

(1983) 02 PAT CK 0034

In the Patna High Court

Case No : CWJC No's. 98, 154, 230, 751 and 798 of 1977

Chandrajot Kuer

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 04-02-1983

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1983) 31 BLJR 301

Hon'ble Judges : Uday Sinha, J;Prabha Shanker Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Uday Sinha, J.—These five writ applications under Articles 226 and 227 of the Constitution have been heard together, as common questions of law arise in all of them. They will be disposed of by this common judgment. The final hearing of the applications was postponed for four years in the hope that a matter pending before the Supreme Court in which similar question of law arises may be disposed of. Since the application before the Supreme Court is still pending, it was not considered advisable to keep these matters hanging any further, as the applications relate to Ceiling Act which should be and are disposed of in this Court without undue delay on the part of this Court. It appears that the State has taken no steps for early disposal of the matter before the Supreme Court.

2. In 1962 the Bihar Legislature enacted The Bihar Land Reform (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 [hereinafter referred to as "the Ceiling Act"] in terms thereof lands in this State were divided into six categories. Section 4 of the Act laid down the ceiling for possessing lands of particular categories. The Act was amended in 1973 by Act 1 of 1973. The salient aspect of this Amending Act was firstly that it was laid down that it should be deemed to have come into force from the 9th September, 1970. The second feature was that a land-holder was defined as a family and a family as including a person his or her spouse and minor children. The Amending Act thirdly

substituted new Section where under lands were divided into only five categories with lower ceiling limit fixed for each category. This Amending Act brought about other changes in the original Act. We are, however, not concerned with the other amendments. The Act was further amended by Bihar Act 9 of 1973 where under the ceiling limits for 3rd, 4th 5th categories were further lowered. The Act was again amended in 1976 by Act 22 of 1976. This Act provided a definition clause in terms of which an "appointed day" meant the 9th day of September, 1970. This Amendment Act farther enacted Sections 4A and 4B, the interpretation of which also falls for consideration in the present writ applications. Section 4A, in short, provided, that where the ceiling area of land for any family on the appointed day has been determined by any order passed by any authority in accordance with the provisions of the Ceiling Act prior to the commencement of Ceiling Act of 1973, the ceiling area of such family would be re-determined under the Amendment Act 22 of 1976 with reference to the appointed day, namely, the 9th day of September, 1970 in accordance with the amended provisions. Section 4B was validating provision which provided that any judgment, decree or order of any Court would not affect the ceiling area of any family with reference to the appointed day in any proceeding under the Act and that orders passed under the Act and would be deemed to be valid and effective. The scope of Section 4A is the main question involved in these applications. The Amendment Act 22 of 1976 also enacted Section 45B to the parent Act which empowered the State Government or the Collector of the District authorised in this behalf to call and examine any record of any proceeding disposed of by a Collector under the Act and if it thought fit direct the case to be re-opened and disposed of fresh in accordance with the provisions of the Act.

3. The scope of Section 4A came up for consideration in *Nalini Ranjan Singh and Others Vs. The State of Bihar and Others*, , presided over by Shambhu Prasad Singh and S.K. Jha, JJ. It was held that where a proceeding was initiated under the parent Act and continued after the commencement of the Amending Act, if an order was finally passed in favour of the land-holder, the initiation of a fresh proceeding would be barred by the principles of *Res-judicata*. The same matter fell for consideration before another Division Bench of this Court in *Sheobachan Giri and Another Vs. The State of Bihar and Others*, , presided over by S. Sarwar Ali (as he then was) and C.M Misra, JJ. This Bench held that the determination under the Act before the amendment could not be a bar to the maintainability of a second proceeding. The same question falls for consideration once more before us. Before I pass on to a consideration of the submissions urged on behalf of the petitioners, it is necessary to set out the facts of each application.

4. The facts:

I. C.W J.C. No. 98 of 1977--

The lands in question in this application belonged to one Guru Sahai Singh. His son Ganesh Narain Singh pre-deceased him in 1934 leaving behind two widows Chandrajot Kuer and Khura Kuer. By a registered deed of gift dated 9-4-1940

Guru Sahai Singh gifted his entire properties measuring 89.61 acres to his two daughters-in-law Chandrajot Kuer and Khira Kuer and put them in possession. The case of the petitioner is that in 1952 the two widows Chandrajot Kuer and Khira Kuer settled orally 8.84 acres of land in village Khusha with Inderdeo Singh and 8.30 acres with Deonandan Upadhyia. Both the settlements were effected orally by both the widows. The names of Inderdeo Singh and Deonandan Upadhyia were entered in Register II. In the very same year the two widows again settled lands in village Gaini with Inderdeo Singh and Deonandan Upadhyia. These settlements were again oral. By a registered deed dated 20-1-1961 the two widows gifted 19.95 acres to Inderdeo Singh and 20 acres to Deonandan Upadhyia. In the same year the two widows transferred 21.25 acres of kast lands and 25 acres homestead land with house thereon to deities Ramchandraji, Jankiji, Lakshmiji, Shankerji etc. On 17-5-1962 Inderdeo Singh and Deonandan Upadhyia separately sold 5.20 and 5.19 acres respectively to Ram Pukar Singh. In 1970 Ceiling Case No. 5/70-71 was initiated. Notice was issued to the landholder Chandrajot Kuer. On 30-11-1970 return was filed by her before the Deputy Collector Land Reforms. On 23-2-1972 after spot verification, the Deputy Collector Land Reforms found that Chandrajot Kuer was possessed of only 10.46 acres. The proceeding was, therefore, dropped. After the amendment of the parent Act by Acts 1 and 9 in 1973 a fresh ceiling case was initiated against Chandrajot Kuer which was numbered as Ceiling Case 248 of 1973-74. Notice u/s 6 was issued and served upon her. In response to the notice Chandrajot Kuer while filing return objected to the initiation of the fresh proceeding. It appears that her objection to the initiation of fresh proceeding was rejected. A draft statement was, therefore, prepared. Notice of preparation of draft statement was served on the petitioner was possessed of 91.08 acres besides 0.29 acres homestead land held by her. The petitioner filed objection to the statement asserting that she was possessed of only 10.46 acres. The Collector considered the objection to the draft statement. The transfer of property to Ram Pukar Singh was accepted as valid. It may be stated that notice had been issued to Inderdeo Singh as well as to Deonandan Upadhyia. By order dated 2-7-1975 the Collector rejected the objection of the petitioner in all regards, but upheld the transfer to Ram Pukar Singh. The petitioner being aggrieved by the order of the Deputy Collector Land Reforms filed appeal to Commissioner, Patna Division, Patna and revision before the Board of Revenue, but without any success. Hence the present application for quashing annexures-2, 3 and 4.

(II) C.W.J.C. No. 798 of 1977--

Ram Sewak Singh the owner of the properties dedicated 100 acres of land to Lakshmi Mahamaya. This was done by registered deed dated 10-1-1955. On 6-3-1963 Ram Sewak Singh transferred another 100 acres of land to Mahabir Jee and Ram Janki Jee by another registered deed and appointed himself as the Shebait for all the deities. A proceeding under the Ceiling Act was initiated against Ram Sewak Singh, but it was dropped on 12-2-1973 holding that there was no surplus land held by him. In 1973 the authorities initiated a fresh

proceeding. A draft statement in terms of Section 10 was prepared. Under this draft statement the Revenue Authorities did not allow any unit to Lakshmi Mahamaya, Mahabirjee or Ram Jankijee. The appeal by Ram Sewak Singh before the Commissioner and revision before the Board of Revenue proved fruitless except to the extent that the Board of Revenue allowed one unit to Lakshmi Mahamaya. The original petitioner No. 1 Ram Sewak Singh is dead. His heirs Ram Sakal Singh and Ramruchehi Kuer were substituted by order of the Bench dated 18-2-1981. The present application has been filed for quashing annexures-2, 3 and 4.

(III) C.W.J. C. No. 164 of 1977--

This case is sequel to the orders passed in C.W.J.C. No. 1977. The petitioners claim interest in lands by virtue of settlement and/or gift in their favor by Chandrajot Kuer. The Revenue Authorities annulled the transfers in favor of Inderdeo Singh and Deonandan Upadhya as Sham and collusive in terms of Section 5(iii) of the Act. Hence the present application by Inderdeo Singh, his wife and sons and sons of Deonandan Upadhya for quashing annexure-2 to 4 of the said application.

(IV) C.W.J.C. No. 230 of 1977--

The petitioners in this application are deities Ramchandra jee Maharaj, Jankijee Maharani, Lakshmanjee Maharaj, Shankarjee Maharaj, Parwatijee Maharani and Hanumanjee through their Shebait and Guardian Chandrajot Kuer (petitioner in C.W.J.C. No. 98 of 1977). The settlements in favor of the deities were made by Chandrajot Kuer herself. These settlements were made in January, 1964. In this case the previous proceeding initiated in 1970 by L.C. Case No. 5Ab/70-71 was dropped by order dated 23-2-1972. A fresh proceeding was initiated in June, 1975. The Collector held that the settlements in favor of the deities were made to defeat the provisions of law. The Commissioner and Member Board of Revenue agreed with the conclusions of the Collector. Hence the present application for quashing annexure 2, 3 and 4 to the said application.

(V) C.W.J.C. No. 751 of 1977--

In 1965 Ceiling Case No. L.C. 12(S) of 1965-66 was initiated against the petitioners. By order dated 24-7-1973 the proceeding was dropped on the finding that the petitioners owned only 29 acres of Class III lands. In 1975 after the amendment of the Act laying down lower ceiling limit fresh proceeding was initiated being Land Ceiling Case No. 06 of 1974-75. The petitioners while contending that there was no surplus land contested the jurisdiction of the Revenue Authorities to re-determine the matter. The stand of the petitioners to the jurisdiction to re-determine the surplus land was rejected by the Collector, the Commissioner as well as by Board of Revenue. Several objections were taken to the draft statements. All of them need not be set out here. All that require to be taken note of here is the contention of the petitioners that the endowment created in 1945 could not have been annulled. The petitioners in this application

have prayed for quashing annexure-2, 3 and 4. The land declared surplus in this proceeding is 313.47 acres.

5. The submission vigorously urged before us is that adjudication of the ceiling area having been completed after 9-9-1970, fresh proceeding under the provisions of the Act would be barred by the principles of Res judicata. This submission was raised for the first time in Mahabir Prasad and Others Vs. The State of Bihar and Others, . In that case the previous adjudication was pending when The Bihar Acts 1 and 9 of 1973 came into being. During the pendency of the earlier proceeding initiated in 1967-68, the petition of that case filed fresh return. A draft publication was made. Subsequently there was final publication of the draft statement. In those circumstances, it was observed by S. Sarwar Ali, J. (as he then was) as follows:

The pendency of the previous proceeding will not affect the jurisdiction of the Collector to proceed in accordance with the provisions of amended Act. His jurisdiction is not ousted on account of the pendency of an earlier proceeding.

In Nalini Ranjan Singh and Others Vs. The State of Bihar and Others, submission similar to that urged before us was raised. S.K. Jha, J accepted the submission urged on behalf of the petitioners that if a proceeding was initiated under the parent Act and continued after the commencement of the Amending Act an order finally passed in favor of the land-holder, then initiation of a fresh proceeding under the provisions of the Act as amended be barred by the principles of Res judicata. In that case Mr. Kailash Roy for the petitioners had also urged that once a proceeding had been initiated and either dropped or otherwise finally decided under the parent Act before the commencement of the Amending Acts (Acts 1 and 9 of 1973), the matter could not be re-opened after the commencement of the Amending Act. That submission was squarely rejected by both the learned Judges constituting that Bench. The submission of Mr. Kailash Roy, however, in regard to proceedings completed after 9-9-1970 was accepted. According to their Lordships any adjudication either commenced before 9-9-1970 or post 9-9-1970, if it had been finally concluded before the enactment of Acts 1 and 9 of 1973, the adjudication would be deemed to be under the amended Acts of 1973. The same submission was urged before another Bench consisting of S. Sarwar AH and G.M. Misra, JJ. only a couple of months later. S. Sarwar Ali, J. in paragraph 5 of his" judgment in Nalini Ranjan Singh and Others Vs. The State of Bihar and Others, , laid down as follows:

The second proceeding does not purport to reopen the decision arrived at in the earlier proceeding on the basis of the amendment. It also does not attempt to review that order. The order was a good and valid order when it was passed. The ceiling was then different. It was on Individual basis. In case of undivided Hindu Joint family, the idea of national partition had to be introduced for determining as to the area of land held by each member of the family. It is to be observed that in those circumstances it was found that the members of the family did not hold surplus land in accordance with law which the authorities had to apply at that

stage. By Act 1 of 1963 an amended by Act 9 of 1973, the ceiling has been lowered. Now, there is no question of notional partition. Moreover, it is not each individual member of the family who is taken as a separate unit for determination of the ceiling area held under the Act. On the other, "land-holder" has been defined as family and family in its turn has been defined to include a person, his or her spouse and the minor children.

With the above observations S. Sarwar Ali, J., laid down that the amendment it was open to the authorities to start a fresh proceeding and to find out whether the land in excess of the ceiling area as prescribed under amending Act. I am in respectful agreement with the views of S. Sarwar Ali, J., Section 5 lays down that it would not be lawful for family to hold except as otherwise provided under the Act any surplus land acquired from such family by the State Government under Chapter IV of this Act. In view of the prohibition against owning and possessing lands above ceiling areas, a fresh proceeding would be a natural corollary when the ceiling area was reduced by the amending Acts. The amending Act, also changed the unit of the land-holder Previously an individual was the land-holder. After the introduction of Section 2(ee) by Act 1 of 1973, land-holder means a family. Thus the provisions of the statute having undergone radical change, by the very nature of the change fresh proceeding was called for. The unit for which a ceiling area was granted under the amending Acts is a family and not an individual. The ceiling area itself was lowered. The basic nature of the ceiling law was radically altered. In that state of affairs, a fresh proceeding was a natural concomitant. Initiation of fresh proceeding cannot be characterised as review of the earlier order, but would be fresh proceeding in light of the change in the law. The primary purpose of the ceiling law is to redistribute lands to individuals, who do not own any while others hold in plenty. It is a law for socio-economic change. The amendments and the impact thereof must be appreciated from that angle.

6. The submission urged by Mr. Kailash Roy on behalf of the petitioners is that since in 1972 order had been passed dropping the proceeding against the petitioners with a finding that there was no surplus land, that order must be deemed to have been passed under the amended Act 1 of 1973 came into force with effect from 9-9-1970. According to Mr. Roy, the order dropping the proceeding in 1972 may be a wrong or illegal order, but it was not without jurisdiction and, therefore, the order (annexure-1) not having been appealed against or agitated in revision, there was no scopes for initiation of fresh proceeding. Although that submission found favor with a Bench of this Court in Nalini Rmjan Singh's case (Supra), I have considerable difficulty in appreciating this submission. At the point of time, annexure-1 in C.W.J.C. No. 98 of 1977 dropping the proceeding was passed (on 23-2-1972), the proceeding was against Chandrajot Kuer. The adjudication of land-holder owning surplus land was not adjudicated in respect of a family. Further, aanexure-1 dated 23-2-1972 was passed in complete ignorance (since the amending law did not exist then) of the provisions contained in Acts 1 and 9 of 1973. If we are to interpret the content and impact of the amending Act specially with reference to a date the Act came

into force, it must also be assumed that the amendments effected by the two Acts were completely ignored by the Revenue Authorities. An adjudication in complete disregard of the statute must be held to be no adjudication in the eye of law. If we go by legal fiction the earlier order (annexure-1) must be deemed to be no adjudication. There was no adjudication by annexure-1 as to whether the alienations dated 20-1-1961, i.e. after 22-10-1959 had been made with the object of defeating the Act or in contravention of the provisions of the Act or for retaining Benami or Farzi lands in excess of the ceiling area. Thus even if order dated 23-2-1972 was to be deemed to be an order passed under the amended Act, it was not (a) made in respect of a family, (b) it took no note of the validity of the alienations of land in 1961 measuring 79.43 acres as required by Section 5(iii) of the Act, and (c) the order (annexure-1) was passed in complete ignorance of the lowered ceiling area. With these infirmities, if the final order were to be deemed to be under the amended Act, it must be deemed to be no order. Tested in the light of the amending Acts, I have no difficulty in holding that order dated 23-2-1972 (annexure-1) was no order and that it was a complete nullity and I would, therefore, have not the slightest hesitation in holding in agreement with the views of S. Sarwar Ali, J., that initiation of a fresh proceeding was fully justified and legal. The Land Reforms Deputy Collector had the jurisdiction to initiate fresh proceeding. Since the matter in controversy under the fresh proceeding had not been adjudicated upon in earlier proceeding, there was no want of jurisdiction in initiating fresh proceeding.

7. The submission that the order passed in 1972 in terms of the parent Act must be deemed to be under the amending Acts of 1973 has lost all significance after the enactment of Section 4A by Act 22 of 1976 which reads as follows:

4A. Re-determination of ceiling area. Where the ceiling area of the land for any family or any member of family constituting the family on the appointed day has been determined by any order passed by any authority in accordance with the provisions of this Act prior to the commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1972 (Bihar Act 1 of 1973), the ceiling area of such family or member of the family shall be re-determined under this Act with the amended provisions.

Explanation.--In this section authority includes the Collector, Commissioner of the Division and the Board of Revenue

The above provision lays down in unmistakable terms that there shall be re-determination of the ceiling area of a family. That re-determination has to be done where the ceiling area of the land for any family or any member of a family on the appointed day had been determined by an order passed by any authority in accordance with the provisions of the Act prior to the commencement of the Bihar Act 1 of 1973. Mr. Kailash Roy submitted that Section 4A enjoins re-determination only in those cases where there has been prior determination prior to 9-9-1970 i.e. the day when Bihar Act 1 of 1973 came into force. I see no rationale for providing re-determination where the earlier determination had

been completed prior to 9-9-1970, but not in those cases where determination had taken place between 9-9-1970, and 19.5.1973 the day Act 1 of 1973 was published. The concept of family was changed in 1973. The ceiling area lowered by the very same Act. In that view of the matter, re-determination was called for in regard to all earlier determinations in view" of the lowered ceiling area. In view of the change in law in 1973, all prior determinations needed to be re-determined, I am, therefore, unable to restrict the scope of Section 4A as covering only those cases in which determination had been completed prior to 9-9-1970. It must be remembered all the time that the very concept of prohibition against owning land above the ceiling area pre-supposes re-determination thereof whenever the land holding goes above the ceiling area. It will always be continuous process.

8. Learned Counsel for the petitioners submitted that proceedings in the instant applications were commenced prior to the enactment of Act 22 of 1976 and, therefore, Section 4A would be no guide as to the content of the powers of the Revenue Authorities. Since the proceedings are still pending at the moment, Section 4A would be fully effective. Even if, it were assumed for the sake of argument that the law prior to enactment of Act 22 of 1976 did not permit re-determination, the enactment in 1976 provided a legal cover for initiating fresh proceeding in view of Section 4A, Therefore, there is not much substance now left in the contention urged on behalf of the petitioners. We must look to the substance of the law and not the skeleton thereof, In my view, the initiations of fresh proceedings were fully justified and were well within jurisdiction.

9. In 1981 Ordinance No. 66 of 1981 was promulgated. This Ordinance engrafted Section 32A in the parent Act. This section provided that any appeal or revision or reference pending before any authority on the date of commencement of the Ordinance shall abate. In 1982 came Bihar Ordinance No. 72 of 1982 by which Section 32B was introduced in parent ceiling law. Section 32B reads as follows:

32B. Initiation of fresh proceeding.--All those proceedings, other than appeal, revision, review or reference referred to in Section 32A pending on the date of commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Ordinance, 1981 (Bihar Ordinance No. 66 of 1981), and in which final publication under Sub-section (1) of Section 11 of the Act as it stood before the amendment by aforesaid Ordinance, had not been made, shall be disposed of afresh in accordance with the provisions of Section 10 of the Act.

The above provision shows that all proceedings pending on the date of commencement of the Ordinance of 1981 and in which final publication u/s 11(1) has not been made shall be disposed of afresh in accordance with the provisions of Section 10 of the Act. The combined effect of Sections 32A and 32B, therefore, is that the entire procedure from beginning to end must be carried out afresh. Since the proceedings have got to be decided afresh, all findings arrived at earlier stages of the proceedings must be considered to have been wiped off

whether the findings of fact were in favor of the land-holder or were in favor of the Revenue. Findings in favor or against a land-holder or, Revenue must be considered afresh.

10. Mr. Kailash Roy submitted that the settlements of 1952 could not be the subject matter of proceedings under the Act and that they could not be annulled. It is true annulment can only be done of transactions effected after 22-10-1959, but the Revenue Authorities certainly have the jurisdiction to adjudicate whether the settlements were really effected prior to 22-10-1959 or were effected subsequent thereto although claimed to have been effected prior to it. All the writ applications except C.W.J.C. Nos. 798 and 751 of 1977 have their origin in settlements effected by the two widows in 1952, but they are all oral settlements. A moot point will, therefore, necessarily arise whether the settlements were really effected in 1952 and were effected post 1959. When the settlements were in fact effected will be essentially a question of fact which the Revenue Authorities will have to decide.

11. Before concluding, however, there is one aspect of the matter to which I must allude. That relates to C.W.J.C. No. 751 of 1977. The facts of this application show that on 4-12-1945 the petitioners endowed 34.36 acres of land in favor of deity Ram Janki Jee by registered document. The endowment was created in 1945. Revenue Authorities would, therefore, have no jurisdiction to annul this endowment. The fact that the properties under the endowment are being dealt with by the petitioners themselves even after the endowment does not militate against a genuine endowment. The properties of a trust must necessarily be looked after by a Shebait and there is no prohibition against the profounder of a trust appointing himself a Shebait. The Act does not permit annulment of transactions effected prior to 22-10-1959. In the instant application, endowment was done by registered instrument. Therefore, there is tangible evidence that the endowment was done in 1945. In the case of Mahabir Prasad (Supra), S. Sarwar Ali, J. in paragraph 29 laid down that transfers made prior to 22nd day of October, 1959 cannot be annulled u/s 5(iii) of the Act and it is only transfers made after that date are capable of annulment. The Revenue Authorities will keep this aspect of the matter in mind then they finally determine the ceiling area and the surplus, if any.

12. Having given my most anxious considerations to the submissions urged on behalf of the petitioners, I am of the view that they are devoid of any merit. The applications are dismissed accordingly, but in the circumstances of the case, there shall be no order as to costs.

Prabha Shanker Misra, J.

13. I agree with the conclusion that the contentions raised on behalf of the petitioners are devoid of any merit and the writ applications be dismissed. The contentions raised on behalf of the petitioners are validly rejected.

14. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus

Land) Act, 1961 (hereinafter referred to as the "Ceiling Act") has undergone several amendments particularly in the provisions relating to the definition of a landholder, fixing the period up to which a landholder may hold lands, categorisation of the lands and the adjudicatory process. The amendment Acts with which we are concerned in these cases are (i) The Bihar Act 1 of 1973, (ii) The Bihar Act 9 of 1973, (iii) The Bihar Act 22 of 1976 and (iv) The Bihar Ordinance No. 22 of 1982. Although the Bihar Act 1 of 1973 came into being and was published on 19-5-1973, it was made to operate with effect from the appointed day. Section 4 of the Ceiling Act as it originally stood laid down the Ceiling for possessing lands of particular categories, the lands being divided into 6 categories. The 1973 Amendment (Act 1 of 1973) substituted a new Section 4 with lower ceiling limit fixed for each category and the lands divided into only 5 categories. The original Act defined a person as landholder who held land for agriculture or horticulture. The amendment defined the landholder as a family including a person, his/her spouse and minor children- The Bihar Act 9 of 1973 further lowered the ceiling limit of certain categories of land. The Bihar Act 22 of 1976 introduced the definition of appointed day to mean the 9th day of September, 1970. Two new sections were introduced by this Act numbered as Sections 4A and 4B. Section 4A provided that where the ceiling area of land for any family on the appointed day has been determined by any order passed by the authority in accordance with the provisions of the Ceiling Act prior to the commencement of the Ceiling Act of 1973, the ceiling area of such family would be re-determined under the amended Act with reference to the appointed day, namely, the 9th day of September, 1970. Section 4B introduced a provision to avoid the effect of any judgment, decree or order of any Court on the determination made under the amended provisions of the Ceiling Act.

15 Mr. Kailash Roy, the learned Counsel for the petitioners advanced, a very spirited argument urging that a proceeding started before the 9th day of September, 1970 and concluded after the 19th May, 1973, will be one decided under the amended law and the same cannot be re-opened on the ground that the proceeding was one initiated under the unamended law. He has further urged that this should also apply to a determination made after 9-9 1970 but before 19-5-1973 because if by a fiction of law the amendment has been made retroactive the same fiction should protect an order made during the period the fiction has operated. He has supported his contention by the authority of a Bench decision of this Court in *Nalini Ranjan Singh v. The State of Bihar* (supra) where it has been held that a proceeding initiated under the parent Act and continued after the enforcement of the Amending Act, when finally disposed of would be one made under the amended law and a fresh proceeding would be barred under the principles of *res judicata*. According to him the view taken by another Bench of this Court only a couple of months latter in *Sheobachan Giri v. State of Bihar* (supra) is an apparent conflict with the view taken in *Nalini Ranjan Singh's* case. In *Sheobachan Giri's* case, as extracted in the judgment of Uday Sinha, J. the salient features of distinction between the original and amended provisions were

noticed by this Court and then held that after the amendments it was open to the authorities to start a fresh proceeding and to find out whether the landholders held lands in excess of the Ceiling area as prescribed under the Amending Act.

16. Although, on a plain reading, the two judgments appear to conflict but in my view there is no real conflict. If in a given case it is found that adjudication started under the unamended or the repealed law but was concluded under the amending or the repealing law and the nature of order is one which confirms to the requirements of the amended law, it can easily be said that the order made is one under the law in force and as such the proceeding has concluded under the existing law. In such a common law principle like the principle of res-judicata may be applied. The learned Judges who took the view that a fresh proceeding would be barred under the principles of res judicata if the proceeding initiated under the unamended law was concluded under the amended law. In Nalini Ranjan Singh's case were not invited to consider whether the determination of the ceiling limit was done in favor of a landholder i. e. a family as defined by the Amending Act or a landholder as defined prior to the amendment; the ceiling limit allowed to the landholder was one determined in accordance with the unamended provisions or in accordance with the amended provisions of the law and other like considerations. When this Court was invited to advert to these aspects in the case of Sheochand Giri, that is to say, to the basic or jurisdictional requirements making a fresh determination permissible, it found no conflict with the view in Nalini Ranjan Singh's case so as to make a reference to a Larger Bench. The question whether a fresh proceeding under the amended law will amount to reopening a concluded determination of the ceiling area and acquisition of surplus land of the landholder under the Ceiling Act, was also considered in Sheochand Giri's case.

17. I am in respectful agreement with the views of S. Sarwar Ali, J. that the proceeding under the amended law does not purport to reopen the decision arrived at in the earlier proceeding on the basis of the amendment. It also does not attempt to review that order. The order was a good and valid order when it was passed, but the landholder was different. The ceiling limit was different, the categorisation of land was different. The adjudication was altogether different as nothing under the amended law was attracted or noticed when the decision under the old law was taken, whether before or after the commencement of Bihar Act 1 of 1973, whether before or after the appointed day i.e. 9-9-1970 or the date of publication 19-9-1973. I am in respectful agreement with the views of Uday Sinha, J. and the reasons given by him in support of the said views.

18. To my mind, there is one more aspect of the matter. A proceeding under the ceiling law does not end merely by an order made by the competent authority. Its conclusion depends upon the final publication of the draft statement as provided u/s 11(1) of the Ceiling Act and even such a publication does not conclude the proceeding because the final publication of the acquisition of surplus lands is yet made u/s 15(1) of the Ceiling Act. The proceedings in either

of the cases before us had not concluded when a decision to proceed under the amended law was taken. It is obvious that on the enforcement of the amended law in the earlier proceedings under the unamended law were treated as non-est and rightly so because they ceased to be of any consequence. A determination in accordance with law in force was the only possible and proper course and it was rightly adopted by the authorities concerned. The principles of res judicata cannot be applied on the basis of some findings in a non-est proceeding.

19. All these arguments and discussions, however, to my mind are academic. Section 32B introduced by the 1982 Ordinance has to be applied to all cases in which there were some determinations and orders made but the final publication of the draft statement had not been made Sub-section (1) of Section 11 of the Ceiling Act. Whatever may be the position as to the effect of Section 4A and/or 4B of the Ceiling Act introduced by the Bihar Act 1 of 1973 as amended by Bihar Act 9 of 1973 and Bihar Act 22 of 1976, whether the impugned orders were one passed under the law in force or not, as there has been no final publication of the draft statement as required under Sub-section (1) of Section 11 of the Ceiling Act, all such proceedings stood abated. In that view of the matter, whether the previous order was one which was the order under the Act or the subsequent order was one which was the order under the Act is of no relevancy and/or consequence. For the reasons given in the judgment of Uday Sinha, J. with which I respectfully agree and the reasons that I have separately discussed, I agree with the conclusion.

20. The applications, are dismissed accordingly, but on the facts and the circumstances of the case, there shall be no order as to costs.