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**(2017) 02 AHC CK 0167**  
**In the Allahabad High Court**  
**Case No : Special Appeal No. 2081 of 2011**

Kaluwa

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

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**Date of Decision :** 07-02-2017

**Acts Referred:**

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 5(8)

**Citation :** (2017) 2 AILLJ 639

**Hon'ble Judges :** V.K. Shukla and Mrs. Sangeeta Chandra, JJ.

**Bench :** Division Bench

**Advocate :** D.S. Srivastava, Advocate, for the Appellants; C.S.C, for the Respondents

**Final Decision :** Dismissed

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## Judgement

1. Present Special Appeal is directed against the judgement and order dated 31.03.2011 passed by the learned Single Judge in Civil Misc. Writ Petition No. 2428 of 1995 (Kaluwa & others v. State of U.P. and others) wherein learned Single Judge has proceeded to dispose of the writ petition in question by refusing to set aside the order declaring and taking surplus land and order dated 12.12.1994 through which land was allotted to the allottee.

2. Brief background of the case in brief is that proceedings for declaration of surplus land under U.P. Imposition of Ceiling on Land Holdings Act, 1960 has been initiated against Laxmi Prasad proposing to declare 4.83 acres irrigated land as surplus. Prescribed authority vide order dated 03.10.1986 took view that there was no surplus land. State Government went up in appeal, bearing Appeal No. 717 of 1986-87 and said appeal was allowed on 05.04.1988 and an area of 11.56 acres irrigated land equivalent to 28.9 acres general land was declared as surplus. Said order has been subjected to challenge in Civil Misc. Writ Petition No.11263 of 1988 and said writ petition has been pending before this Court with an interim order dated 20.05.1988, whereas State Government has come forward with the case that possession has been taken on 11.05.1988. Aforesaid

land has been allotted to respondents no. 5 to 9 to the writ petition. This much is also clear that Civil Misc. Writ Petition No.11263 of 1988 had been dismissed in default on 12.09.2007. Thereafter, an application for recall of the order dated 12.09.2007 has been moved and said order has been recalled on 24.11.2010 and writ petition was restored to its original number, and during this period, petitioner-appellants filed Civil Misc. Writ Petition No. 2428 of 1995 (Kaluwa & others v. State of U.P. and others) before this Court with the following relief:-

(i) To issue a writ, order or direction in the nature of certiorari calling for the records of the case and to quash ex-party proceedings by which the plot no. 3825 M of the petitioners has been included while declaring surplus land of the respondent nos. 10 and 11 and the exparty allotment proceedings of plot No. 3825 M of the petitioners situated at village Bhaisaundha Tehsil Karwi, District Banda in declaring the land of the Respondent Nos. 10 and 11 as surplus by the respondent nos. 3 and entries dated 12.12.1994 made by Tehsil authorities in Khatauni records, entering the names of Respondents no. 5 to 9.

(ii) To issue a writ in the nature of mandamus directing the respondents No. 1 to 4 not to include the petitioners plot no. 3825 situated at Village Bhaisaundha Tehsil Karwi, District Banda in declaring the land of surplus land of the respondent no. 10 and 11 (transfer).

(iii) To issue a writ order or direction in the nature of mandamus directing the respondents no. 1 to 4 not to proceed with the allotment proceedings in Plot No. 3825 situated at village Village Bhaisaundha Tehsil Karwi, District Banda.

(iv) To issue a writ order or direction in the nature of mandamus directing the respondents not to dispossess the petitioners from plot no. 3825 situated at village Village Bhaisaundha Tehsil Karwi, District Banda.

(v) To issue any other writ, order or direction which this Hon"ble Court may deem fit and proper in the circumstances of the case.

(vi) To award the cost of the petition in favour of the petitioners.

3. Learned Single Judge has proceeded to turn down the request in question vide order dated 31.03.2011 and aggrieved petitioner-appellants are before this Court.

4. Sri Hare Ram Misra, Senior Advocate, assisted by Sri Daya Shankar Srivastava, Advocate submitted with vehemence that in the present case, earlier proceedings were nullity and petitioners-appellants ought to have been accorded requisite relief as claimed for in the body of the writ petition, in view of this present Special Appeal deserves to be allowed and request as has been claimed for in the writ petition be accorded.

5. Learned Standing Counsel on the other hand contended that present special appeal is not at all maintainable under Chapter-VIII Rule 5 of the High Court Rules, as proceedings in question are in pith and substance arising out of Ceiling proceeding that has been affirmed in appeal and writ petition is pending before

this Court, and coupled with this, it has been sought to be contended that learned Single Judge has rightly proceeded to make a mention that transaction that has been made in favour of the petitioner-appellants is void and as such no interference be made.

Chapter-VIII Rule 5 of the High Court Rules is being extracted below:-

5. Special Appeal:- An appeal shall lie to the Court from a judgement (not being a judgement passed in the exercise of Appellate Jurisdiction in respect of a decree or order made by a Court subject to the Superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgement, order or award (a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution or (b) of the Government or any Officer or authority, made or purported to be made in the exercise or purported exercise of Appellate or revisional Jurisdiction under any such Act of one Judge.

On the parameter that has been quoted above, this much is clear that special appeal will not at all lie in the circumstances as has been provided for under Chapter-VIII Rule 5 of the High Court Rules.

Chapter VIII Rule 5 "A special appeal will not lie in the following set of circumstances"

6. The exclusions, which have been specified in Rule 5, are:

"(i) A judgement passed in the exercise of the appellate jurisdiction in respect of a decree or order made by a court subject to the superintendence of the Court;

(ii) An order made in the exercise of revisional jurisdiction;

(iii) An order made in the exercise of the power of superintendence;

(iv) An order made in the exercise of criminal jurisdiction;

(v) An order made in the exercise of jurisdiction conferred by Articles 226 or 227 of the Constitution in respect of any judgment, order or award :

(a) of a tribunal, court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or Central Act, with respect to a matter contained in the State List or the Concurrent List to the Seventh Schedule of the Constitution; or

(b) of the government or any officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act."

7. After respective arguments has been advanced, at the first instance, we proceed to consider the issue of maintainability of appeal in question. Prayer that has been quoted above would go to show that prayer that has been made in the body of the writ petition is to quash the ex-party proceedings, by which plot No. 2825 M of the petitioner-appellants has been included while declaring surplus land of the respondents no. 10 and 11 and ex-party allotment proceedings of plot No. 3825 M has been sought to be assailed along with further action. Entire proceedings that has been assailed by the petitioner-appellants, in pith and substance, is nothing but co-lateral challenge to the proceeding that has been undertaken under U.P. Imposition of Ceiling on Land Holdings Act 1960. Fact of the matter is that proceedings under U.P. Imposition of Ceiling on Land Holdings Act 1960 has been initiated against original tenure holder, and in the said proceeding, in Appeal an area of 11.56 acres irrigated land equivalent to 28.9 acres general land has been declared as surplus and original tenure holders have challenged the same in Civil Misc. Writ Petition No.11263 of 1988. Petitioner-appellants are subsequent purchaser based on the sale deed of the year 1976 and 1979 and they are assailing the validity of the proceeding when allotment has been made in favour of private respondents in the year 1994, but at no point of time, petitioner-appellants in their turn have proceeded to assail the validity of the order dated 05.04.1988 passed in appeal wherein land has been declared as surplus.

8. Once such has been the factual situation and petitioner-appellants are contending that entire ceiling proceedings are nullity, then in pith and substance, it is the order passed by the Appellate Forum dated 05.04.1988 i.e. being assailed. In our considered opinion, under Chapter VIII Rule V of the High Court Rules, appeal is not at all competent and maintainable.

9. Even otherwise, petitioners-appellants are subsequent purchaser and accepted position is that transaction that has been entered in favour of petitioners-appellant is after cut of date i.e. 08.07.1973, as transaction has been of the year 1976, 1979 and 1983.

10. The Supreme Court in the case of "Rajendra Singh v. State of U.P." AIR 1999 S.C. 124 has held that sale deeds executed by the tenure holder after 08.06.1973 but during the pendency of the proceedings for determination of the surplus area would be void in view of Section 5(8) of the U.P. Imposition of Ceiling on Land Holdings Act 1960.

11. The said section is quoted below:-

S.5(8) Notwithstanding anything contained in sub-sections (6) and (7), no tenure-holder shall transfer any land held by him during the continuance of proceedings for determination of surplus land in relation to such tenure-holder and every transfer made in contravention of this sub-section shall be void.

Explanation - For the purposes of this sub-section, proceedings for determination of surplus land shall be deemed to have commenced on the date of publication of

notice under sub-section (2) of Section 9 and shall be deemed to have concluded on the date when an order in relation to such tenure-holder is passed under sub-section (1) of Section 11 or under sub-section (1) of Section 12, or as the case may be, under Section 13."

12. On the parameter of the provisions that has been quoted above, this much is clear that sale deed has been executed in favour of the petitioner-appellants after 08.07.1973 and the learned Single Judge is right at the point of time when he has proceeded to make a mention that transactions are void.

13. Much emphasis has been laid on the fact that tenure holder was entitled to get choice, and in view of this, as choice has not been extended, requisite relief in question ought to have been accorded. It is true that the order passed by the learned Single Judge, the learned Single Judge has proceeded to make a mention that it is not clear as to whether choice was given, but the fact of the matter is that, at no point of time, tenure holder has ever come forward to raise such plea that he ought to have been given choice.

14. Consequently, once the transaction in question is hit by Section 5 (8) of U.P. Imposition of Ceiling on Land Holdings Act 1960, then petitioner-appellants cannot claim as a matter of right of choice being executed by the tenure holder, in view of this, by all means, no relief can be given to petitioners-appellants.

15. With the above, present Special Appeal stands dismissed.