
(2011) 04 RAJ CK 0077

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3444 of 1989

Mool Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-04-2011

Acts Referred:

Constitution of India, 1950 — Article 300A
Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 — Section 12,
12(2), 12(3), 13, 15
Rajasthan Tenancy Act, 1955 — Section 15(2), 30B, 30E, 4(1), 5

Citation : (2011) 4 RLW 3531

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Rafiq, J.—This writ petition has been filed by petitioner-Mool Singh inter-alia with the prayer that a declaration be made that his agricultural holdings are not in excess of the ceiling area under the Rajasthan Imposition of Ceiling on Holding Act, 1973 (hereinafter be referred as the "Act of 1973") and/or under Chapter-III B of the Rajasthan Tenancy Act, 1955 (for short, "Act of 1955"). It has been further prayed that respondents be restrained from dispossessing the petitioner from the land in question pursuant to orders passed by the respondents-authorities under the Act of 1973 supra and to declare such orders illegal and quash the same and respondents be further directed to hold a fresh proceedings after giving opportunity of hearing to the petitioner and decide the matter anew in accordance with law. Any other order prejudicial to the petitioner passed during the pendency of the writ petition be declared illegal and quashed.

2. Factual matrix of the case is that one Bhanu Pratap Singh, former-Jagirdar of Dudu of Jaipur District died on 21/5/1966. He was survived by his mother Smt. Rasal Kunwar, adopted son Kuldeep Singh and adopted daughter Jayendra Kumari, who are successors of Bhanu Pratap Singh according to Hindu Succession Act. Smt. Rasal Kunwar, widow of late Shri Jawan Singh and mother

of Shri Bhanu Pratap Singh filed a suit for declaration before the Sub Divisional Officer Sambharlake. Said suit was decreed on 1/12/1971 and all the above referred to three legal heirs were held entitled to receive 1/3rd share each of the disputed land. The S.D.O. Sambharlake decided the ceiling case No.24/1971 on 6/12/1971 under Chapter-IIIB of the Act of 1955 and allowed all the above referred to three legal heirs entitled to retain 30 standard acres of land as independent unit and remaining land was declared surplus. It is claimed by petitioner that Smt. Rasal Kunwar executed a gift deed of her 1/3rd share (30 acres of land) in his favour on 9/4/1973. She also executed a Will in his favour on 18/12/1971 before coming into force the Act of 1973 w.e.f. 1/1/1973. The S.D.O. Sambharlake initiated fresh proceedings only against Kuldeep Singh, adopted son of Bhanu Pratap Singh, who was one of his three legal heirs under Act of 1973 and vide its order dated 25/9/1975 held that 1.35.5 acres of land was in excess of ceiling limit and passed an order of his dispossession from surplus land. Kuldeep Singh filed an appeal before the Additional Collector Jaipur thereagainst, which was dismissed vide order dated 7/2/1966. Further appeal filed by respondent No.4 - Kuldeep Singh under the Act of 1973 before the Board of Revenue was also dismissed by the Board of Revenue vide judgment dated 10/1/1977. The judgment of Board of Revenue was challenged before this Court in D.B. Civil Writ Petition No.336/1977 and the Division Bench dismissed the writ petition vide judgment dated 10/1/1977. Kuldeep Singh then filed special leave to petition before Supreme Court being S.L.P.(C) Appeal No.8719/1988, which too was dismissed vide judgment dated 13/9/1988 with liberty to him to file review petition before Rajasthan High Court. However, all the issues were left open to be raised if necessity arise. Kuldeep Singh thereafter filed review petition before this Court, being D.B. Civil Review Petition No.16/1989. Division Bench of this Court vide order dated 10/11/1989 dismissed the review petition. It is in the backdrop of these facts that the petitioner claiming to be legal heir of Smt. Rasal Kunwar, has approached this Court by filing present writ petition praying for the aforesaid relief.

3. Stand of the petitioner is that Smt. Rasal Kunwar gifted her 1/3rd share of land measuring 90 bighas and 19 biswas of lands to him by a gift deed and mutation in his favour was attested by the revenue authorities on 23/11/1977. It is claimed that petitioner for the first time came to know that his land has been declared surplus in excess of ceiling limit in the year 1988 when other persons came to take possession of the land on the basis of alleged allotment. Petitioner thereafter filed application accompanied by affidavit to the Collector Jaipur on 21/7/1988 requesting him not to proceed further and not to allow other persons to take possession of the land. Petitioner is even now in possession of the disputed land and the Patwari of halka while submitting his report dated 23/8/1988 to the Collector Jaipur has also reported that the land was still in possession of the petitioner. It was only thereupon the petitioner made enquiries and came to know that in the ceiling proceedings under the Act of 1973 against Kuldeep Singh alone, the S.D.O. Sambharlake has vide its order dated 25/9/1975

declared 135.1 standard acres of land surplus. Hence, this writ petition.

4. Shri K.K. Mehrishi, learned Senior Counsel appearing for the petitioner has argued that Smt. Rasal Kunwar, the predecessor-in-title of petitioner was already recorded as tenant of the disputed land as on 1/1/1973, which was the appointed date under the Act of 1973. The order passed by the S.D.O. Sambharlake dated 25/9/1975 under the Act of 1973 against Kuldeep Singh would not be binding on her or the petitioner. Ceiling proceedings in the Act of 1973 could have been drawn against her/him only after they were made parties and notice was served upon them. No opportunity of hearing was provided to the petitioner. Those proceedings were thus conducted in flagrant violation of the principles of natural justice. It is argued that executive authorities are seeking to forcibly dispossessing the petitioner from his property under the garb of allotting the same to a landless person under the Act of 1955. It is further stated that it is settled law that any right of a citizen cannot be taken away without resorting to law in an arbitrary and illegal manner. The State cannot dispossess a person without the due process of law even if he/she happens to be a trespasser. It is trite that no person can be condemned unheard of or penalized without providing opportunity of hearing. Minimum requirement of complying with the principles of natural justice have not been followed in the present case. When under the Act of 1955, it was held that Smt. Rasal Kunwar was entitled to 1/3rd of the share i.e. 30 acres of the land as an independent unit, the land could not have been thereafter declared surplus without any notice to her or her legal heir. The order u/s 15(2) to reopen an already decided cases under the Act of 1955 has not been passed by the State Government and the S.D.O. Sambharlake has on his own level is not competent to reopen the case. The State Government while passing such order u/s 15(2) of the Act of 1973, was under an obligation to issue notice to the person concerned.

5. Shri K.K. Mehrishi, learned senior counsel has placed reliance on judgments of the Supreme Court in Lachhman Dass Vs. Jagat Ram and Others, Urban Improvement Trust, Jodhpur Vs. Gokul Narain and another, and judgment of Punjab and Haryana High Court in Hoshiarpur Central Co-operative Bank Ltd., Hoshiarpur vs. Urmar Harmonium Reed Workshop C.I.S. Ltd. and others : AIR 1989 P&H 245 & 268 and argued that an order passed without hearing affected party would be nullity. He further placed reliance on the judgments of Supreme Court in Sabitri Dei and Others Vs. Sarat Chandra Rout and Others, and judgment of Madras High Court in V.S. Alwar Ayyangar Vs. Gurusamy Thevar, It is argued that judgment of Division Bench dated 26/2/1988 passed in D.B. Civil Writ Petition No.336/1977, Division Bench judgment dated 10/11/1989 passed in D.B. Civil Review Petition No. 16/1989 and order of Supreme Court dated 13/9/1988 passed in SLP (C) Appeal No.8719/1988 are liable to be treated per incuriam because they have been rendered without analyzing the statutory provisions. Reliance has also been placed on the judgments of Supreme Court in N.Bhargavan Pillai (dead) by N. Bhargavan Pillai (Dead) by Lrs. and Another Vs. State of Kerala, and para 21 of Nirmal Jeet Kaur Vs. The State of Madhya

Pradesh and Another, . Learned counsel for petitioner further argued that the S.D.O. Sambharlake in a partition suit vide decree dated 1/12/1971 declared Smt. Rasal Kunwar, Smt. Jayendra Kumari and Kuldeep Singh entitled to 1/3rd share each. Smt. Risal Kunwar or for that matter petitioner khatedar of 90 bighas and 19 biswa of land comprising of Khasra No.63 always remained in possession of the same, pursuant to order dated 6/12/1971 passed by S.D.O. Sambharlake was under the Act of 1955. Smt. Rasal Kunwar and her successor i.e. the petitioner, cannot therefore be ejected from the land in question in such a summary manner under the Act of 1973 The proceedings under the Act of 1973 be held afresh against them. It is argued that Article 300A of the Constitution of India guaranteed rights of a citizen not to be deprived of property save by authority of law. Since on 1/1/1973, notified date under the Act of 1973, Smt. Risal Kunwar was recorded khatedar of 1/3rd share of 1336 bighas 12 biswas of land comprised in Khasra No.236 of former village Mozamabad and present village of Dudu of District Jaipur. Unless a notice was given to Smt. Risal Kunwar under Sections 12(2) and 13 of the Act of 1973, proceedings in that Act could not be held. Order dated 6/12/1971 was passed by the S.D.O. under the Act of 1955 with reference to notified date 1/4/1966, whereby Smt. Risal Kunwar was held entitled to retain 30 standard acres of land. Accordingly, petitioner acquired khatedari rights of a tenant of 90 bighas 19 biswas comprised in land bearing Khasra No.63, Smt. Risal Kunwar was entitled to retain 1/3rd share of those lands. It is therefore prayed that writ petition be allowed.

6. Per contra, Shri G.K. Garg, learned Senior Counsel appearing for respondent No.4 has argued that once disputed land was declared surplus under the Act of 1973 and that order of the S.D.O. Sambharlake dated 25/9/1975 has been upheld by this Court and even by the Supreme Court, this writ petition would not be maintainable. This writ petition has been filed only with a view to frustrating the ceiling proceedings. Merely because petitioner-Moot Singh derived the right from Smt. Rasal Kunwar, he cannot get any benefit of collusive judgment and decree dated 1/12/1971 because the issue regarding excess/surplus land has attained finality. No right, title or interest accrues to the petitioner by gift -deed for the simple reason that Smt. Rasal Kunwar herself had no right to transfer any right in the land in question. It is argued that Chapter-IIIB of the Old Act was repealed by Rajasthan imposition of Ceiling on Agriculture Holdings Act, 1973, which in its Section 40 provides for repeal and saving and Section 15(2) provides for reopening of the cases. The lands in dispute were initially held by Bhanu Pratap Singh, who expired on 21/5/1966. Ceiling proceedings were initiated against Kuldeep Singh -respondent No.4 under Chapter-IIIB of the Act of 1955. As per report of the Tahsildar, Bhanu Pratap Singh held 835 acres of land as on 25/2/1958, which is equivalent to 342.5 standard acres of land. After considering various provisions the S.D.O. held that as many as 40 transfers recognizable and in the balance land thereof, kuldeep Singh himself, Smt. Jayendra Kumari daughter of Shri Bhanu Pratap Singh and Smt. Rasal Kunwar mother-in-law of Bhanu Pratap Singh were held entitled to equal shares as individual units.

Excluding the land for three units, remaining land was liable to be acquired by the decision of the S.D.O. dated 6/12/1971. Very same S.D.O. passed partition decree on the basis of the compromise on 1/12/1971. Matter was again decided by the authorized officer vide judgment dated 25/9/1975 under the Act of 1973, who held that Bhanu Pratap Singh died in the year 1966 and after his death, land was inherited by his adopted son Kuldeep Singh and his wife Smt. Sajjan Kumari and that with a view to frustrating the ceiling proceedings, a collusive compromise decree was obtained in 1971. If Bhanu Pratap Singh had died in 1966, why they kept silent for such a long time. According to the verification made by the Tehsildar office on 26/3/1970, total land holding, which was available with Kuldeep Singh was 300.16 bighas whereas, he was held entitled to retain only 54 acres of land and rest of the land measuring 135.01 acres of land was held liable to be acquired as surplus land. Appeal was preferred by Kuldeep Singh against the said order before Additional Collector, who dismissed the same vide judgment dated 7/2/1976. Thereafter, the Board of Revenue also dismissed the further appeal filed by him on 10/11/1977. Division Bench in its judgment dated 26/2/1988 rendered in D.B. Civil Writ Petition No.336/1977 (Kuldeep Singh vs. State of Rajasthan) while rejecting the writ petition of Kuldeep Singh - respondent No.4 noticed that the proceedings were re-opened u/s 15(2) of the Act of 1973 by order of Deputy Secretary to the Government dated 5/10/1978. Division Bench of this Court vide order dated 26/2/1988 also rejected the argument made by Kuldeep Singh that the proceedings under the Old Ceiling Law, which culminated in the judgment dated 6th December, 1971 of the Sub-divisional Officer became final and, therefore, proceedings for computation of ceiling area under the New Ceiling Law were barred on the principle of resjudicata. Division Bench upheld the finding of the Board of Revenue that the land in dispute was recorded in the name of Bhanu Pratap Singh, who expired in 1966 when it was recorded in the name of petitioner and his mother, the applicant did not think of the share of the sister and the aunt till 1/12/1971, the suit for partition was filed and allowed to be decreed as an attempt to defect the proceedings of the Act because sister and aunt could not have any share in the land recorded in the name of the applicant.

7. Shri G.K. Garg, learned senior counsel contended that the argument of Kuldeep Singh that the ceiling proceedings had attained finality under the Act of 1955 could not be re-opened under Act of 1973 was rejected by the Division Bench of this Court after considering provisions of Sections 4, 5 and 6 of the Act of 1973. The authorized officer held that Kuldeep Singh was holding an excess land therefore, proceedings u/s 11 of the New Act. It is argued that Kuldeep Singh approached the Supreme Court by filing S.L.P., which was dismissed however, opportunity was given to him to file review petition before this Court. Review petition was also decided vide judgment dated 10/11/1989 rejecting the argument that judgment of S.D.O. dated 6/12/1971 holding Kuldeep Singh, his sister and grand-mother entitled to 1/3rd Share each, would operate as resjudicata. Contention of the learned counsel for the petitioner that since

petitioner was not Served With any notice hence, he could not be deprived of his right, which he derived from Smt. Rasal Kunwar by way of gift deed; is liable to be rejected because he is bound by decision of this Court. Petitioner Mool Singh is actually harassing respondent No.4 and he wants to deprive him of his holding under the alleged gift deed executed by Smt. Rasal Kunwar in his favour. He has also been contesting the civil litigation claiming 1/3rd share of the property. 1/3rd share of Smt. Rasal Kunwar has not; been recognized by this Court. Such efforts made by him in the nature of this second inning of litigation is not sustainable. Learned counsel further argued that petitioner was not a necessary party to the ceiling proceedings because S.D.O. Sambharlake followed the procedure under the Ceiling Law. Possession of the excess land was taken over, which land has been allotted to land persons on 19/6/1976 and 30/6/1976. Para 9 of the ceiling order emphasis that Smt. Rasal Kunwar and Smt. Jayendra Kumari both were given liberty to file written. In fact, they submitted application before the S.D.O. Sambharlake. When the petitioner claims to have derived right from Smt. Rasal Kunwar, who herself was given opportunity therefore petitioner has no independent right and cannot be said to have been prejudiced.

8. Shri G.K. Garg, learned senior counsel further canvassed that according to Section 6 of the Act of 1973, the crucial date to determine excess land would be 26/9/1970 and whatever lands were declared surplus in the khata of Kuldeep Singh was liable to be acquired. Argument that partition after 26/9/1970 is not a transfer, is not acceptable in law on account of the deeming provisions contained in Section 6 because such transfer is intended to frustrate the ceiling proceedings and is not a bonafide transfer. This Court while dismissing writ petition categorically held that Judgment of partition obtained from S.D.O. dated 1/12/1971 was collusive act. It is further argued that after publication of draft statement u/s 12, authorized officer has taken into consideration objections received from interested person. Objections have to be submitted within 15 days from the date of service of notice. Authorized officer decided the objections on 25/9/1975 under the Act of 1973. It is not case of the petitioner that he did not receive any draft statement. Admittedly when the excess land was already taken possession of in 1976 and allotted to landless person, objection of the petitioner about not giving opportunity belatedly in the year 1989 is not only false but also not bonafide. When Smt. Rasal Kunwar through whom petitioner derived his rights has already filed application before the authorized officer, petitioner, who has stepped into her shoes, cannot claim any equity from this Court. It is argued that even if it is assumed that petitioner has not been served with the draft statement, then also he ought to have under sub-Section (3) of Section 12 filed objection, which admittedly he did not do and there is no explanation why he did nothing for the period from 1975 to 1989.

9. Shri G.K. Garg, learned Senior Counsel argued that rights of Smt. Rasal Kunwar have already been decided by the S.D.O. Sambharlake on 25/9/1975 and therefore she did not have right to gift the land in dispute because she was not having any share in such land and therefore the gift deed would be nullity.

Learned Senior counsel also cited the judgment of this Court in *Hardham Singh vs. State of Rajasthan* : 1982 RLW 649 and argued that computation of the ceiling area has to be made under the Act of 1973 as well as Act of 1955. On the basis of Division Bench judgment of this Court in paras 21, 22 and 30 in *Ram Ratan vs. State of Rajasthan* : 1982 RLR 939, learned counsel argued that Section 30-B contained in Chapter-IIIB of the Rajasthan Tenancy Act provides that the rights have to be determined existing on the notified date and it is not affected or influenced by subsequent decrees. Reliance was also placed on the judgment of this Court in *Mrs. Sumitra Kaur vs. Authorised Officer & Ors.* : 1977 WLR 505 : 1977 RLW 423, Division Bench judgment of this Court in *State of Raj. vs. Prithvi Singh & Ors.*(8) : 1986 RLR 32 : 1986 RLW 29 and *Kesa vs. The State of Rajasthan* : 1987 RLW 1. Lastly, learned counsel relied on the judgment of Supreme Court in *State of Maharashtra vs. Keshav Wamanrao Joshi and others* : AIR 1990 SC 2058 and argued that the Supreme Court in that case held that onus to prove that transfer made after the particular date, which in this court would be 26/9/1970, was bonafide and this onus has not been discharged in this case. It is denied that judgment of Division Bench is per incuriam. Learned counsel in this connection cited judgment of the Supreme Court in *Mayuram Subramanian Srinivasan Vs. C.B.I.*, It is therefore prayed that writ petition be dismissed.

10. Shri R.P. Singh, learned Additional Advocate General appearing for the State has argued that though he had initially filed his written statements supporting the case of writ petitioner acting as *amicus curiae* as per the directions of co-ordinate bench of this Court but in the course of arguments, he has submitted that he would rather now oppose the writ petition therefore he adopts the arguments made by Shri G.K. Garg, learned Senior counsel appearing for respondent No.4. He therefore prayed that writ petition be dismissed.

11. Having heard learned counsel for the parties and perused the material available on record, I have given my thoughtful consideration to the rival submissions and studied the case law cited on the subject.

12. Sheet anchor of the arguments advanced by the petitioner is that since Smt. Rasal Kunwar, mother of Bhanu Pratap Singh, who died on 21/5/1966 was held entitled to 1/3rd share of his land by declaration made by the S.D.O. Sambharlake vide judgment & decree dated 1/12/1971, along with other two legal heirs namely; respondent No.4 Kuldeep Singh, his son and Smt. Jayendra Kumari his sister as his heirs, which was duly recognized by the S.D.O. Sambharlake by his order dated 6/12/1971 passed under the Act of 1955, the S.D.O.-cum-Authorized Officer could not have passed order dated 25/9/1975 adverse to their interest without giving any notice either of them in proceedings initiated only against respondent No.4-Kuldeep Singh. This was done despite the fact that mutation was attested in their favour. This argument though outwardly appears to be appealing but on deeper examination, cannot be for very many reasons accepted. Application of principle of natural justice and requirement of

providing opportunity of hearing would always depend upon facts of a given case as per interpretation of the relevant provisions of law applicable in question.

13. According to the Scheme of the Act of 1973, the extent of permissible land in the hands of a person and surplus/excess land has to be determined with reference 26/9/1970, which is the crucial date. Any transfer made after that date and before 1/1/1973, are not recognizable being not bonafide and intended to defeat the provisions of the Act. In the same spirit, Section 5(f) of the Act of 1973 clearly provides that even if a person holding individual land after 26/9/1970 seeks to convert such land into a property belonging to joint Hindu family or throwing it into the common stock of the joint Hindu family, lands so converted shall still be deemed to be a land held by such person individually not by joint Hindu family for the facility of reference, Sections 5(f) and 6 of the Act of, 1973 are reproduced hereinbelow:-

5(f) Where in the case of a person being the member of joint Hindu family, any land held separately by such person, has, on or after the 26th day of September, 1970 or at any time thereafter, been converted by such person into property belonging to the joint Hindu family, through the act of impressing such land with the character of property belonging to the joint Hindu family or throwing it into the common stock of the joint Hindu family, then, the land so converted shall be deemed to be held by such person and not by the joint Hindu family.

6. Non-recognition of certain transfers-(1) Notwithstanding anything contained in any law for the time being in force, every transfer of land whether by way of sale, gift, exchange, assignment, surrender, bequest, creation of trust or otherwise made on or after 26th September, 1970, except a bona fide transfer made before 1st January, 1973, shall be deemed to have been made in order to defeat the provisions of this Act and shall not be recognised or taken into consideration in determining the ceiling area applicable to a person

A conjoint reading of those two provisions clearly show that every person of land after 26.9.1970, except a bonafide transfer made before 1.1.1973 shall be deemed to have been made in order to defect the provisions of the Act shall not be taken into consideration for determining the ceiling area applicable to a person. In *Mrs. Christine Pais vs. K.Ugappa Shetty*, AIR 1966 Mys 299 (303), the sale-deed executed by the direction of the court pursuant to a decree for specific performance was held to be a transfer by the court on behalf of the judgment-debtor and it was held that such sale deed has all the characteristics of a transfer inter vivos. This very question directly fell consideration of the Division Bench of this Court in *Ram Ratan supra*. In that judgment, it was held that a decree obtained after the notified date in Chapter-IIIB of the Act of 1955, which as per Notification of the State Government No.F.6(9) Rev/B/64 dated 11.2.1966, which u/s 30-E of the Act was fixed as 1.4.1966, cannot be taken into consideration for determining the surplus area of the land of a person. It was held that his rights are determined as existing on the notified date and that the ceiling area to which a person is entitled is not liable to fluctuation with the subsequent decrees or

increase in the number of the members of the family. Division Bench in taking this view was fortified from the judgment of Supreme Court in Raghunath Laxman Wani and Others Vs. The State of Maharashtra and Others,

Examining the matter from application of either of two dates i.e. 1/4/1966 and notified by the State Government as the appointed date u/s 30-E of the Act of 1955 as 26/9/1970, indicated in Section 6 of the Act of-1973, decree of partition, muchless when it was held to be a collusive decree obtained by a compromise between the parties, could not be recognized while determining the excess land in the hands of Bhanu Pratap Singh.

14. Under the Act of 1973, Sec. 30B of the Rajasthan Tenancy Act, 1955 was repealed by Sec. 40(1), which provides for repeal and savings, as under:-

40. Repeal and savings - (1) Except as provided in second proviso to sub-section (1) of section 4 and in sub section (2) of section 15 of this Act, the provisions of clause 6(A) of Section 5 and Chapter III-B of the Rajasthan Tenancy Act, 1955 are hereby repealed except in the Rajasthan Canal Project area wherein such, provisions shall stand repealed on the date on which this Act comes into force in that area." Section 15 of the Act of 1973 is reproduced hereinbelow:-

15. Power to re-open cases--(1)-Notwithstanding anything contained in any provision of this Act, if the State Government at any time within three years of the publication of the final statement u/s 13, is satisfied that, the ceiling area in relation to a person has been determined in contravention of the provisions of this Act, it may direct any officer subordinate to it to re-open a decided case and enquire into it and to determine the ceiling area and the surplus area afresh in accordance with the provisions of this Act.

(2) Notwithstanding anything contained in Section 40, if the State Government, at any time within three years of the commencement of this Act, is satisfied that the ceiling area in relation to a person as fixed under the law repealed by the said section has been determined in contravention of the provisions of such repealed law, it may direct any officer subordinate to it, to re-open a decided case and enquire into it and to determine the ceiling area and the surplus area afresh in accordance with the provisions of such repealed law.

Emphasis of the petitioner is on the provisions of Section 15(2), which provides that no such direction shall be issued unless a notice to show cause against the proposed action has been served upon the person concerned. Petitioner insists that since no notice was served upon him, he being the person concerned having inherited share of Smt. Rasal Kunwar, mother of Shri Bhanu Pratap Singh, was entitled to receive 1/3rd share of the disputed land. The order passed by the S.D.O.-cum-Authorized Officer, Sambharlake dated 25/9/1975 under the Act of 1973 and maintained upto the Supreme Court, would not be binding on him. This argument is founded on the decree of partition dated 1/12/1971 passed by the S.D.O. holding respondent No.4-Kuldeep Singh, son of Bhanu Pratap Singh, Smt. Rasal Kunwar, his mother and Smt. Jayendra Kumari, his daughter, entitled to

equal share, which is 1/3rd, in his property. This argument was noticed by the authorized officer when he passed fresh order under the Act of 1973 on 25/9/1975. In fact, perusal of the aforesaid order would show that the authorized officer was very much cognizant of the fact about the decree of partition dated 1/12/1971 but he rather accepted the argument of the Government representative that when Bhanu Pratap Singh had died in 1966 and his entire land was mutated in the name of his son Kuldeep Singh and Smt. Sajjan Kumari, wife of Kuldeep Singh, why no steps were taken by the other claimants to get mutation entries corrected in their names in the revenue records for a long period from 1966 to 1971. Even if what State has pleaded in its reply that the draft statement prepared u/s 12 was served upon the authorized officer concerned is not accepted, then also, the fact remains that petitioner himself could have come forward to join the proceedings by filing objections under the provisions of Section 12(3) of the Act of 1973, which envisages that objections can be filed, not only by those persons to whom the copy of the draft statement is served but also by any person interested in land. Petitioner thus cannot plead ignorance about these proceedings. The authorized officer also was not inclined to accept this argument because he held that the decree dated 1/12/1971 was a collusive decree. This clearly proved that the suit was filed only with a view to defeating the proceedings under the Ceiling Law.

15. The date 1/4/1966, notified as the appointed date u/s 30-E of the Act of 1955 assumes significance in the facts of the present case because it was on that date, that surplus land in the hands of Bhanu Pratap Singh was determined and on that date, he was holding such land in his own name as ex-Jagirdar of Dudu of Jaipur District and was still living. As per record, he expired on 21/5/1966 and it much thereafter when the ceiling proceedings under the Act of 1955 were started on the verge of culmination with collusive decree by way of compromise was obtained.

16. Argument that the S.D.O. was not competent to re-open the case of ceiling is liable to be rejected because Division Bench in its judgment dated 26/2/1988 rendered in D.B. Civil Writ Petition No.336/1977 (Kuldeep Singh vs. State of Rajasthan) while rejecting the writ petition of Kuldeep Singh respondent No.4 noticed at the proceedings were re-opened u/s 15(2) of the Act of 1973 by order of Deputy Secretary to the Government dated 5/10/1978. Division Bench of this Court vide order dated 26/2/1988 also rejected the argument made by Kuldeep Singh that the proceedings under the Old Ceiling Law, which culminated in the judgment dated 6th December, 1971 of the Sub-divisional Officer became final and, therefore, proceedings for computation of ceiling area under the New Ceiling Law were barred on the principle of resjudicata. Division Bench upheld the finding of the Board of Revenue that the land in dispute was recorded in the name of Bhanu Pratap Singh, who expired in 1966 when it was recorded in the name of petitioner and his mother, the applicant did not think of the share of the sister and the aunt till 1/12/1971, the suit for partition was filed and allowed to be decreed as an attempt to defect the proceedings of the Act because sister and

aunt could not have any share in the land recorded in the name of the applicant.

17. Contention that since Smt. Rasal Kunwar and Smt. Jayendra Kumari were recorded as khatedar tenant of the disputed land with respondent No.4 Kuldeep Singh on 1/1/1973, which was the appointed date under the Act of 1973, therefore the order passed by the authorized officer on 25/9/1975 under the Act of 1973 would not be binding upon the petitioner because he was not served with any notice of such proceedings, also cannot be accepted for the reason that in the facts of this case, apart from what has been noticed in the preceding para that the collusive decree dated 1/12/1971 was held to have : been obtained with the sole purpose of defeating the ceiling proceedings, the authorized officer in his order dated 25/9/1975 very much noticed the affidavit filed by Smt. Rasal Kunwar in those proceedings. Since petitioner claims to have acquired the right in the disputed land by way of gift deed from Smt. Rasal Kunwar, no prejudice can be said to have been caused to him by mere non-service of notice on him if Smt. Rasal Kunwar herself had come forward to file an affidavit before the authorized officer in the new ceiling proceedings. This is because, petitioner himself has no independent right to challenge the ceiling proceedings because he has stepped into the shoes of Smt. Rasal Kunwar. When she herself was not entitled to retain any share in the land, question of her transferring any right in such land by gift deed did not arise.

18. There is another interesting aspect to note that in the present case, the decree of the S.D.O. dated 1/12/1971, which has been held to be a collusive decree passed by the authorized officer in his order dated 25/9/1975 was passed just five days ago before the date on which the order was passed under the Act of 1955 by the very same S.D.O. on 6/12/1971 namely; Shri Narayan Sharma. Although, this fact may not be directly of much significance because Shri Narayan Sharma as S.D.O. while deciding the revenue suit of partition and passing the compromise decree, which has been held to be a collusive decree, was working in a different capacity than as authorized officer under the Act of 1955 but this fact assumes significance in view of the finding recorded by the authorized officer under the Act of 1973 that the collusive decree was obtained by the parties only with a view to defeating the ceiling proceedings. It is precisely for this purpose that ceiling proceedings were reopened by the Government as per the intention of the legislature manifest in Section 15(2) of the Act of 1973. Finding that the compromise decree was obtained with intention to defeat the ceiling proceedings has been upheld by the Additional Collector dismissing appeal filed by respondent No.4 on 7/2/1976, Board of Revenue dismissing his second appeal vide order dated 1/10/1977 and thereafter by the Division Bench of this Court vide judgment dated 10/1/1977 dismissing the writ petition, SLP filed by respondent No.4 dismissed by the Supreme Court vide order dated 13/9/1988 however, with liberty to him to file review petition before this Court, which too was dismissed by the Division Bench vide order dated 10/11/1989. Since the order passed by the authorized officer under the Act of 1973 has attained finality upto the Supreme Court, it cannot thus possibly be

reopened at the instance of the petitioner in the present writ petition, which has been filed belatedly in the year 1989.

19. Argument about the judgment rendered by this Court being per incuriam would not be binding upon the petitioner, cannot be accepted because a judgment can be said to be per incuriam only if it is rendered in ignorance of a statute or any binding authority and there is none in this case therefore judgment passed by the Division Bench dismissing the writ petition filed by respondent No.4, which was upheld by the Supreme Court dismissing the S.L.P., cannot be held to be per incuriam.

20. In view of what has been discussed above, I do not find any merit in this writ petition, which is accordingly dismissed.