

(1967) 12 AHC CK 0014
In the Allahabad High Court
Case No : Special Appeal No. 128 of 1966

Raja Yuveraj Datt Singh

APPELLANT

Vs

Prescribed Authority, Tahsil Lakhimpur and Others

RESPONDENT

Date of Decision : 08-12-1967

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10, 10(2),
12, 14(6), 44
Uttar Pradesh Imposition of Ceiling on Land Holdings Rules, 1961 — Rule 8

Citation : AIR 1968 All 305

Hon'ble Judges : R. Chandra, J;Lakshmi Prasad, J;Jagdish Sahai, J

Bench : Full Bench

Advocate : B.K. Dhaon, R.N. Shukla and P.C. Srimal, for the Appellant;

Final Decision : Allowed

Judgement

Jagdish Sahai, J.—This case has been laid before this Full Bench on a reference made by a Division Bench.

2. Raja Yuveraj Datt Singh of Oel is a Bhumidhar within the meaning of the U. P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as the U. P. Z. A. and L. R. Act) as also a tenure-holder of a large number of plots within the meaning of the U. P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the Act). He is said to have been possessed of 2510.96 acres of land. He made certain transfers., from the land held by him after the 20th of August 1959.

3. In connection with the proceedings under the Act, admittedly he filed no statement u/s 9 of the Act. The Prescribed Authority proceeded against him u/s ,10 of the Act and preferred a statement. A notice in C. L. H. Form 4 was issued to Raja Yuveraj Datt Singh who filed objections to the statement and stated clearly in his objections that he wanted to retain plots situate in village Oel, in his ceiling area. This objection was rejected and Raja Yuveraj Datt Singh

was allotted land in villages Sunsi and Barter.

4. Raja Yuveraj Datt Singh's appeal was dismissed and the order of the Prescribed Authority was upheld by the District Judge, Kheri. Thereafter he filed writ petition No. 296 of 1965 in this Court. This writ petition was dismissed by B. N. Nigam, J., on 21st of April, 1966. This led to the filing of the instant special appeal against the judgment of B. N. Nigam, J. dated 21st of April, 1966,

5. The Prescribed authority dealt with the question of the choice given by Raja Yuveraj Datt Singh in the following words :--

"The objector wants to retain certain plots of village Oel to be included in his Ceiling area. He has, however, made transfers of more than 40.00 acres of land after 20-8-59, and in case the transferred area is to be treated as his Ceiling area, he will be left with no land and even some of the other transfers may have to be taken into consideration whether their land should or should not be declared surplus. It is but fair that 40.00 F. Q. acres of land permissible to the tenure holder as ceiling area should consist of the land transferred after 20-8-59 and such transferred land as cannot be declared Ceiling area, should be included in the surplus area. His choice for retaining specific plots cannot therefore, be adhered to".

6. Before B. N. Nigam, J., the following submissions were made on behalf of Raja Yuveraj Datt Singh :--

1. That the petitioner (Raja Yuveraj Datt Singh) having indicated his choice of the land he wanted to retain within the ceiling area, the Prescribed Authority could not reject his choice;

2. That the land transferred by the petitioner (Raja Yuveraj Datt Singh) could not be allotted to him as it was no longer in his possession within the meaning of Section 5 (2) of the Act.

3. That the petitioner was entitled to 40 acres of fair quality land and inasmuch as the land which he had already transferred has been allotted to him, he has not been given 40 acres of land.

B. N. Nigam, J., repelled all the three submissions of the learned counsel and dismissed the writ petition as stated above.

7. The special appeal came up for hearing before a Division Bench consisting of two of us (Jagdish Sahai and R. Chandra, JJ.). The Division Bench referred the whole case to the Full Bench because it was of the opinion that the decision of this Court in Kali Prasad v. State of Uttar Pradesh 1964 All LJ 896, the correctness of which was challenged by Mr Dhaon. may require re-examination.

8. In 1964 All LJ 896 (supra), it was held by Desai, C. J., and R. S. Pathak, J., that whereas a tenure-holder can insist on his choice if he files a statement u/s 9 of the Act, he has no such right when proceedings are taken u/s 10 and decided u/s 12 of the Act, for in that case, he can give a choice but that is not binding on

the Prescribed Authority. It was also held in the aforesaid case that a part of Rule 8 and C.L.H. Form 4 is ultra vires the Act.

9. Rule 8 of the rules framed under the Act reads :--

"8. As soon as may be, after the expiry of 30 days from the date of Publication of the general notice in C. L. H. Form 1 in the official gazette, the Prescribed Authority shall cause to be served upon every tenure-holder, who. has failed to submit the statement in C. L. H. Form 2 or has submitted an incomplete or incorrect statement, a notice in C. L. H. Form 4 together with a copy of the statement in C. L. H. Form 3 prepared under Rule 6 calling upon him to show cause within a period of 15 days from the date of service of the notice why the aforesaid statement be not taken as correct".

10. C. L. H. Form 4 reads :--

"C. L. H. Form 4.

(See Rule 8)

Form of notice u/s 12 (2) of the Imposition of Ceiling on Land Holdings Act, 1961 (U. P. Act 1 of 1961).

To

Name or tenure-holder with parentage and address

Whereas you have failed to submit a statement have furnished incomplete/ incorrect statement in respect of all your holdings in the State of Uttar Pradesh with all the required particulars within the time mentioned in the notice in C. L. H. Form I, published u/s 0:

And whereas the statement of holdings held by you in the State on January 3, 1961, proposed ceiling area applicable to you and the proposed surplus land has been prepared under Sub-section (1) of Section 10, it is sent to you herewith and you are hereby called upon to show cause within a period of 15 days from the date of service of this notice why the said statement be not taken as correct.

"In case the land proposed to be included in the ceiling area applicable to you, as indicated in Cols. 3 to 7 of Part C of C. L. H. Form 4, is not acceptable to you, you should file an objection specifying your own choice of the land (giving the same details as in the columns referred to above) that you want to retain within the ceiling area applicable to you."

In calculating the proposed selling area applicable to you those members of your family who also happen to be members of any other family have not been treated as members of your family. In case you want any such member to be included in your family you should specifically indicate the same in your objection and enclose the option of such member to this effect.

On your failure to dispute the correctness of the statement and/or to indicate

your choice of the land to be retained by you in my Court", within the time allowed, the aforesaid statement shall be treated as final and ceiling area applicable to you and surplus land shall be determined accordingly.

Given under my hand and seal of the Court this day of..... 196.

Seal.

Signature of the Prescribed Authority of the Sub-Division".

(Underlined (in single quotation marks in this report--Ed.) by me.)

11. In the instant case admittedly a notice under Rule 8 was served upon Raja Yuveraj Datt Singh in C. L. H. Form 4. In the third paragraph of this notice it has been clearly stated that if the form was not acceptable to Raja Yuveraj Datt Singh, he should file an objection specifying his own choice of the land, giving the same details as in the columns referred to above, that he wants to retain within the ceiling area applicable to him. It is the admitted case of the parties that it was in compliance with this notice that he submitted his objections u/s 10 of the Act. This rule was later on repealed, but was in existence at the time when the notice was served upon Raja Yuveraj Datt Singh and for our purposes its existence has to be accepted.

12. Before us the following two submissions have been made :--

1. That on a harmonious reading of the relevant provisions of the Act and the Rules it must be held that the choice given by Raja Yuverja Datt Singh in his objections was binding upon the Prescribed Authority and the view of the learned single Judge as also of the appellate and the Prescribed Authority is wrong.

2. That in any case even if it be held that the Prescribed Authority and the appellate authority had a discretion in the matter, their orders are liable to be set aside on the ground that they proceeded on irrelevant considerations and on grounds which are wholly extraneous to the Act.

13. In order to understand the correct meanings of Sections 9, 10 and 12 of the Act which require interpretation at our hands, it is necessary to have a bird's eye view of the scheme of the Act as disclosed by its material provisions.

13-A. The long title of the Act reads : --

" An Act to provide for the imposition of ceiling on land holdings in Uttar Pradesh and certain other matters connected therewith".

The Preamble of the Act reads :--

"Whereas it is necessary in the interest of the community to ensure increased agricultural production and to provide land for landless agricultural labourers and for other public purposes as best to subserve the common good;

And whereas a more equitable distribution of land is essential;

And, wherefore, it is expedient to provide for the imposition of ceiling on land holdings in Uttar Pradesh for the aforementioned purposes;

It is hereby enacted In the Eleventh Year of the Republic of India as follows :"

Section 4 of the Act provides for the manner in which ceiling area shall be determined. Section 5 of the Act reads :--

"5. Imposition of ceiling of existing land holdings-

(1) As and from the date of enforcement of this Act no tenure-holder shall, except as otherwise provided by this Act, be entitled, to hold an area in excess of the ceiling area applicable to him, anything contained in any other law, custom, or usage for the time being in force, or agreement, to the contrary notwithstanding.

(2) In determining the ceiling area applicable to a tenure-holder at the commencement of this Act any transfer or partition of land made after the twentieth day of August, 1959. "which but for the transfer or partition would have been declared surplus land" under the provisions of this Act, shall be ignored and not taken into account.

(3) The provisions of Sub-section (2) shall have no application to-

(a) a transfer in favour of the State Government;

(b) a partition under the U. P. Consolidation Holdings Act, 1953, (U. P. Act V of 1953:

(v) a partition of the holding of a Joint Hindu Family made by a suit or proceeding pending on twentieth day of August, 1959".

(Underlined (in single quotation marks in this report--Ed.) by me).

Sections 6, 7 and 8 of the Act provide for exemptions of certain class of land from the imposition of ceiling. Section 9 requires a general notice to be issued and reads:

"9. General notice to tenure-holder holding land in excess of ceiling area for submission of statement in respect thereof--As soon as may be, after the date of enforcement of this Act. the Prescribed Authority shall, by general notice, published in the official Gazette, call upon every tenure-holder holding land in excess of the ceiling area applicable to him on the date of enforcement of this Act, to submit to him within thirty days of the date of publication of the notice, a statement in respect of all his holdings in such form and giving such particulars as may be prescribed. The statement shall also indicate the plot or plots for which he claims exemption and also those which he would like to retain as part of the ceiling area applicable to him under the provisions of this Act".

Section 10 of the Act provides for the notice to tenure-holder who fails to submit a statement or files an incomplete or incorrect statement u/s 9 of the Act. It

reads:

"10. Notice to tenure-holders failing to submit a statement or submitting an incomplete, or incorrect statement:--

(1) In every case where a tenure-holder fails to submit a statement or submits an incomplete or incorrect statement, required to be submitted u/s 9, the Prescribed Authority shall after "making such enquiry as he may consider necessary", either by himself or by any person subordinate to him cause to be prepared a statement containing such particulars as may be prescribed. The statement shall in particular indicate the land, if any, exempted under Sections 6 and 7 and the plot or plots proposed to be declared as surplus land.

(2) The Prescribed Authority shall thereupon cause to be served upon every such tenure-holder in such manner as may be prescribed, a notice together with a copy of the statement prepared under Sub-section (1) calling "upon mm to show cause within a period specified in the notice, why the statement be not taken as correct. The period specified shall not be less than ten days from the date of service of the notice"".

(Underlined (in single quotation marks in this report--Ed.) by me).

Section 11 of the Act deals with the determination of surplus land where an objection is filed. Section 12 of the Act deals with the determination of the surplus land by the Prescribed Authority where an objection is filed and reads:

"12. Determination of the surplus land by the Prescribed Authority where an objection is filed :--

(1) Where an objection has been tiled under Sub-section (2) of Section 10 or under Sub-section (2) of Section 11, or because of any appellate order u/s 13, the Prescribed Authority shall, after affording the parties reasonable opportunity of being heard and of producing evidence, decide the objections after recording his reasons, and determine the surplus land.

(2) Subject to any appellate order u/s 13, the order of the Prescribed Authority under Sub-section (1) shall be final and conclusive and be not questioned in any Court of law".

(Underlined (in single quotation marks in this report--Ed) by me).

Section 14 of the Act deals with the acquisition of surplus land. The relevant portions of it read :--

"14. Acquisition of surplus land :--(1) The Prescribed Authority shall (i) in case, where the order passed under Sub-section (1) of Section 11 has become final; or

(ii) in case, where no appeal has been preferred u/s 13, after the expiry of the period of limitation provided therefore or

(iii) in case, where an appeal has been preferred u/s 13. after its decision; notify

in the official Gazette the surplus land determined under "Sections 11, 12, or 13, as the case may be.

(2) As from the beginning of the date of the notification under Sub-section (1) all such surplus land shall stand transferred to and vest. except as hereinafter provided, in the State free from all encumbrances and all rights, title and interest of all persons in such land shall, with effect from such date, stand extinguished"

(Underlined (in single quotation marks in this report--Ed.) by me).

Section 19 of the Act provides for the preliminary publication of the Draft Compensation Assessment Roll. Section 20 of the Act provides for procedure in cases where no objection is filed. Section 21 of the Act deals with the manner in which the objections to compensation roll shall be disposed of.

14. It is clear from the long title and the preamble of the Act that object of the Act is only to impose ceiling on land holdings in Uttar Pradesh. It is also clear from its provisions that a tenure-holder does not cease to be a "Bhumidhar" nor does he lose the rights he has under the U. P. Z. A. and L. R. Act including the right to deal with his land as he likes merely because the Act applies to his case. The Act does not take away any rights of a Bhumidhar but only restricts the area he can hold. Clearly it does not deal with the rights of tenure-holders in the land they hold. Such matters are beyond its scope and are the exclusive preserve of the U. P. Z. A. and L. R. Act.

It is not the scheme of the Act that no sooner a notification is issued u/s 9 of the Act, the tenure-holder loses dominion over his land, and control over it stands transferred to the State which gives 40 acres or such other area as is permissible under the Act out of it to the tenure-holder as his "ceiling area". Clearly the scheme of the Act is that the tenure-holder remains the owner (Bhumidhar) of the entire land held by him retaining with him the entire bundle of rights until a notification is issued u/s 14 of the Act Section 14 (2) of the Act provides that it is only from the date of the notification under Sub-section (1) that the surplus land shall stand transferred to and vest in the State. The rights, title and interest of the tenure-holder even in respect of the surplus land stand extinguished only from the "date of the notification u/s 14 of the Act.

This would show that until the notification under Section 14 (1) is issued, the tenure-holder retains all his rights, title and interest in the land including the surplus land, the only condition being that he cannot transfer any portion of it after 20th of August 1959. The stage of proceedings under Sections 10 and 12 of the Act is much earlier in time than the notification issued u/s 14 (1). Consequently it is logical and reasonable to hold that a tenure-holder retains complete dominion and control over the entire land even after proceedings under Sections 10 and 12 have been initiated or even completed.

15. It is elementary that the right of a person to hold and enjoy his property and deal with it as he likes cannot be destroyed or taken away except by an express

legislative enactment. A Bhumidhar is a proprietor for all practical purposes. He is free to retain such land as he wants to and transfer such as he does not want. The right to choose the land he would like to retain vests in him by virtue of being the Bhumidhar of the land. The provisions of the U. P. Z. A. and L. R. Act are categorical on this point. There is nothing in Section 10 or Section 12 of the Act to show that the tenure-holder loses dominion, effective control and rights incidental to ownership over his land including what would later on become the surplus (sic) at the stage of proceedings under those provisions. It is clear from Sub-section (2) of Section 14 that the entire bundle of rights that a tenure-holder has, as also his title and interest in the land, remain intact with him until the notification u/s 14 (1) of the Act has been issued. Deprivation of right, which is so fundamentally incidental to the exercise of the rights of a tenure-holder like the one to choose his own plots, cannot be assumed. There must be compelling reasons for depriving him of this right.

16. It is true that Section 9 of the Act provides that in the statement prepared by the tenure-holder, he can indicate his choice of plots. If we were to go by the letter of this provision, we would find nothing in it which compels the Prescribed Authority to accept the choice. The right to choose land for his retention flows to the tenure-holder not from the provisions of Section 9, but from the right of ownership and dominion that he has in the land being his Bhumidhar. What is provided for by Section 9 in respect of the indication of choice by the tenure-holder is given to him also by Section 10 read with Rule 8. Once Section 10, Rule 8 and C. L. H. Form 4 are read together, it becomes clear that the tenure-holder has been given a right to indicate his choice similar to the one given to him u/s 9 of the Act. For the proposition that the choice given by the tenure-holder in the statement prepared u/s 9 of the Act is binding upon the Prescribed Authority, *Desai, C. J. and Pathak, J., in 1964 All LI 896 (Supra)*, did not derive support from the language of Section 9 or any other provisions of the Act, but relied on principle of inference. They observed :--

"Section 9 of the Act requires the tenure-holder to indicate the plots which he would like to retain as part of his ceiling area, but does not lay down that the Prescribed Authority is bound to include them in his ceiling area so far as is legally possible. There is no provision laying down how it should deal with this choice of the tenure-holder, but we are prepared to concede that it is binding upon it so far as permitted by the law. Section 11 lays down how the statement submitted by the tenure-holder in response to the general notice is to be dealt with. Since the Act and the Rules do not lay down the principles to be followed for including a plot within the ceiling area or within the surplus area it may be inferred that the choice exercised by the tenure-holder is to be accepted by the Prescribed Authority. The prescribed authority would have no ground for rejecting his choice and would therefore be bound to accept it"

If Section 9 of the Act can be interpreted on the basis of inferences from the scheme of the Act, I do not see what objection there can be to read Sections 10

and 12 in the light of and subject to the rights which a tenure-holder has in his land and of which he has not been deprived by the Act.

17. Section 10 requires the Prescribed Authority to make an enquiry. It also requires him to call upon the tenure-holder to show cause within a period specified in the notice why the statement be not taken as correct. The last line of Sub-section (2) of Section 10 of the Act provides that the period specified shall not be less than ten days from the date of service of the notice. Section 12 clearly provides that the Prescribed Authority shall give the parties reasonable opportunity of being heard and of producing evidence before deciding his objection. It also requires him to record his reasons.

18. Reading Sections 10 and 12 of the Act together, it is clear that the Prescribed Authority must give a reasonable notice to the tenure-holder to show cause against the statement prepared u/s 10. It is also clear that the Prescribed Authority must make an enquiry and that he must give a reasonable opportunity to the parties of producing evidence and of being heard. Not only that, the law requires the Prescribed Authority to give reasons for his decision. From all this it follows that, the objections have got to be decided objectively in accordance with law and on the basis of the evidence on the record and the Prescribed Authority cannot deal with them subjectively as he likes. There being nothing in Section 10 or 12 or any other provision of the Act, taking away the right of the tenure-holder to choose his plots, the request of the tenure-holder as disclosed in his objection for certain plots being included in his ceiling area can only be rejected by the Prescribed Authority for reasons which have behind them, the support of law. The Prescribed Authority cannot ignore the circumstance that the tenure-holder has a right of dominion and possession over his plots and that it is a right incidental to his ownership of the plots that he can choose those which he would like to retain within the limit of 40 acres allowed to him by the Act.

The mere fact that u/s 12 of the Act the Prescribed Authority has been given the power and the jurisdiction to decide the objections does not mean that he has with him the power of over-riding the clear law that a tenure-holder can deal with his property as he likes, subject to the limitations imposed upon the exercise of such rights by law. The right to choose his plots flows from the right that he has in land as a tenure-holder (Bhumidhar). An authority who has been given the power to decide a matter under a statute can only decide it according to the law. The power to decide does not include the power to decide in derogation of a legal right. The power u/s 12 is not discretionary. The law does not confer on the Prescribed Authority the discretion to allot whichever plots he likes. Such a power cannot be assumed. It must be expressly provided (or. Consequently, unless it can be shown that there is anything in Section 10 or 12 or any other provision of the Act to the effect that a tenure-holder loses his right to choose his plots, it cannot be assumed that he has lost such a right.

19. In fact, I see no difference, so far as the matter of choice is concerned, between Section 9 on the one hand and Section 10 read with Rule 8 and C. L. H.

Form 4 together on the other.

20. It has been contended by the learned Standing Counsel that if a tenure-holder does not prepare a statement u/s 9, he loses the right to insist on his choice. This argument is based only on an assumption which is not supported by the language of Section 10 or 12 or any other provision of the Act. In fact, the argument introduces an element of a penal action against the tenure-holder. Properly analysed, the argument is that inasmuch as the tenure-holder defaulted to prepare a statement u/s 9, a penal consequence is visited upon him and he is deprived of his right of choosing the plots that he would like to retain in his ceiling area. The visitation of such penal consequences cannot be assumed or merely interred. They must be provided for clearly either in express terms or by necessary implication.

21. The words underlined (Printed in single quotation marks in this report -- Ed.) by us while reproducing Section 5 of the Act also show that the land transferred by a tenure-holder after 20th of August 1959 would become surplus land. The words used are "which but for transfer or partition would have been declared surplus land" This means that the land which a tenure-holder does not want to retain must be included in the surplus land. This implies that the tenure-holder can choose which land to retain and which to surrender as surplus land.

22. It has been contended on behalf of the State that if the choice of the tenure-holder is binding on the Prescribed Authority, nothing remains for him to decide. This argument is not correct. In the first place, objections may be in respect of other matters also and a decision on them may be required at the hands of the Prescribed Authority. Secondly, even with regard to the choice regarding the plots the question for decision may arise whether the plots chosen constitute an area larger than what is due to the tenure-holder under the Act.

23. It has also been contended that Section 10 requires a notice showing cause against the correctness of the statement prepared under that section. The argument is that the word "correctness" relates only to factual correctness and not to correctness in respect of propriety and legality. The expression "show cause usually envisages an opportunity of being heard and of leading evidence. In any case. Section 12 is clear that the opportunity is to extend not only to produce evidence, but also to give a reasonable hearing to the parties. The Prescribed Authority is required to write out a speaking and reasonable order. The tenure-holder has been given the right to indicate his choice. (See Section 10, Rule 8 and C L. H. Form 4). His rights as Bhumidhar under the U. P. Z. A. and L. R. Act are not affected by any provision of the Act. That being the position, it is clear that the objections can travel much beyond the factual correctness of the statement and by means of them correctness of the statement in respect of propriety and legality can also be challenged. In fact, this position has been accepted even in Kali Prasad's case 1964 All LJ 896, for it has been clearly stated therein is follows :--

"A tenure holder"s right to show cause why the statement prepared u/s 10 be not taken as correct, may include a right to select the land to be included in his ceiling area; he can show that the land selected by the Prescribed Authority for being declared as surplus land was not properly selected and may suggest other land to be selected in its place". The learned Judges then held :--

"It is not bound to accept his choice without being satisfied that the land selected by itself for being declared as surplus land was not the proper land to be so declared".

With great respect, I am unable to agree with this view. The learned Judges have not said as to what would be the test or the consideration, on the basis of which the Prescribed Authority would Act. They have not mentioned the legal provision under which the tenure-holder, who is also a "Bhumidhar", loses his right of choosing the land he would like to hold. I would also like to point out that if the provisions of Sections 9 and 10 are properly analysed, there is no difference in them with regard to the right of the tenure-holder to choose his plots. Even Section 9 does not say that the choice of the tenure-holder is binding on the Prescribed Authority. It only says "the statement shall also indicate the plot or plots which he would like to retain as part of the ceiling area". This would indicate that he can give his choice. Section 10 says "the Prescribed Authority shall thereupon cause to be served.....a notice together with a copy of the statementcalling upon him to show cause..... why the statement be not taken as correct .

Desai, C. J, and Pathak, J. have in Kali Prasad"s case 1964 All LJ 896, clearly held that the result of issuing such a notice is to provide the tenure-holder an opportunity of specifying the plots he would like to retain. The result therefore is that both u/s 9 and Section 10 a tenure-holder can indicate his choice. The only difference is that whereas u/s 9 he could do so by means of the statements, u/s 10 he would do so by means of objections.

The question, therefore, that arises is whether there is any judicial ground for the view that even though Sections 9 and 10 of the Act only permit the indication of the choice of plots by the tenure-holder without requiring its acceptance by the Prescribed Authority, if a choice is made u/s 9 it is binding on the Prescribed Authority but if it is made u/s 10 it is not so binding. The use of the words "calling upon him to show cause..." in Section 10 as much provide an opportunity for indicating the choice of the plots as the words "the statement shall indicate the plot or plots. ." occurring in Section 9 of the Act.

In fact, the opportunity u/s 10 is more specific than the one u/s 9 for, under the former section, notice is issued to the tenure-holder personally, under the latter section the notice is only a general one. I, therefore, see no good ground for making a distinction between the acceptance of a choice u/s 9 and the one u/s 10 of the Act. In my opinion, on the basis of the law that a "Bhumidhar" can deal with his land as he likes, it "must be held that even if the choice is made u/s 10,

it is binding on the Prescribed Authority. Section 10 does not say that the choice of the tenure-holder shall not be binding on the Prescribed Authority.

24. I would like to emphasise that there is nothing in the Act in the shape of statutory provisions to guide the Prescribed Authority in choosing which land to include in "ceiling area". If the law intended that he could ignore the choice of the tenure-holder, it would have laid down principles on the basis of which the request could be rejected. The legislature could not have given arbitrary powers to the Prescribed Authority to deal with the land as he liked. A naked and uncontrolled power to include whichever land the Prescribed Authority desires in the "ceiling area" of a tenure-holder would be clearly unconstitutional and it is well settled that all attempts should be made not to so interpret an Act or a provision as to make it unconstitutional. It was not necessary to provide in Section 9 or Section 10 of the Act that the choice of the tenure-holder would be binding on the Prescribed Authority because the right to choose the plots is incidental to the right of a Bhumidhar tenure-holder and what is provided for in the U. P. Z. A. and L. R. Act need not have been provided for in the Act specially when the Act did not curtail the rights conferred by the U. P. Z. A. and L. R. Act.

25. It cannot also be over emphasised that the Act is not confiscatory in its nature and its scheme is not to destroy rights that a tenure-holder has in his land but to acquire only such land as is surplus. Again, with great respect to the learned Judges who decided Kali Prasad's case. 1964 All LJ 896, I am unable to hold that any part of Rule 8 or C. L. H. Form 4 is ultra vires. Neither Rule 8 nor C. L. H. Form 4 provides that the choice of the tenure-holder is binding upon the Prescribed Authority. The view that it is binding does not rest on Rule 8 or C. L. H. Form 4 but on the rights of the tenure-holder as a Bhumidhar. All that Rule 8 and C. L. H. Form 4 provides is that the tenure-holder can indicate his choice and the learned Judges in Kali Prasad's case 1964 All LJ 896, have themselves held that such a choice can be indicated. Consequently, it is difficult to see how the rule and form can be held to be ultra vires. Besides. Section 44 (1) clearly confers the power to "make rules for carrying out the purposes of this Act" Rule 8 and C. L. H. Form 4 are needed to carry out the purpose of the Act. Such a rule and form is necessary for carving out "ceiling area" and "surplus land".

26. It would be a mistake to think that Section 10 was enacted as a penal provision to punish a tenure-holder who did not file a return u/s 9 of the Act, by taking away his rights of choosing the land that he would like to be included in his ceiling area. Section 10 had been enacted for the same purpose for which Section 9 was enacted, that is, to provide a procedure through which the ceiling area would be carved out and the surplus land declared. Whereas Section 9 dealt with the procedure to be followed in a case where a tenure-holder voluntarily filed a statement, Section 10 provided for the alternative method in a case where the tenure-holder did not file a statement u/s 9 of the Act. The purpose of the two provisions is the same. The necessity for two provisions arose to cover

different circumstances arising out of the filing of a statement by the tenure-holder and his not filing the one u/s 9 of the Act. Section 10 is a procedural provision which cannot and does not take away the vested rights of a tenure-holder of choosing the plots that he would like to retain in his ceiling area. Such a right is a vested and substantive right which could not be destroyed by a mere provision of procedure assuming that Section 10 by searching it could permit such a destruction. (We have held to the contrary).

27. 1 now deal with the second submission of the learned counsel. From the scheme of the Act it is clear that there are only two parties before the Prescribed Authority, that is, the tenure-holder and the State. The transferees are not parties before it and the Prescribed Authority has no jurisdiction to take into consideration their rights or to determine them. It is also clear that the Prescribed Authority is not a Court. It has no right to adjudicate upon the civil rights of a party. Section 14 (6) of the Act clearly provides that the Prescribed Authority or the District Judge as the case may be shall accept any decision of a Court of competent jurisdiction in respect of the rights of the parties.

28. I have extracted from the judgment of the Prescribed Authority the paragraph that deals with this matter. The Prescribed Authority has said "the objector wants to retain certain plots of village Oel to be included in his ceiling area. He has, however, made transfers of more than 40.00 acres of land after 20-S-59, and in case the transferred area is to be treated as his ceiling area he will be left with no land and even some of the other transfers may have to be taken into consideration whether their land should or should not be declared surplus". The meaning of this observation of the Prescribed Authority is not clear, but if the idea was to protect the transferees as appears to be the case because of the use of the words "even some of the other transfers may have to be taken into consideration whether their land should or should not be declared surplus", the Prescribed Authority has clearly exceeded its jurisdiction. It has no authority to deal with the rights of the, transferees. It had to treat transfers a nullity. But what the Prescribed Authority has done is to accept the transfers, to recognize their existence and to protect the interest of the transferees. This course was not open to the Prescribed Authority.

As the passage extracted from the judgment of the Prescribed Authority would show it allotted the land which the appellant Raja had transferred to third persons after 20th of August 1959 in his ceiling area. The reason given by the Prescribed Authority for doing so is that "it is but fair that 40.00 F.Q. acres of land permissible to the tenure-holder as ceiling area should consist of the land transferred after 20-2-1959 and such transferred land as cannot be declared ceiling area, should be included in the surplus area." The idea seems to be to punish the Raja for making transfers in contravention of the Act. The Prescribed Authority has clearly exceeded its jurisdiction. The Act did not confer on the Prescribed Authority any penal powers. It forgot that, at best, it was a Tribunal of limited jurisdiction and had only such powers which the Act expressly conferred

upon it. It is well settled that a Tribunal of limited jurisdiction must act strictly within the four corners of the powers expressly conferred upon it. (See A.V. D'costa Vs. B.C. Patel and Another,

29. I am, therefore, of the opinion that the Prescribed Authority and the District Judge who affirmed the decision of the Pre-scribed Authority acted beyond jurisdiction and proceeded on extraneous considerations while declaring the surplus land and while allotting plots in the ceiling area of the Raja.

30. The orders passed by them are clearly amenable to a writ of certiorari.

31. For the reasons mentioned above, I allow this appeal and the writ petition and set aside the judgments of Nigam, J., dated 21-4-1966, and of the District Judge, Kheri and the Prescribed Authority, dated January 16, 1965 and July 13, 1964, respectively. I also issue a writ of mandamus to the Prescribed Authority to allot the appellant Raja such plots belonging to him as he wants to be included in his ceiling area provided he does not exceed the limit permitted to him under the Act. The respondents must pay the costs of the appellant both of this appeal as also of the writ petition.

Lakshmi Prasad, J.

32. I agree and have nothing to add.

R. Chandra, J.

33. I agree.