi v. State of U.P. and others, 2023 SCC OnLine All 3483;**

(d) **Kamla Kant and another v. Third Additional District Judge, 2013 SCC OnLine All 2228**.

29. Shri Hemant Kumar Pandey along with Shri L.M. Khare, learned standing counsel for the State-respondents has vehemently controverted the submissions advanced on behalf of the petitioner.

30. It was urged that the entire arguments advanced by the learned Senior Counsel for the petitioner are fallacious. It was pointed out that first and foremost the transitory provision of Section 19(2) of the Amending Act No.18 of 1973 is not applicable in the instant case. Hence, the said provisions cannot come to the aid of the petitioner.

31. Elaborating his submissions, Shri Pandey has urged that on a bare perusal of Section 19 of the Amending Act No.18 of 1973, it would reveal that it specifically holds that it would be applicable only in respect of the proceedings which were pending at the time of enforcement of the Act of 1960. It further reveals that all the proceedings which at the time of enforcement whether under Sections 9, 10, 11, 12, 13 or 30 of the Principal Act, if pending would stand abated. The Prescribed Authority is required to initiate fresh proceedings for determination of ceiling area under the provisions of the Amended Act by issuing notice under Section 9(2) of the Act. This fresh determination of the surplus land is to be made in accordance with the provisions of the Act of 1960 as amended by the Amending Act No.18 of 1973.

32. Shri Pandey has further pointed out that by introducing the Amending Act No.18 of 1973, the Principal Act was radically amended and the same came into effect on 08.06.1973. The provision as introduced by the Amending Act No.18 of 1973 received the Presidential Assent. Earlier under the Principal Act, there was a concept of ceiling limit of 40 acres of fair quality land with addition of 8 acres for each family member exceeding 5 subject to a maximum of 24 acres. However, with the introduction of Amending Act No.18 of 1973 which

came into force on 08.06.1973. The Act required the surplus land to be determined by taking into consideration irritated land. The ceiling limit was reduced from 40 acres to 7.3 hectares of irrigated land with permissible addition upto 6 hectares depending on the family size.

33. It was further pointed out by Shri Pandey that Section 19(2) of the Amending Act No.18 of 1973 has limited applicability and that too in respect of proceedings under Section 14 or those which fall under Chapter III or Chapter IV of the Principal Act which are required to be continued and are to be concluded in accordance with the provisions of the Principal Act. It was submitted that the Legislature by using the words 'be continued and concluded' clearly indicates that the provision has been made applicable only to such proceedings which were pending at the time of commencement of the Amending Act and only such proceedings as referred to i.e. proceedings under Section 14, Chapter III & IV of the Principal Act could be taken to be its logical conclusion in terms of the Principal Act. However, there is no indication that the said provisions would be applicable to the proceedings which had already been decided. It has also been urged that the aforesaid provisions also has an overriding applicability as the provision clearly clarifies that even if the proceedings have been concluded under the old Act, the new inserted provisions of Section 9(2) and Section 13-A would still be applicable.

34. Shri Pandey has referred to several provisions of the Act both prior to the amendment as well as the amended provisions to demonstrate the changes brought in by the amendments. He submitted

that Section 14 of the Act of 1960 does not relate to determination of ceiling area rather it only gives a guideline as to how the surplus land is to be taken over and it cannot have any applicability insofar as the determination of surplus land is concerned.

35. It has further been urged that with a further amendment introduced in the year 1976, it made re-determination of the surplus land mandatory in accordance with the Principal Act of 1960 as amended by the Amending Act No.20 of 1976 within a limit of two years, commencing from 10 October, 1975. In this regard, he has specifically referred to Section 31(3) of the Amending Act No.20 of 1976 to submit that the Legislature in clear terms expected that all surplus land which was determined prior to the 10 October, 1975 be re-determined and it is in this context that the subsequent notice under Section 10(2) of the Act of 1960 was issued to the petitioner on 15.05.1976 i.e. after the Act was amended by the Amending Act No.20 of 1976.

36. Shri Pandey further urged that by the Amending Act No.20 of 1976, Section 38-B was also introduced which clearly indicated that any finding to the decision, order or decree rendered before the commencement of the Amending Act, made by any Court or Tribunal or any Authority in respect of the ceiling matter shall bar the re-trial or consideration, notwithstanding the principles of res judicata.

37. It has further been submitted that the decisions cited by the learned Senior Counsel for the petitioner relating to Section 13-A are not applicable to the facts of the instant case. It is urged that in the instant case, fresh proceedings were initiated under Section 9(2)/10(2) of the

Act of 1960 which came into effect after the amendment was introduced vide Amending Act No.20 of 1976 also taking into consideration Section 31(3). The instant proceedings were not for correction of records as provided under Section 13-A, hence, the decision cited by the learned Senior Counsel, which is referable to Section 13-A of the Act of 1960 cannot be pressed into service in the instant case, as it would have no applicability.

38. It has further been pointed out that the petitioner has changed the entire complexion of the petition by raising issues which were never raised before the ceiling authorities. It has further been urged that the initial case set up by the petitioner was only confined to the issue of land recorded in the name of the wife, sons and daughters of the petitioner, being clubbed with the land of the petitioner and the issue relating to choice as per Section 12-A of the Act of 1960 and the issue relating to the land being considered as irrigated or unirrigated.

39. It has further been urged that this issue had been decided more specifically in the third round of litigation between the parties vide judgment dated 16.09.1983 passed by the Appellate Authority in Appeal No.3/1982, whereby the Appellate Authority had crystallized and narrowed the controversy only on two points that is to say **(i)** the Plots bearing No.353, 432, 433, 498 and 503 were to be considered as unirrigated and for the aforesaid purpose, the matter was remanded **(ii)** Further indulgence was granted to the petitioner to give his choice regarding the land he wanted to retain, and all other issues had been turned down.

40. This judgment dated 16.09.1983 was never assailed by the petitioner and thereafter he succumbed to the jurisdiction of the Prescribed Authority and in the fourth round also, no such issues were raised which are now being raised before this Court. Moreover, even the issue of choice did not find favour with the Prescribed Authority and the Appellate Authority for the reason that the manner in which the choice was expressed by the petitioner was in context with the certain proceedings for exchange initiated by the daughters of the petitioner which had no bearing with the ceiling proceedings. In the aforesaid circumstances, the petitioner now cannot turn around and raise an issue which was never the subject matter before the ceiling authority and by an indirect method the petitioner is trying to enlarge the scope of adjudication which is not permissible also noticing the fact that since 1976 more than 4 decades have gone by and the petitioner has been successful in prolonging the litigation and it is for the same very reason that in the petition instituted in the year 1993 an amendment was introduced in the year 2022 by which new facts and grounds have been raised which apparently in the given fact situation, have no applicability and the writ petition deserves to be dismissed.

41. In support of his submissions, Shri Pandey has relied upon the following decisions:-

(a) **Darshan Prasad and others v. Civil Judge-II, Gorakhpur and others, 1992 Suppl. 2 SCC 87**;

(b) **Viroj Kunwar and others v. II Additional District Judge and others, (1996) 1 SCC 570**;

(c) **Rajendra Prasad Singh v. 4th Additional District Judge, 1980 SCC OnLine All 402**;

(d) **Gurdeep Singh v. State of U.P. and others, MANU/UP/2265/2019**.

42. The Court has heard learned counsel for the parties at length and also perused the material on record including the written submissions submitted by the contesting parties.

43. In light of the submissions advanced by the parties, certain undisputed facts which emerge from the record are:-

(a) The original petitioner late Himanshu Dhar Singh was served with a notice under Section 10(2) of the Act of 1960. The petitioner had furnished his objections and the Prescribed Authority, Raebareli by means of the order dated 24.07.1964 had discharged the notice.

(b) A fresh notice was issued to the petitioner on 15.05.1976 which was again contested by the petitioner on the ground that the land recorded in the name of his wife, sons and daughters was clubbed with the land of the petitioner despite the wife, daughters and sons being recorded owners in their own individual capacity.

(c) It is also not disputed that the Prescribed Authority vide its order dated 15.11.1978 excluded the land recorded in the names of sons and daughters of the petitioner and thereafter re-determined the surplus land by considering the land recorded in the name of the petitioner's wife as land available with the petitioner.

(d) It is also an undisputed fact that the petitioner had assailed the order dated 15.11.1978 by filing Appeal No.16/1978 which was allowed

on 20.03.1979 by remanding the matter to the Prescribed Authority to re-determine the surplus land by treating certain plots as unirrigated and also directed the Prescribed Authority to take the preference of the petitioner in respect of the land he proposed to retain with himself.

(e) It is also undisputed that the Prescribed Authority in pursuance of the remand order dated 20.03.1979, re-determined the matter and rejected the objection holding that no specific choice was given by the petitioner rather a vague statement was given that except for the land in Village Dadu Tikari and Salon, rest can be considered for being declared surplus.

(f) It is also undisputed that this order of the Prescribed Authority dated 23.04.1982 was assailed by the petitioner in Appeal No.3/1982 which was allowed by the Appellate Authority on 16.09.1983, wherein the Appellate Authority remanded the matter directing the Prescribed Authority to consider the Plots No.353, 432, 433, 498 and 503 as unirrigated and the petitioner was permitted to submit his choice for the land which he wished to retain.

(g) It is also an undisputed fact that this judgment dated 16.09.1983 was never assailed by the petitioner any further and the matter went back to the Prescribed Authority for the fourth time and now the Prescribed Authority accepted the directions of the Appellate Authority and considering Plots No.353, 432, 433, 498 and 503 as unirrigated land, permitted the petitioner to retain 7.3 hectares of land and rest was declared surplus.

(h) Effectively, it was only the issue of choice which remained to be considered by the Prescribed Authority, but the same was turned down. It is also an undisputed fact that this order of the Prescribed Authority was again assailed in an appeal, which came to be dismissed on 11.06.1993 and the orders dated 27.06.1986 or 11.06.1993 are now under challenge in this writ petition.

44. In the backdrop of the undisputed facts noted above, the two issues which arise for consideration are:-

(I) Whether the two impugned orders passed by the Ceiling Authorities can be said to be without jurisdiction in light of the transitory provisions introduced by the U.P. Amending Act No. 18 of 1973 and U.P. Amending Act No. 20 of 1976.

(ii) Whether the impugned orders passed by the Ceiling Authorities are otherwise erroneous in law?

45. In order to examine the first issue as noticed above, it will be appropriate to consider the certain provisions of the Amending Act No. 18 of 1973 and the Amending Act No. 20 of 1976 by which the U.P. Act of 1960 was drastically amended.

46. The U.P. Act of 1960 came to be amended by the U.P. Amending Act No. 18 of 1973 and the provisions of the said Amending Act No. 18 of 1973 are being noticed hereinafter:-

The Uttar Pradesh Imposition of Ceiling on Land Holdings, (Amendment) Act, 1972)

(U.P. Act No. 18 of 1973)

Substitution of new sections for sections 3, 4, 5, 6, 7 and 8 of U.P. Act I of 1961

"**3 (7)**. 'family' in relation to a tenure-holder, means himself or her-self and his wife or her husband, as the case may be (other than judicially

separated wife or husband),minor sons daughters (other than married daughters);
3(17). 'tenure-holder' means a person who is the holder of a holding, but does not include-
(a) a woman whose husband is a tenure-holder:
(b) a minor child whose father or mother is a tenure-holder.
Imposition of ceiling

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Imposition of ceiling

5. (1) On and from the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, no tenure-holder shall be entitled to hold in the aggregate, throughout Uttar Pradesh, any land in excess of the ceiling area applicable to him.
(2) Nothing in sub-section (1) shall apply to land held by the following classes of persons, namely:-
(a) the Central Government, the State Government or any local authority or a Government Company or a Corporation;
(b) a University;
(c) a post-graduate college;
(d) a banking company or a co-operative bank or a co-operative land development bank;
(e) the Bhoodan Yagna Committee constituted under the U. P. Bhoodan Yagna Act, 1952.
(3) Subject to the provisions of sub-sections (4), (5) and (6), the ceiling area for purposes of sub-section (1) shall be-
(a) In the case of a tenure-holder having a family of not more than five members, 7.30 hectares of irrigated land (including land held by other members of his family), plus two additional hectares of irrigated land or such additional which together with the land held by him aggregates to two hectares, for each of his adult sons, who are either not themselves tenure-holders or who hold less than two hectares of irrigated land, subject to a maximum of six hectares of such additional land;
(b) in the case of a tenure-holder having family of more than five members, 7.30 hectares of irrigated land (including land held by other members of his family), besides, each of the members exceeding five and for each of his adult sons who are not themselves or who hold less than two hectares of irrigated land, two additional hectares of irrigated land or such additional land which together with the land held by such adult son aggregates to two hectares, subject to a maximum of six hectares of such additional land.
Explanation-The expression 'adult son' in clauses (a) and (b) includes an adult son who is dead and has left surviving behind him minor sons or minor daughters (other than married daughters) who are not themselves tenure-holders or who hold land less than two hectares of irrigated land;
(c) in the case of a tenure-holder being a degree college imparting education in agriculture, 20 hectares of irrigated land;
(d) in the case of a tenure-holder being an intermediate college imparting education in agriculture, 12 hectares of irrigated land;
(e), in the case of any other tenure-holder, 7.30 hectares of irrigated land

Explanation-Any transfer or partition of land which is liable to be ignored under sub- sections (6), and (7) shall be ignored also-
(p) for purposes of determining whether an adult son of a tenure holder is himself a tenure- holder within the meaning of clause (a);
(q), for purposes of service of notice under section 9.

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Amendment of section 9

4. Section 9 of the principal Act, shall be re-numbered sub-section (1). shall be inserted, namely,-
"**9.** (2) As soon as may be after the enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, the prescribed authority shail, by like general notice, call upon every tenure-holder holding land in excess of the ceiling area applicable to him on the enforcement of the said Act, to submit to him within 30 days of publication of such notice, a statement referred to in sub-section (1).
(3) Where the tenure-holder's wife holds any land which is liable to be aggregated with the land held by the tenure-holder for purposes of determination of the ceiling area, the tenure-holder shall, along with his statement referred to in sub-section (1), also file the consent of his wife to the choice in respect of the plot or plots which they would like to retain as part of the ceiling area applicable to them and where his wife's consent is not so obtained, the prescribed authority shall cause the notice under sub- section (2) of section 10 to be served on her separately."

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Substitution of new section for section 29

14. For section 29 of the principal Act, the following section shall be substituted, namely :-

29. Where after the date of enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) 1972-
(a) any land has come to be held by a tenure-holder under a decree or order of any court, or as a result of succession or transfer, or by prescription in consequence of adverse possession, and such land together her with the land already held by him exceeds the ceiling area applicable to him; or
(b) any unirrigated land becomes irrigated land as a result of irrigation from a State irrigation work, or any grove-land loses its character as grove-land or any land exempted under this Act ceases to fall under any of the categories exempted,-
The ceiling area shall be liable to be re-determined and accordingly any land held by him in excess of the ceiling area so re-determined shall be liable to be treated as surplus land."

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Transitory provisions

19. (1) All proceedings for the determination of surplus land under section 9, section 10, section 11, section 12, section 13 or section 30 of the principal Act, pending before any court or authority at the time of the commencement of this Act, shall abate and the prescribed

authority shall start the proceedings for determination of the ceiling area under that Act afresh by issue of a notice under sub-section (2) of section 9 of that Act as inserted by this Act:
Provided that the ceiling area in such cases shall be determined in the following manner :-
(a) firstly, the ceiling area shall be determined in accordance with the principal Act, as it stood before its amendment by this Act;
(b) thereafter, the ceiling area shall be re-determined in accordance with the provisions of the principal Act as amended by this Act.
(2) Notwithstanding, anything in sub-section (1), any proceeding under section 14 or under Chapter III or Chapter IV of the principal Act, in respect of any tenure-holder in relation to whom the surplus land has been determined finally before the commencement of this Act, may be continued and concluded in accordance with the provisions of the principal Act, without prejudice to the applicability of the provisions of sub-section (2) of section 9 and section 13-A of that Act, as inserted by this Act, in respect of such land.

47. Now, once again, the U.P. Act no. 1960 was amended by the U.P. Amending Act No. 20 of 1976 and certain relevant provisions which were introduced in the Act of 1960 by the U.P. Amending Act No. 20 of 1976 are being noticed hereinafter:-

The Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1976)

(U.P. Act No. 20 of 1976)

Transitory Provisions

31. (1) All proceedings under sub-sections (3) to (7) of section 14 of the principal Act, as it stood immediately before the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Ordinance, 1976, pending before any Court or authority immediately before the date of such commencement shall be deemed to have abated on such date.
(2) Where an order determining the surplus land in relation to a tenure-holder has been made under the principal Act before January 17, 1975 and the Prescribed Authority is required to re-determine the surplus land under sec-tion 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amend-ment) Act, 1974, then notwithstanding anything contained in sub-section (2) of section 19 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amend-ment Act, 1972, every appeal under section 13 of the principal Act or other proceedings in relation to such appeal, preferred against the said order, and pending immediately before the tenth day of October. 1975, shall be deemed to have abated on the said date.

(3) Where an order determining surplus land in relation to a tenure-holder has been made under the principal Act before the tenth day of October, 1975, the Prescribed Authority (as defined in the principal Act) may, at any time within a period of two years from the said date, redetermine the surplus land in accordance with the principal Act as amended by this Act, whether or not any appeal was filed against such order and notwithstanding any appeal (whether pending or decided) against the original order of determination of surplus land.
(4) The provisions of section 13 of the principal Act shall mutatis mutandis apply to every order re-dermining surplus land under sub-section (3) of this section or section 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings Amendment) Act, 1974:
Provided that the period of thirty days shall, in the case of an appeal against the order referred to in section 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974, be computed from the date of such order or October 10, 1975, whichever is later.
(5) The provisions of section 13-A of the principal Act shall mutatis mutandis apply to every re-dermination of surplus land under the section or under section 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974.
(6) Where any Assessment Roll has become final under sub-section (4) of section 21 before the sixteenth day of February, 1976, this same shall not be reopened, notwithstanding any amendment made in Chapter III of the principal Act read with the Schedule thereof by this Act.

48. Having taken note of the aforesaid statutory provisions which were introduced by the two Amending Acts i.e. U.P. Amending Act No.18 of 1973 and the U.P. Amending Act No.20 of 1976, it would reveal that there is a complete change in the scheme of the Act and the amended provisions have been made to apply retrospectively. Having noticed the aforesaid legislative scheme of the Act of 1960 which was put through several amendments, as noticed above, it is now the stage to consider the decisions cited by the learned counsel for the petitioner to completely comprehend the thrust of the submissions advanced by the learned Counsel for the respective petitioner.

49. The learned Senior Counsel for the petitioner heavily relied upon the decision of the Apex Court in **Arvind Kumar** (Supra) wherein the Apex Court in paragraph 14 to 18 held as under:-

> **"14.** The argument of the learned counsel for the State, therefore, leads us to analyse the four Acts in question a little closely. One thing becomes clear at the outset : that the original statutory scheme of 1960 which spoke of surplus "fair quality land" was substituted in its entirety by a completely new and different scheme by the 1972 Amendment Act read with the 1974 Amendment Act. Both of these Acts, as has been noticed above, with certain minor exceptions, came into force on the same date, namely, 8-6-1973. The new statutory scheme would necessarily involve "fair quality land" being substituted by "irrigated land", the ceiling area in the two cases also being entirely different. This being the case, it is important to now construe Section 9 of the 1974 Amendment Act in this backdrop:
> **14.1** Be it noted that Section 9 itself comes into force only on 17-1-1975. For Section 9 to apply, an order has to be made determining surplus land in relation to a tenure-holder before the commencement of the Amendment Act. By Section 1(2), "this section" and Section 9 both come into force at once i.e. on 17-1-1975. The expression "this section" refers to Section 1(1) which in turn refers to the Act as the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1974. This being the case, it is clear that the Act has commenced only on 17-1-1975, even though a number of sections shall be deemed to have come into force retrospectively i.e. on 8-6-1973. The order passed by the prescribed authority being on 13-1-1975, the first condition of Section 9 is met, namely, that this order has been passed before 17-1-1975.
> **14.2.** It is the second part of the section on which a lot of the debate featured. According to the learned counsel for the State a discretion is vested in the prescribed authority by use of the expression "may". We may hasten to add that the very expression "may, at any time within a period of two years …" also occurs in Section 31(3) of the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1976. This sub-section makes it clear that the expression "may" goes along with the words "at any time within a period of two years …" as it is clear that on a correct reading of the sub-section, the prescribed authority has, *in every case*, to redetermine surplus land if an order determining surplus land has been made before the 10th day of October, 1975. The idea is that a period of two years is given to redetermine surplus land in accordance with the principal Act as amended by the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1974. This being the case, it is clear that no discretion is vested in the prescribed authority to redetermine the surplus land. Surplus land has, in all cases, to be redetermined, as a completely different and new scheme applicable to *all* lands has replaced the existing scheme. The only exception is where, prior to 8-6-1973, a

determination of surplus land has been made finally, that is, an appeal has been disposed of under Section 13.

15. The matter may be looked at from a slightly different angle. Section 19 of the 1972 Amendment Act, which is a transitory provision, provides for abatement of proceedings that are pending on the commencement of the said Act. We have already indicated that the pending proceedings of 1967 had to start afresh on the issuing of a general notice under Section 9(2) as inserted by the 1972 Amendment Act, which was in fact done. Thus, the 13-1-1975 order is a consequence of Section 19(1) of the Act. Section 19(2) on facts has no application for the simple reason that surplus land had not in this case been determined finally before commencement of the 1972 Act — that is, an appeal had not been decided under Section 13 of the principal Act prior to this date.

16. This brings us then to the transitory provision contained in the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1976. Under Section 31(2), clearly, the order determining the surplus land in the present case had been made four days before 17-1-1975 and thus the first condition or prerequisite for the application of the section is met. The second prerequisite is also met for the simple reason that Section 9 of the 1974 Act, which forms part of the same legislative scheme as the 1972 Amendment Act, would apply for the reason that an order determining surplus land had been made prior to commencement of the said Act, namely, 17-1-1975, [which happens to be the same as the first prerequisite for the application of Section 31(2) of the 1976 Amendment Act]. This being the case, the language of Section 31(2) makes it clear that every appeal preferred against such orders and pending immediately before the 10th day of October, 1975, shall be deemed to have abated on the said date. On facts, we are informed that an appeal had been filed prior to this date.

17. This being the case, it was necessary for the prescribed authority to redetermine the surplus land under Section 31(3) in accordance with the principal Act as amended by the 1976 Act, for which purpose, the provisions of Section 13 of the principal Act shall apply mutatis mutandis to every order redetermining surplus land under sub-section (3) of this section or Section 9 of the 1974 Amendment Act [*vide* Section 31(4) of the 1976 Amendment Act]. This never having been done on facts in the present case, it is clear that the appeal filed in 1975 has abated and could not therefore have been heard by the Additional Commissioner, Agra on merits. This being so, the judgment and order passed by the Commissioner dated 13-1-1975 is without jurisdiction.

18. It only remains to consider the reasoning of the appellate authority and the High Court. Both the appellate authority and the High Court were of the view that no fresh notice had been issued under Section 9(2) of the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972. It has been pointed out to us, on facts, that in fact such a notice had been issued on 24-11-1975. Despite this, the appellate authority and the High Court, in their anxiety to decide against the abatement, have wrongly held that no such notice was proved to have been issued. Be that as it may, it is clear that abatement under Section 31 does not depend upon the issuance or non-issuance of any notice under Section 9(2) as

> amended. This being the case, the finding of fact of non-issuance of notice itself being a non-issue, it is unnecessary for us to pursue the same. It is only necessary to reiterate that no fresh exercise under the 1976 Amendment Act was undertaken by the prescribed authority as is required by Section 31(3) of the 1976 Amendment Act. This being the case, the impugned judgment [*Kamla Devi* v. *State of U.P.*, 2007 SCC OnLine All 1621] of the High Court has necessarily to be set aside. The appeal is, therefore, allowed with no order as to costs."

50. A careful reading of the decision of the Apex Court in **Arvind Kumar** (Supra)**,** reveals that the Apex Court noticed the import of Section 31(2) of the Amending Act of 1976 and held that two conditions must be present to draw the applicability of Section 31(2) i.e. **(i)** there should have been an order declaring the surplus land which had been made prior to the Principal Act as amended vide the U.P. Amending Act No. 20 of 1976 and **(ii)** The Prescribed Authority was required to re-determine the surplus land under Section 9 of the U.P. Amending Act No.18 of 1973.

51. The aforesaid decision does not come to the aid of the petitioner for the reason that the facts of the instant case are quite different. After the U.P. Amending Act No.20 of 1976 had come into force, it mandated the authorities to re-determine the land and it is in furtherance thereof that fresh notice was issued to the petitioner. It is not a case where any pending proceedings had abated in light of the transitory provision and thereafter if the proceedings had to be continued then the original Act of 1960 would have been made applicable. Admittedly, here it is a case of fresh determination made in pursuance of the notice issued under Section 10(2) post the U.P. Amending Act No.20 of 1976 having been introduced. Thus, the said decision cannot be pressed into service per se

and also for an additional reason that admittedly, the issue which was being considered and pressed by the petitioner before the ceiling authorities was in respect of the the land recorded in the name of petitioner's wife which, as per the petitioner, could not be clubbed with the land of the petitioner, as she held her land in her separate right.

52. The learned Senior Counsel for the petitioner also relied heavily on the decision of the Apex Court in **Devendra Nath Singh** (Supra), more specifically paragraph 3, which is being reproduced hereinafter for ready reference:-

> "3. Having examined the provisions of Section 13-A and Section 38-B of the Act, we are of the considered opinion that under Section 13-A, the prescribed authority has the power to reopen the matter within two years from the date of the notification under sub-section (4) of Section 14 to rectify any apparent mistake which was there on the face of the record. That power will certainly not include the power to entertain fresh evidence and re-examine the question as to whether the two sons, namely, Hamendra and Shailendra were major or not. The power under Section 38-B merely indicates that if any finding or decision was there by any ancillary forum prior to the commencement of the said section in respect of a matter which is governed by the Ceiling Act then such findings will not operate as res judicata in a proceeding under the Act. That would not cover the case where findings have already reached their finality in the very case under the Act. In this view of the matter, we have no hesitation to come to the conclusion that the prescribed authority had no jurisdiction to reopen the question of the majority of the two sons in purported exercise of the power under Section 13-A. If the authority had no jurisdiction, question of waiver of jurisdiction does not arise, as contended by learned counsel for the respondent."

53. From a careful perusal of the aforesaid decision, it would indicate that the aforesaid judgment is in context with Section 13-A of the Act of 1960. If the aforesaid Section 13-A is seen, it would reveal that the said provision applies is in a very limited sphere and becomes applicable when any rectification is necessitated on account of any mistake

apparent on the face of the record and that too can be done within two years from the date of the notification made in respect of Section 14(4) of the Act of 1960.

54. Keeping this in mind, if the said judgment of **Devendra Nath Singh** (supra) is noticed, it would reveal that it is not applicable to the facts of the instant case as in the present case fresh notice had been issued under Section 10(2) of the Act of 1960 after the U.P. Amending Act No.20 of 1976 had came into effect, the scope of Section 10(2) of the Act of 1960 is completely different to the scope of Section 13-A of the Act of 1960.

55. It is not a case where the Prescribed Authority had given any finding which were found to be erroneous. Had it been a case of Section 13-A only then the limitation provided in the said Section itself i.e. of two years, could have been nudged into play. Moreover, the Apex Court has also noticed the provisions of Section 38-B but then, again if it is seen in context with Section 13-A, it would reveal that the same has no applicability to the facts of the instant case, hence, the said decision also cannot help the petitioner.

56. Apart from the aforesaid decisions, the learned Senior Counsel for the petitioner relied upon the decision in **Ramkali Devi** (Supra) and **Kamla Kant** (Supra)**.**

57. Considering the decision of **Ramkali Devi** (supra) it would reveal that the said decision is on completely different facts situation, hence, it does not come to the aid of the petitioner as the issue being considered therein was in context with Section 13-A and considering whether the

Prescribed Authority under the Act of 1960 has the power of review which is not the case at hand, hence, the said decision does not help the petitioner.

58. As far as the decision of **Kamla Kant** (supra) is concerned, needless to say that the same is based on a parallel drawn from the authority of the Supreme Court of **Devendra Singh** (supra) which as already noticed above, had no role to play in the instant case and for the same reason, the decision of **Kamla Kant** (supra) also cannot save the day for the petitioner.

59. Now, it will be appropriate to examine the decisions cited by Sri Pandey, learned Standing Counsel for the State.

60. The Apex Court in **Viroj Kuwar** (Supra) in paragraph 8 has held as under:-

> "8. In other words, in computation of the ceiling area the family defined under Section 3(7) becomes relevant in computation of the members of the family to give additional land to the extent of the members of the family envisaged therein. While aggregating the ceiling area a judicially separated wife has been excluded to be a member of the family. The question, therefore, is whether judicially separated wife is a tenure-holder under the Act. It is seen that Section 3(17)(*a*) would exclude the wife when husband is a tenure-holder and that, therefore, she cannot be at the same time an independent tenure-holder when the husband is a tenure-holder, though she was judicially separated from her husband. In this definition, the judicially separated wife has not been excluded for obvious reason that though by judicial separation the wife and the husband may not be living together, in law, still she remains to be his wife so long as there is no divorce putting an end to the marital tie.
> 9. Under those circumstances, judicially separated wife cannot be an independent tenure-holder when her husband is a tenure-holder within the meaning of Section 3(17) of the Act. If this construction is adopted, it is consistent with the provisions of the Act for the reason that under the Amendment Act judicially separated wife has been brought in for computation of the aggregate of the ceiling area under Section 5 obviously for the reason that the legislators intended that when there is judicial separation between wife and husband, she cannot be treated to be a member of the family for the purpose of aggregating the ceiling area held by the tenure-holder. The learned Single Judge in the judgment (*supra*) obviously has overlooked the impact of the definition

under Section 3(17)(*a*) and held that in the absence of any express exclusion of the judicially separated wife to be the tenure-holder she is entitled to a separate holding as a tenure-holder. We are of the opinion that the view of the learned Judge is clearly in negation of the expressed provision contained in Section 3(17)(*a*) of the Act. Therefore, it is not correct law."

61. The next decision relied upon by the learned Standing Counsel is that of **Darshan Prasad** (Supra) wherein the Apex Court has held as under:-

"**3.** We do not find any force in this contention. The Amendment Act 20 of 1976 inserted two Sections 38-A and 38-B in the Principal Act of 1960. Sections 38-A and 38-B are reproduced as under:
"38-A. *Power to call for particulars of land from tenure-holders*.— (1) Where the prescribed authority or the appellate court considers it necessary for the enforcement of the provisions of this Act, it may, at any stage of the proceedings under this Act, require any tenure-holder to furnish such particulars by affidavit in respect of the land held by him and members of his family as may be prescribed.
(2) The particulars of land filed under sub-section (1) may be taken into consideration in determining the surplus land of such tenure-holder.
38-B. *Bar against res judicata*.— No finding or decision given before the commencement of this section in any proceeding 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 the retrial of such proceeding or issue under this Act, in accordance with the provisions of this Act as amended from time to time."
4. The above provisions clearly show that the prescribed authority was given power to require any tenure-holder to furnish such particulars, by affidavit in respect of the land held by him and members of his family as may be prescribed which may be considered necessary for the enforcement of the provisions of the Ceiling Act. It is clearly provided under Section 38-B inserted by the Amending Act as mentioned above that any finding or decision given before the commencement of this section will not operate as a bar for the retrial of such proceeding or issue in accordance with the provisions of the Act as amended from time to time. The appellants had raised a similar objection before the High Court, but the same was rejected on the ground that if an earlier judgment is said to operate as res judicata in the subsequent proceedings, then all the necessary facts including pleadings of the earlier litigation must be placed in the subsequent proceedings. The High Court further observed that in the instant case, the earlier notice under Section 10(2) which was issued to the tenure-holder along with the statement prepared in Form No. 3 were not placed before the ceiling authorities in subsequent proceedings. It was further held that even in the writ petition no such material was placed in order to enable the Court to decide whether the second notice could be said to be illegal. Section 30(3) of the U.P. Act 20 of 1976 clearly provided that the prescribed authority was authorised to issue fresh notice within a

period of two years from the date of any order passed in earlier ceiling proceedings. We are in agreement with the view taken by the High Court. Learned counsel for the appellants was unable to show that in the facts and circumstances of the case, the notice issued under Section 10(2) of the present proceedings was in any manner illegal or without jurisdiction.

* * *

6. We do not find any force in the above contention in view of the clear provisions of the Ceiling Act, 1960. Section 3(7) defines 'family' as under:

"3.(7) 'family' in relation to a tenure-holder, means himself or herself and his wife or her husband, as the case may be (other than a judicially separated wife or husband), minor sons and minor daughters (other than married daughters);"

7. It is clear from the above definition that the wife is included in the family of her husband other than a judicially separated wife.

8. It is important to note that the Hindu Marriage Act, 1955 had come into force on May 18, 1955. Section 10 of this Act provided for the judicial separation. Under Section 10 of the Hindu Marriage Act either party to a marriage was entitled to present a petition to the District Court praying for a decree for judicial separation on any of the grounds specified in sub-section (1) of Section 13 and in the case of wife also on any of the grounds specified in sub-section (2) thereof, as grounds on which a petition for divorce might have been presented. Thus, in order to get a judicial separation, it was necessary to obtain a decree under the above provision and then alone it could be recognised as a judicial separation. The Ceiling Act, 1960 was enacted and brought into operation long after the Hindu Marriage Act, and as such the legislature was fully aware of the meaning of judicially separated wife or husband while using this term in the definition of 'family' under Section 3(7) of the Ceiling Act, 1960. It is further important to note that sub-section (3) of Section 5 of the Ceiling Act, 1960, prescribes, while determining the ceiling area, the land of 'adult son/sons' who were themselves tenure-holders being excluded, but no such land is allowed to be excluded in the case of the wife, even though she might be a separate tenure-holder. Thus, it is abundantly clear from a perusal of the above provisions that in the case of determining ceiling area of the land belonging to a person, the land even if owned or possessed by his wife in her own right would have to be included in the land of the husband treating the wife as a member of his family. The only exception has been made in the case of a judicially separated wife. It was contended by the learned counsel for the appellants that a wider meaning should be given to the term 'judicially separated' wife to include a wife who may be living separately from her husband and agricultural land owned or possessed in lieu of her right of maintenance should be excluded from the ceiling limit of her husband. It is difficult for us to accept this contention in view of the clear provisions of the Ceiling Act, 1960 which apart from being a beneficial act for the landless has used the term 'judicially separated' wife after the coming into force of the Hindu Marriage Act, 1955. This cannot be given a meaning to include a wife merely living separately from the husband, but having not obtained a decree for judicial separation under the provisions of the Hindu Marriage Act, 1955."

62. The learned Standing Counsel has relied upon a decision of this Court in **Gurdeep Singh (Supra)** wherein noticing the definition of the word ‘family’ as amended, this Court held as under:-

> “7. The word "family' has been defined in Section 3 (7) of the Ceiling Act to mean the tenure holder himself or herself and his/her spouse as the case may be (other than a judicially separated wife or husband), minor sons and minor daughters (other than married daughter). The said definition occurring in Section 3 (7) is extracted herein below:-
> "(7) "family" in relation to tenure-holder means himself or herself and his wife or her husband, as the case may be (other than a judicially separated wife or husband), minor sons and minor daughters (other than married daughter)."
> 8. A perusal of definition of "family' as given in the Ceiling Act leaves no doubt that family in relation to a tenure holder would exclude judicially separated wife or husband. However, what is of significance in this case is to consider the relevant date for determination as to who constitutes family of a tenure holder.
> 9. The Ceiling Act was amended by U.P. Act No.2 of 1975 with effect from 08.06.1973. Sub-section (3) of Section 5 as it existed in the Principal Act was also substituted by the said amending Act. Section 5 (3) as it stands amended vide U.P. Act No.2 of 1975 is extracted herein below:-
> "(3) [Subject to the provisions of sub-sections (4), (5), (6) and (7)] the ceiling area for purposes of sub-section (1) shall be -
> (a) in the case of a tenure-holder having a family of not more than five members, 7.30 hectares of irrigated land (including land held by other members of his family) plus two additional hectares of irrigated land or such additional land which together with the land held by him aggregates to two hectares, for each of his adult sons, who are either not themselves tenure-holders or who hold less than two hectares of irrigated land, subject to a maximum of six hectares of such additional land;
> (b) in the case of a tenure-holder having family of more than five members, 7.30 hectares of irrigated land (including land held by other members of his family), besides, each of the members exceeding five and for each of his adult sons who are not themselves tenure-holders or who hold less than two hectares of irrigated land, two additional hectares of irrigated land or such additional land which together with the land held by such adult son aggregates to two hectares, subject to a maximum of six hectares of such additional land;
> (c) [x x x]
> (d) [x x x]
> (e) in the case of any other tenure-holder, 7.30 hectares of irrigated land;

(f) for purposes of determining whether an adult son of a tenure-holder is himself a tenure-holder within the meaning of [clause (a) or clause (b)];
(g) for purposes of service of notice under Section 9".
10. In the case of Murari Lal vs. District Judge, Mathura and others, reported in 1987 RD 103, it has clearly been held that relevant date for determination as to whether the wife was judicially separated would be 08.06.1973 and not any other date. In the instant case, admittedly the decree of divorce on which Gurdeep Singh as also Smt Prakash Kaur relied upon to contend that the land recorded in the name of Smt Prakash Kaur could not have been clubbed with the land of tenure holder-Gurdeep Singh, was passed on 10.05.1984 i.e. much after the relevant date which is 08.06.1973. Sub-section (3) of Section 5 provides for determination of ceiling area in the case of tenure holder having a family of not more than five members and also a tenure holder having a family of more than five members. Thus, for the purpose of determination of surplus land, the family which existed on 08.06.1973 is to be taken into consideration.
11. Any judicial separation or decree of divorce passed or obtained after 08.06.1973 will be a factor to be taken into consideration for the purpose of clubbing or excluding the land held by such judicially separated or divorced wife. Even otherwise, the Prescribed Authority has categorically recorded a finding that Gurdeep Singh and Smt Prakash Kaur have been living together and in fact it is Gurdeep Singh who has been doing agriculture even on the land recorded in the name of Smt Prakash Kaur.
12. Legally, in the proceedings for determination of ceiling area/surplus area, a woman whose husband is tenure holder, does not have any status as tenure holder and her land is thus to be clubbed with the land of her husband. Exclusion of land held by wife is possible only in a case where there exists a judicial separation, that too on the relevant date i.e. 08.06.1973."

63. The learned Standing Counsel also relied upon the decision of this Court in **Rajendra Prasad Singh** (Supra), wherein this Court in paragraph 6 held as under:-

"**6.** Accordingly, the first point is rejected.
POINT No. 2:— So far as this point is concerned, it should be seen that it is wholly immaterial that Smt. Sushila Devi, the wife of the petitioner, was treated as a separate tenure-holder in the earlier ceiling proceedings. It should be seen that the provisions contained in the Ceiling Act before its amendment by the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act 1972 (U.P. Act No. 18 of 1973) were radically different. There was no provision for the clubbing of the land held by the wife with the holding of her husband-tenure-holder. In view of the definition of the 'family' in Section 3(7) and of the 'tenure-holder' in Section 3(17), it is clear that when the husband has been treated as the tenure-holder, the wife herself cannot be treated to be a

> tenure-holder. Further, Section 5(3) provides for the clubbing of the land held by the members of the family of a tenure-holder with the holding of the tenure-holder. Reading all these provisions together, it is obvious that the land held by Smt. Sushila Devi as the member of the family of her husband tenure-holder was bound to be clubbed with the holding of her husband tenure-holder and she could not herself be treated as a tenure-holder in her own rights. Therefore, it is not at all material that in the earlier ceiling proceedings, which were held under the provisions of the Act as they stood before 8-6-1973, the were had been treated as a Separated tenure-holder. The said finding lost its relevance and effect in view of the change in the law brought about by the U.P. Act No. 18 of 1973. The constitutionality of the provisions of the Ceiling Act providing for the clubbing of the lands held by the members of the family with the holding of the tenure-holder concerned, was sought to be attacked on the ground of the infringement of fundamental rights, but such a challenge cannot be entertained in view of the fact that the Ceiling Act and its amending Acts were included in the 9th schedule of the Constitution. (See *State* v. *Rajesh Pachauri*1977 All WC 180 : 1977 Rev Dec 160 : ((1977) 2 SCC 548 : AIR 1977 SC 915)).”

64. In the aforesaid backdrop of the submissions, the undisputed facts and the decisions relied upon by the respective parties, this Court finds that in the instant petition actually there is no challenge to the validity or vires of Sections or provisions of the Act of 1960. Hence, the submission of the learned Senior Counsel that the provisions of the Act should be construed harmoniously and be given prospective application is misconceived.

65. It will not be out of place to mention that the provisions of the Act of 1960 amended by the Amending Act of 1976 has been made applicable retrospectively i.e. w.e.f. 10th October, 1975 and the said provisions have been insulated from judicial review by placing them under Chapter IX of the Constitution of India. For this additional reason as well, there cannot be any challenge to the provisions of the Act as suggested by the learned Senior Counsel. Needless to say that this aspect of the matter was considered by this Court way back in **Rajendra**

Prasad Singh (supra) and this Court does not find that the matter requires any fresh re-determination.

66. Moreover, if the provisions are to be given a harmonious and prospective construction, as suggested by the learned Senior Counsel for the petitioner, then the only conclusion that will be evident, would lead to an anomaly. The basic purpose of the Act of 1960 was transitional in nature and was a step forward taken after the abolition of the Zamindari in the State of U.P. Huge land holdings which were concentrated in the hands of few privileged sections, were to be distributed amongst the actual tilling class, landless labourers and to achieve an optimum and widespread use of the State resources to subserve the common good and this would not be achieved.

67. Another anomaly which will set in and that would be that the ceiling limit contained in the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 will get violated. The two Acts of 1950 and Act of 1960 are complimentary and are not supposed to derogate each other. If the ceiling of 40 acres as initially available in the unamended Act of 1960 is retained then it will cause more harm than good and it would result in violating the language and provisions of the Act of 1960, as amended by several amendments which are not under challenge here.

68. Learned Senior Counsel laid heavy emphasis on the transitory Section 19 of the Amending Act no. 18 of 1973 and Section 31 of the Amending Act of 1976. In case if the said Sections are closely examined, it would be clear that the said transitory provision is confined to proceedings which were referable to Section 14 and Chapter III and IV

of the Principal Act. Section 14 apparently is a procedural aspect relating to process as to how the possession of the surplus land as declared is to be taken and how it is to be dealt with. This is the stage, after the surplus land has already been declared and the orders have attained finality. Similarly, Chapter III is titled ‘determination and payment of amount’ and comprises of Sections 17 to 23 and Chapter IV is titled ‘disposal and settlement of surplus land’ and comprises of Section 24 (which was deleted by the Amending Act No.18 of 1973) till Section 31. These are provisions which relate to payment of compensation and as noticed above relating to disposal of land declared surplus and it has got nothing to do with the determination of rights and declaration of surplus land.

69. The Amending Act of 1976 (U.P. Act no. 20 of 1976) came into force from 10.10.1975 and it required the Authorities to re-determine the surplus land within two years w.e.f. 10.10.1975. It was in furtherance thereof that fresh notice was issued to the petitioner on 15.05.1976 after the Amending Act had come into force. This situation is further clarified by Section 38-B introduced by the Amending Act No. 20 of 1976. Hence, this Court is inclined to accept the reasoning of Sri Pandey, learned Standing Counsel on the aforesaid aspects.

70. Taking a complete holistic view of the Act of 1960 along with Amendments introduced in the year 1973 and 1976, it would reveal that a composite scheme has been brought into play by the Legislature. The submissions made by the learned Senior Counsel for the petitioner appears to be based on disjointed and selective reading of the provisions and is based on tearing observations out of context, from a decision or

from the provisions of the Act of 1960. The interpretation suggested does not impress this Court, and it cannot be accepted as it would violate the provisions of the Act of 1960 and it would run contrary to the legislative scheme.

71. Thus, this Court finds that the orders passed by the two Ceiling Authorities cannot be said to be bad for want of jurisdiction or having been passed in contradiction or against the dictum of the Apex Court in **Devendra Nath** (Supra) and **Arvind Kumar** (Supra). **Thus, the first question is answered accordingly.**

72. Now, considering the second question, this Court finds that in light of the facts noticed hereinabove first, it would reveal that one part of the submission/objection of the original tenure-holder i.e. that the land belonging to the sons and daughters should not be clubbed with the land of the original tenure-holder. This was already accepted in the second round vide order dated 15.11.1978 and the matter rested. The other issue that was raised was regarding clubbing of the land belonging to the wife of the original tenure-holder (though as per the original petitioner, his wife held the land in her own separate right.

73. In this regard, it will be relevant to take note of the definition of the word 'family' which has been defined in Section 3(7). Simultaneously, the definition of words 'surplus land and tenure holder' which has been mentioned in Section 3(16) and (17) may also be perused.

> "3 (7) 'family' in relation to a tenure-holder means himself or herself and his wife or her husband as the case may be (other than a judicially separated wife or husband), minor sons and minor daughters (other than married daughters) ;

> 3 (16) ‘surplus land’ means land held by a tenure-holder in excess of the ceiling area applicable to him, and includes any buildings, wells and trees existing thereon ;
>
> 3 (17) ‘tenure-holder’ means a person who is the holder of a holding but 1[except in Chapter III] does not include-
> (a) a woman whose husband is a tenure-holder ;
> (b) a minor child whose father or mother is a tenure-holder ;

74. From the perusal of the above definition, it would clearly indicate that in the word ‘family’ in relation to tenure holder, the wife or the husband as the case may be are included alongwith minor sons and daughters.

75. Similarly, in the definition of the words ‘tenure holder’, it clearly prohibits the inclusion of a woman whose husband is a tenure holder. It also prohibits a minor child to be treated as a tenure holder whose father or mother is already a tenure holder. Thus, it would be seen that a determination has to be made as to who would be a tenure holder, then for the purposes of Ceiling Act either the husband or the wife can only be treated as a tenure holder but both cannot be tenure holders together to exclude the land held by them, while determining the ceiling and surplus land under the Act of 1960.

76. Since, the definition clause was amended and in the word ‘family’, in relation to a tenure-holder it included the husband or wife, of the tenure holder. Taking note of the definition of the word ‘tenure holder’ it will reveal that it can either be the husband or the wife as a tenure-holder for the purposes of the Act of 1960 and in such a situation, if the husband is treated as a tenure holder, then his wife, will be excluded and if any land is held by her it will be clubbed with the husband being a

family and in case if the wife is treated to be a tenure holder then her husband will be excluded and his land would be clubbed with his wife, being a family.

77. In the instant case, it was always the husband (the original petitioner) who was treated as a tenure holder and he had always raised this issue that the land recorded in the name of his wife may not be included, but that was turned down by the ceiling authorities. It is also relevant to notice that the Prescribed Authority in the second round of litigation vide its order dated 15.11.1978 had already excluded the adult sons and daughters whereas it continued to club the land recorded in the name of the petitioner's wife as the land of the petitioner. Thus, the order passed by the Prescribed Authority to include the land of the wife of the tenure holder along with the land of the petitioner cannot be said to be bad or against the law.

78. There is another aspect to this issue, though, the original petitioner had raised this issue of clubbing of his wife's land by filing Appeal No.16/1978 which did not find favour with the Appellate Authority and it partly allowed the appeal vide judgment dated 20.03.1979. A limited issue was left and remanded for consideration whereby certain plots were directed to be considered unirrigated. Had the petitioner been aggrieved by the finding that his wife's land was being clubbed with him, he could have raised the matter at that stage by escalating the matter further, but he did not and once having succumbed to it, the issue before the Prescribed Authority naturally remained confined to the issue relating to certain plots being treated as unirrigated and liberty was

granted to the petitioner for making his choice known for the land he wished to retain in terms of Section 12-A of the Act of 1960.

79. As the admitted facts would indicate that Appeal No.3/1982 was allowed by the Appellate Authority on 16.09.1983 and again the only issue was regarding the choice and certain plots to be treated as unirrigated and admittedly this judgment dated 16.09.1983 was never challenged. In the fourth round, the Prescribed Authority excluded Plots bearing No.353, 432, 433, 498 and 503 as unirrigated. At this stage, the only issue remained was regarding choice. The decision rendered by the Prescribed Authority dated 27.06.1986 cannot be examined for any other purpose except as to relating to the issue of choice whether it has been properly considered by the Prescribed Authority.

80. As noticed above, 7.3 hectares was permitted to be retained by the petitioner and rest was declared surplus and this finding apparently could not be demonstrated to be erroneous, hence, it does not suffer from any manifest error which may persuade this Court to enter into the factual dispute under Articles 226/227 of the Constitution of India.

81. As far as the issue regarding choice is concerned, despite on two occasions, liberty was granted to the petitioner to express his choice explicitly yet on one earlier occasion, he gave a vague statement. However, the authority giving indulgence to the petitioner gave another opportunity to express his choice and on the second occasion, the petitioner gave a reason that his choice must be treated to be dependent on the exchange proceedings which were initiated at the behest of married daughters of the original petitioner, who wanted to get their land

exchanged with that of their mother. Once the exchange proceedings under Section 161 of the Act of 1950 could not have any bearing on the ceiling authorities, it could not be treated as a valid expression of choice.

82. Even before this Court, learned Senior Counsel could not demonstrate that despite having been granted two opportunities to express the choice, why no cogent choice was given, knowing well that the provisions of Section 161 of the Act of 1950 are different and operate in a different sphere and it could not bind the ceiling authorities or have any impact.

83. Even otherwise though this petition has been pending before this Court since 1993 and the writ petition came to be amended drastically in the year 2022 i.e. after about two decades yet nothing has been brought on record to indicate the status of exchange proceedings which allegedly were initiated by the daughters of the original petitioner, nor any option of choice has been made and no prayer for seeking another opportunity to give choice to the Prescribed Authority has been made.

84. In this backdrop, the petitioner is attempting to raise issues indirectly by trying to hit at the proceedings which had already attained finality by raising issues of transitory provisions which have no role to play and as already considered, this Court finds that submissions advanced by the learned Senior Counsel have no force and substance, they have been raised only to perpetuate the litigation before this Court and it does not find favour with this Court. **Thus, the second question is answered accordingly.**

85. In light of the facts and law discussed hereinabove, this Court finds that the view taken and expressed by the Ceiling Authorities in the impugned orders cannot be faulted.

86. This Court unhesitatingly holds the writ petition to be sans merit and it is **dismissed**. The judgment and order dated 27.06.1986, passed by the Prescribed Authority and the judgment dated 11.06.1993 passed by the Appellate Authority are confirmed. In the facts and circumstances, there shall be no order as to costs.

87. The original records provided to this Court has been handed over to Shri Hemant Kumar Pandey, learned standing counsel, for the State.

(Jaspreet Singh, J.)

February 06, 2026
Rakesh/-

Digitally signed by :-
ASHEESH KUMAR
High Court of Judicature at Allahabad,
Lucknow Bench