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**(1979) 11 AHC CK 0044**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 3622 of 1977

Banshi Lal

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

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**Date of Decision :** 29-11-1979

**Acts Referred:**

Constitution of India, 1950 — Article 226

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 13

**Citation :** (1979) 11 AHC CK 0044

**Hon'ble Judges :** M.P.Mehrotra, J

**Final Decision :** Allowed

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## Judgement

M. P. Mehrotra, J.

This petition arises out of the proceedings under the U. P. Imposition of Ceiling on Land Holdings Act, 1960.

The facts, in brief, are these. The petitioner was the prescribed authority under the U. P. Imposition of Ceiling on Land Holdings Act, 1960 for the subdivision Kalpi in the District of Jalaun at the material time. The opposite party No. 3. Sri Madho Ram Singh was issued a notice under Section 10f2) and the same was served upon him on March 11, 1976. It seems that no objection were filed by the said Madho Ram Singh within time and, therefore, an order was passed on March 26, 1976 under Section 11 (1) of the Act. Thereafter, it seems that applications were moved by the said Madho Ram Singh and by some other persons also. Two of these other persons were Gaya Deen and Mata Deen. These two persons by separate applications applied for the setting aside of the exparte order dated March 26, 1976. They claimed that they were transferees and real tenure holders of certain plots, which had been included in the holding of the said Madho Ram Singh. These applications were rejected by the Prescribed Authority by his order dated July 7, 1976, a true copy whereof is Art Annexure V to the petition. Thereafter, three appeals were filed before the District Judge one appeal was filed by Mata Deen and others and the same was numbered as Misc. Civil Appeal

(Ceiling) No. 82 of 1977. The other was filed by Gaya Deen and the same was numbered as Misc. Civil Appeal (Ceiling) No. 83 of 1977. The third appeal was filed by Madho Ram Singh and the same was numbered as Misc. Civil Appeal (Ceiling) No. 85 of 1977. All three appeals were decided by one common judgment dated July 14, 1977. All the three appeals were allowed and the aforesaid order dated March 26, 1976 was set aside. The case was remanded to the Prescribed Authority, Kalpi, with directions.

Now the petitioner has come up in the instant petition and in support thereof, I have heard Sri A. P. Tewari, learned counsel for the petitioner, in opposition, Sri S. C. Khare, learned counsel for the respondent No. 3, has made his submissions. There has been some argument as to whether the appeals were maintainable in the lower Appellate Court. I do not propose to enter into that controversy as it is within my discretion to interfere or not to interfere in a writ petition even if an order passed by a Court or authority below is illegal or without jurisdiction. In the instant case no writ petition was filed by the State questioning the maintainability of the said appeals. I do not think that I should allow the petitioner to raise the said controversy when he is not directly concerned with the merits of the controversies involved in the ceiling case. As has been stated above, he was the Prescribed Authority who passed the *ex parte* order dated March 26, 1976 and who also passed the aforementioned order dated July 7, 1976.

The petitioner's grievance, however, is that the Appellate Court in its judgment dated 14th July, 1977, used uncalled for language making unnecessary insinuation against the petitioner. It has seemed to me that this contention is correct. Very serious allegations were made against the petitioner in the said judgment of the Appellate Court and clear cut findings up holding such allegations were given by the said Court in the said judgment. In my opinion, this course was not correct, higher Court undoubtedly criticised the lower Court and some times even strong language is used but in the instant case, the Prescribed Authority has been alleged and held to have committed criminal offences in the discharge of his official duties. Such an allegation should not be made and verdict passed without affording the officer concerned, an opportunity to place his point of view.

Accordingly I allow this petition and direct that the portion in paragraph 2 of the judgment beginning from "I may first take up Madho Ram Singh's appeal itself and ending with the end of the said paragraph 2 should stand deleted from the Appellate Court's judgment. The rest of the judgment will remain intact and be operative and shall be given effect to by the Prescribed Authority. In the circumstances, there will be no order as to costs.