

(2011) 04 AHC CK 0022

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 37273 of 2006

Rajat Lal and Another

APPELLANT

Vs

Commissioner, Saharanpur Division and Others

RESPONDENT

Date of Decision : 16-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 41 Rule 22
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5
Suits Valuation Act, 1887 — Section 11
Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1976 —
Section 31, 31(2), 31(3), 31(5)
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10, 10(1),
10(2), 11, 11(1)

Citation : (2011) 5 ADJ 434 : (2012) 1 AWC 518 : (2011) 113 RD 548

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shishir Kumar, J.—Present writ petition has been filed for quashing the order dated 28.th June, 2006 (Annexure 13 to writ petition), order dated 13.9.2004 (Annexure 7 to writ petition) and order dated 25.9.1983 (Annexure 4 to writ petition). Further a writ in the nature of mandamus commanding Respondents not to dispossess Petitioners from land in dispute.

2. Present writ petition is arises out of a proceeding under U.P. Imposition of Ceiling of Land Holding Act, 1960. In the year 1974, proceedings were initiated against one Narendra Lal and Rajendra Lal and two ceiling cases were registered as Case Nos. 212 of 1974 and 214 of 1974. Both the cases were consolidated and decided by prescribed authority on 25.2.1975 declaring certain land as surplus. Two separate appeals were filed as Appeal Nos. 377 and 378 of 1975 and State of U.P. has also filed two separate appeal Nos. 441 and 442 of 1975. By order dated 22nd January, 1976, Judgment was passed in all four appeals dismissing the appeals filed by State of U.P. and has allowed the appeals filed by

tenure holders and remanded the matter to be decided in accordance with observation made in appeal by the prescribed authority. On 9.1.1977, Naib Tehsildar has reported for abating the proceedings and vide judgment and order dated 10.1.1977 prescribed authority passed an order abating the proceeding in view of amending Act as per Section 31(2) of U.P. Act No. 20 of 1976. Though the report was for re-determination ceiling area u/s 9 of U.P. Ordinance No. 31 of 1975 but re-determination was to be done under U.P. Ordinance No. 11 of 1976 which was replaced by U.P. Act. No. 20 of 1976 after abating ceiling proceedings u/s 31(2) of the U.P. Act No. 20 of 1976. After abatement fresh notice was issued to tenure holders u/s 10(2) of the Act on 17.2.1977. A case was registered as Case Nos. 336 and 337 of 1977. Tenure holders against the aforesaid notices filed a writ petition being Writ Petition No. 1706 of 1977 which was dismissed with an observation to re-determine the land in view of Section 31(2) of Act No. 20 of 1976. Then proceedings mentioned above were decided by prescribed authority by a common judgment declaring certain land as surplus. Both appeals were allowed on the ground that order dated 30.4.1979 not being passed within a period of two years in view of Section 31(2) of the U.P. Act No. 20 of 1976 and in view of law laid down in Nahar Singh's case reported in 1983 ALJ, 391 but the matter was remanded back to prescribed authority by order dated 25.9.1983. State of U.P. filed two writ petitions No. 398 of 1984 and 416 of 1984 against the judgment dated 25.9.1983 in which no interim order was granted. In the meantime, Rajendra Lal father of Petitioner No. 1 died on 11.7.1985 and father of Petitioner No. 2 Narendra Lal died on 24.2.2001. Both writ petitions were dismissed by order dated 27.11.2002. After second remand order dated 25.9.1983, there was no stay of proceedings of trial court, in the writ petitions filed by State of U.P. but trial court kept pending the proceedings till pendency of writ petitions. It started proceedings after dismissal of writ petition in 2003.

3. It is also to be mentioned that second proceedings were initiated without substituting heirs though Petitioners filed their objections on merits. Prescribed authority vide its common judgment dated 13.9.2004, decided the case and declared 20-08-11 beghas of land of Rajendra Lal and 16-06-06 of the land of Narendra Lal as surplus. The order dated 13.9.2004 was an order without jurisdiction as they have not passed within a period of two years and proceedings cannot continue in view of Section 31(2) of the Act. Against this order the State of U.P. filed time barred appeal before the Commissioner, Saharanpur against both the Judgments along with an application u/s 5 of Limitation Act but it was not supported by any affidavit. Cross objections were also filed by Petitioners in the appeals filed by the State Government on the ground that order dated 13.4.2004 is without jurisdiction. The trial court did not consider reduction of 3-9-10 begas of land during consolidation, State has already acquired 10-5-10 beghas of land of Petitioners and 17-10-0 beghas of land as abadi land. The Commissioner vide its order dated 28.6.2006 has dismissed appeal and affirmed the order passed by the prescribed authority. Hence, the present writ petition has been filed by Petitioners being Writ Petition No. 37237 of 2006 and the State

has also filed a Writ Petition No. 31838 of 2007.

4. The main contention raised by learned Counsel for Petitioners is that because all previous proceedings pending being abated by order dated 10.1.1977 passed by Respondent No. 2 as well as in view of deeming Clause of 31(2) of U.P. Act No. 20 of 1976, therefore, the order passed by Prescribed Authority or by Appellate Authority before 30.4.1976 became non-existence due to abatement.

5. Learned Counsel for Petitioners has placed reliance upon Section 31(3) of U.P. Act No. 20 of 1976 of the U.P. Imposition of Ceiling of Land Holding Act. Section 31(3) of said provisions is being quoted below:

Where an order determining surplus land in relation to a tenure-holder has been made under the principal Act before the tenth day of October, 1975, the Prescribed Authority (as defined in the principal Act) may, at any time within a period of two years from the said date, re-determine the surplus land in accordance with the principal Act as amended by this Act, whether or not any appeal was filed against such order and notwithstanding any appeal (Whether pending or decided) against the original order of determination of surplus land.

6. In support thereof it is being submitted that if order of determination of surplus land was passed before 10th October, 1975, period of two years only prescribed for re-determination. Further reliance has been placed upon Section 30(3) of the Ordinance No. 11 of 1976 which provides that where an order determining surplus land in relation to a tenure holder has been made under the principal Act before the commencement of this Ordinance, the Prescribed Authority, at any time within a period of two years from commencement of this Ordinance, re-determination of surplus land can be made in view of the Principal Act. Petitioners have submitted that admittedly in the present case proceeding has been ordered to be abated by order dated 10.1.1977 and after issuance of fresh notice dated 17.2.1977, re-determination has not been done within a period of two years as prescribed under the Act. He has placed reliance upon a judgment of 1987 SC 21 State of Uttar Pradesh v. Mithilesh Kumari, Nahar Singh (Dead, by LRs.) and Ors. and has placed reliance upon paras 4 and 5 of the Judgment. The same is being quoted below:

4. A plain reading of this transitory provision alongwith proviso to Section 9(2) of the Principal Act (as amended) makes it clear that what was contemplated by Section 31(3) of the Amendment Act was the redetermination of the surplus land, that is to say, the conclusions of the proceeding initiated by the notice issued under the proviso to Section 9(2) of the Principal Act.

5. We do not see how any other conclusion is possible. Obviously, the legislature took notice of the fact that 17 years had already passed since the passing of the original Act, and therefore, the legislature was particular that the proceedings for redetermination of surplus land should conclude as expeditiously as possible. This was the view taken by the High Court and we see no reason to depart from it. The appeals are dismissed. There will be no order as to costs.

7. Reliance has been placed upon another judgment reported in 1983 ALJ 391 Nahar Singh, Petitioner v. Sub-Divisional Magistrate, Meerut and Ors. and has placed reliance upon paras 4 and 8 of the Judgment. The same are being quoted below:

4. Submission No. (1) (supra) is covered by ground No. 11 of the grounds mentioned in the petition. Orders dated 14.6.1979 and 17.9.1980 are not mentioned in the prayer. It appears that the learned counsel failed to add these dates in the prayer by oversight. The prayer may, therefore, be taken for quashing the aforesaid four orders of the Prescribed Authority and the Appellate Authority. It appears that the tenure-holder had not urged before the prescribed Authority that in view of Sub-sec (3) of Section 31 of U.P. Act No. 20 of 1976 it could not pass an order of re-determination of surplus land after 10th October, 1977 and all the proceedings after that date were without jurisdiction. This plea was also not taken up before the Appellate Authority. It has been taken for the first time in this writ petition. The learned Counsel for the Petitioner has submitted that the plea arises a question of jurisdiction of the Prescribed Authority and goes to the root of the matter. The plea is a pure question of law and does not involve ascertainment of fresh facts. Hence, such a plea can be raised for the first time in the writ petition, notwithstanding the fact that it was not raised before the Prescribed Authority or the Appellate Authority. In support of this submission the learned Counsel has placed reliance on the observations contained in the Supreme Court decision Pioneer Traders and Others Vs. Chief Controller of Imports and Exports Pondicherry, Awadhoot and Others Vs. State of Maharashtra and Others,

4-A. In the case of Pioneer Traders (supra) the Supreme Court observed:

Where an authority, whether judicial or quasi judicial, has in law no jurisdiction to make an order, the omission by a party to raise before the authority the relevant facts for deciding that question, cannot clothe it with jurisdiction.

In Awadhoot's case (supra) the Bombay High Court placed reliance on the aforesaid observation of the Supreme Court and held that:

If the matter raises a question of jurisdiction of a Tribunal, it is by now well-settled that such a contention can be raised for the first time even in a writ petition.

In Har Prasad's case it was observed:

A ground raising a question which goes to the root of the matter as to jurisdiction or power of an authority, whose acts or orders have been brought up before the High Court in a petition under Article 226 of the Constitution, can be allowed to be raised if it otherwise does not require any further enquiry and no prejudice is caused to opposite parties at the hearing.

In the instant case, the facts relevant to submission No. 1 are already on the record. The submission raises a question of jurisdiction which may go to the root

of the matter. There is nothing to show that raising of this plea for the first time in this writ petition would take the State by surprise and cause it prejudice. I am, therefore, of the view that the Petitioner can raise this plea for the first time in this writ petition.

8. In its order dated 19.2.1981 the Prescribed Authority mentioned that no arguments were advanced on behalf of the tenure-holder on other points and no additional evidence was given. The Authority observed that the findings given by him earlier on these points would stand. The judgment of the learned Additional District Judge shows that only one point was raised before him in the appeal and it was with regard to plot No. 56 which was claimed as grove land. It means that no other point which was decided by the Prescribed Authority, was pressed before the appellate authority. The contention of the Petitioner that other points were also urged before the appellate authority, but the same were not considered by it, cannot be accepted. There is no reason to doubt the correctness of the aforesaid observation contained in the appellate judgment. The affidavit of the counsel for the Petitioner at the appellate stage, filed in the writ proceedings, in which it had been said that other points were also raised before the appellate authority, does not deserve any preference over the observation of the appellate authority. The appellate authority had no reason to make an incorrect observation. In regard to such an observation contained in judgment, the correct legal position has been explained by the Supreme court in the decision State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, There also, the counsel for the State of Maharashtra had challenged an observation made by the Bombay High Court in its judgment. Their Lordships of the Supreme Court said:

We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. Judgments cannot be treated as mere counters in the game of litigation. (per Lord Atkinson in Somasundarsan v. Subaramanian AIR 1926 PC 136. We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in Court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error Per Lord Buckmaster in Madhusudan v. Chandrabati AIR 1917 PC 30. that is the only way to have the

record corrected.

Their Lordships further observed:

So the Judge's record is conclusive. Neither lawyer nor litigant may claim to contradict it, except before the Judge himself, but nowhere else.

8. Taking support of aforesaid Judgment, learned Counsel for Petitioners states that re-determination of surplus land after a period of two years from 10.10.1975 would be an act of without jurisdiction.

9. Another judgment relied upon in 1984 ALJ 33 Smt. Mithlesh Kumari -Petitioner v. State of U.P. and Ors. Para 13 is being quoted below:

13. Now I go on to deal with the second submission of the learned Standing Counsel. As stated above, he made a point that what Section 31(3) requires by laying down the rule of two years is that the fresh proceedings should be initiated within a period of two years and it is not necessary that they should be completed also within a period of two years. In support of this contention as I have already said above, he placed reliance on the parent Act which nowhere lays down any time-limit within which the ceiling proceedings have to be completed. It may be seen that the mere fact that in the parent no such time limit has been laid down, can have no relevance to decide whether such a time limit has been placed for the subsequent proceedings taken for redetermination of the surplus land. It is quite possible to think that the Legislature in its wisdom did not think it necessary to lay down any rule of limitation for the original proceedings but thought it necessary that when a revision was called for, that should be accomplished in an expeditious manner within a time limit. In any case, the controversy will have to be decided with reference to the rule contained in the Amending Act viz, u/s 31(3) of the U.P. Act No. 20 of 1976. There can be no denying the fact that it does lay down a rule of limitation. It should be seen that if one were to accept the contention of the learned Standing Counsel then there should have been no rule of limitation at all in his Sub-section because u/s 10 of the parent Act no time limit has been laid down for the issuance of the notice under the said provision of the Act. In the same manner there is no time limit laid down u/s 9(1) or Sect. 9(2) including its proviso in respect of the general notice issued under the said provision. Where was the justification for laying down any rule of limitation u/s 31(3) of the U.P. Act No. 20 of 1976 when none existed in Ss. 9 and 10 of the parent Act?. Even on the basis of the contention raised by the learned Standing Counsel he has conceded that the rule of two years" limitation must be held to be applicable at least to the issuance of the subsequent notice u/s 10(2) of the Act. Therefore, in my view, nothing hinges on the fact that in the parent Act there is no rule of limitation laid down for the completion and finalisation of the ceiling proceedings. Therefore, the only point which remains to be considered is whether when the said provision contained u/s 31(3) of the Act says that the redetermination of the surplus land in accordance with the principal Act as amended by this Act, is to be done within

a period of two years, then does it mean merely issuance of the subsequent notice u/s 10(2) of the Act within a period of two years or does it prescribe that the order by the Prescribed Authority must be passed within a period of two years. In my view, looking to the scheme of the Act the order itself of the Prescribed Authority must be passed within two years from the relevant date and a mere issuance of the notice u/s 10(2) within a period of two years will not suffice. In this connection a reference may be made to Section 10 of the Act which is headed as under:

Notice to tenure-holders failing to submit a statement or submitting an incomplete or incorrect statement.

Briefly this section refers to earlier Section 9 which provides for general notice to tenure-holders holding land in excess of ceiling area for submission of statement in respect thereof. By the general notice u/s 9(1) which has reference to the Ceiling Act as it stood before its amendment by Act No. 18 of 1973 and the identical notice under Sub Section.(2) of Section 9 which has to be issued after the amendment effected by the said U.P. Act No. 18 of 1973, such tenure holders who hold land in excess of the ceiling area, are required to submit their statements. When such statements are not submitted then the notice u/s 10(2) of the Act is issued to such individual tenure holders and along with the said notice a copy of the statement prepared in respect of such tenure-holder u/s 10(1) of the Act is also sent to him to enable him to file objections. The Rules prescribed the form in which such statement is prepared and the same is C.L.H. Form 3. The tenure-holder is called upon to show cause within a period specified in the notice why the statement be not taken as correct. If the tenure-holder does not submit his objections then the Prescribed Authority proceeds to determine the surplus land u/s 11 which is headed "Determination of surplus land where no objection is filed". In sub-s (1) of Section 11 it is laid down that if no objection is filed by tenure-holder within the specified period then the Prescribed Authority shall accordingly determine the surplus land of the tenure-holder. Section 12 provides for a situation where the tenure-holder has filed his objections u/s 10(2). Again this section is headed as "Determination of the surplus land by the Prescribed Authority where an objection is filed." The words contained in Section 12(1) are:

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.

In S. 12-A again the language used is in determining the surplus land u/s 11 or Section 12: it is significant that no reference is made to Section 10 because really there is no determination of surplus land u/s 10 which is basically in the form of a tentative proposal made to the tenure-holder. The determination comes after the said proposal has been made and, in case, the tenure-holder accepts the same, the determination is made on the basis of his acceptance and if the tenure-holder objects, then the determination comes after deciding objections.

Some useful light may also be obtained from Sub Section.(4) and Sub Section.(5) of Section 31 of the U.P. Act No. 20 of 1976. it has to be emphasised that Sub Section.(4) and Sub Section.(5) of Section 31 of the U.P. Act No. 20 of 1976. it has to be emphasised that Sub Section.(4) and Sub Section.(5) come immediately after Sub Section.(3) of Section 31. Sub Section.(4) lays down that the provisions of Section 13 of the Act, shall mutatis mutandis apply to every order redetermining surplus land under Sub Section.(3) of this section or Section 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974. Now Section 13 of the principal Act provides for an appeal against an order passed u/s 1192) or u/s 12 of the Act. We may leave apart Section 1192) which is not relevant in the present controversy. It is the order passed u/s 12 against which the appeal is preferred. Section 12, I have already emphasised above, provides for determination of surplus land in a case where objections have been filed by the tenure-holder. No appeal u/s 13 can be filed against the mere issuance of the notice u/s 10. Sub Section.(5) of Section 31 again points to the same position namely that what is contemplated by redetermination u/s 31(3) is the passing of the order by the Prescribed Authority u/s 12 and not merely issuance of the notice u/s 10(2) of the Act as contended for by the learned Standing Counsel.

10. In view of aforesaid fact, learned Counsel for Petitioners submits that re-determination not being made within the prescribed period of two years from 10.10.1975, ceiling authority cease to have any jurisdiction after expiry of period of two years. Therefore, the order passed by prescribed authority and the Appellate Authority after that period is without jurisdiction null and void. Further submission has been made by learned Counsel for Petitioners that because appeals filed by the State if within a period of 30 days from the date of service of summons, cross objection filed by Petitioners was maintainable and should have been considered and decided. Finding to this effect recorded by Respondent No. 1 in the appeal that cross examinations were not maintainable is totally against the principle of law because non-consideration of various objections, pleas of facts and law taken in cross objection and argued before Respondent No. 1 and written argument submitted has not been considered, therefore, the order passed by Respondent No. 1 is vitiated and is liable to be set aside. In support of his contention learned Counsel for Petitioners has placed reliance upon following two Judgments.

1. AIR 2005 SCC 1712 Hari Shankar Rastogi v. Sham Manohar

5. Thus, it is clear that cross-objection is like an Appeal. It has all the trappings of an Appeal. Even when the Appeal is withdrawn or is dismissed, cross-objection can still be heard and determined.

7. As a cross-objection is in the nature of an Appeal, the High Court was wrong in holding that the cross-objection did not survive on the Appeal being withdrawn.

8. In this view of the matter, we set aside the impugned judgment and 2005

2. Superintending Engineer and Others Vs. B. Subba Reddy, . From the examination of these judgments and the provisions of S. 41 of the Act and Order 41, Rule 22 of the Code, in our view, following principles emerge:

(1) Appeal is a substantive right. It is creation of the statute. Right to appeal does not exist unless it is specifically conferred.

(2) Cross-objection is like an appeal. It has all the trappings of an appeal. It is filed in the form of memorandum and the provisions of Rule 1 of Order 41 of the Code, so far as these relate to the form and contents of the memorandum of appeal apply to cross-objection as well.

(3) Court-fee is payable on cross-objection like that on the memorandum of appeal. Provisions relating to appeals by indigent person also apply to cross-objection.

(4) Even where the appeal is withdrawn or is dismissed for default, cross-objection may nevertheless be heard and determined.

(5) Respondent even though he has not appealed may support the decree on any other ground but if wants to modify it, he has to file cross-objection to the decree which objections he could have taken earlier by filing an appeal. Time for filing objection which is in the nature of appeal is extended by one month after service of notice on him of the day fixed for hearing the appeal. This time could also be extended by the Court like in appeal.

11. It has further been submitted by learned Counsel for Petitioners that provisions of CPC being applicable in the ceiling proceedings. On failure to substitute heirs and legal representatives of the deceased Respondents within 90 days and no sufficient cause for condonation of delay and good reason for vacating abatement shown. Admittedly, no substitution application has been filed. He has placed reliance upon 1983 R.D. Supreme Court 244 Balram and Ors. v. Third Addl. District Judge and Anr.. Further submission has been made that total proceedings taken subsequently is without jurisdiction and nullity. He has placed reliance various judgment which are being quoted below:

1. Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another,

6. The answer to these contentions must depend on what the position in law is when a Court entertain a suit or an appeal over which it has no jurisdiction and what the effect of Section 11 of the Suit Valuation Act is on that position. It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial or whether, it is in respect of the subject-matter of the

action, strikes at the very authority of the Court to pose any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District, Court of Monghyr was coram non judice, and that its judgment and decree would be nullities. The question is what is the effect of Section 11 of the Suits Valuation Act on this position.

2. Harshad Chiman Lal Modi Vs. DLF Universal and Another,

30. We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity.

32. In Bahrein Petroleum Co., this Court also held that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. It is well-settled and needs no authority that "where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing". A decree passed by a court having no jurisdiction is non-est and its validity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a coram non judice.

37. In the instant case, Delhi Court has no jurisdiction since the property is not situate within the jurisdiction of that court. The trial court was, therefore, right in passing an order returning the plaint to the Plaintiff for presentation to the proper court. Hence, even though the Plaintiff is right in submitting that the Defendants had agreed to the jurisdiction of Delhi Court and in the original written statement, they had admitted that Delhi Court had jurisdiction and even after the amendment in the written statement, the paragraph relating to jurisdiction had remained as it was, i.e. Delhi Court had jurisdiction, it cannot take away the right of the Defendants to challenge the jurisdiction of the court nor it can confer jurisdiction on Delhi Court, which it did not possess. Since the suit was for specific performance of agreement and possession of immovable property situated outside the jurisdiction of Delhi Court, the trial court was right in holding that it had no jurisdiction.

3. Mantoo Sarkar Vs. Oriental Insurance Co. Ltd. and Others,

18. We, however, while taking that factor into consideration must place on record that we are not oblivious of the fact that a decision rendered without jurisdiction would be coram non juris. Objection in regard to jurisdiction may be taken at any stage. (See Chief Engineer, Hydel Project and Others Vs. Ravinder Nath and Others, wherein inter alia the decision of this Court in Kiran Singh and Others Vs. Chaman Paswan and Others, was followed, stating:

26. The Court also relied upon the decision in Kiran Singh and Others Vs. Chaman Paswan and Others, and Harshad Chiman Lal Modi Vs. DLF Universal and Another, therefrom: (Kiran Singh case (supra), AIR p.342, para 6

6. ... It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceeding. A defect of jurisdiction,... strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties.

Though in the aforementioned decision these observations were made since the Defendants before raising the objection to the territorial jurisdiction had admitted that the court had the jurisdiction, the force of this decision cannot be ignored and it has to be held that such a decree would continue to be a nullity.

4. 2010 (2) ADJ 575 New India Assurance Company Ltd. v. Meharunisha @ Misrozan and Ors.

14. There, the situation is to be understood on the facts and circumstances of the case whether the Court intended the insurance company to contest the claim or not. If it is allowed then obviously it will be construed that the permission has been granted impliedly. In such circumstances, either not passing the order or passing the order without any reason hardly cause any material difference. This situation is totally different when the driver and/ or owner has contested the claim or there is no proof of collusion between the owner or driver and/ or claimant. In such situation it has to be construed that the insurance company was disallowed to contest the claim. However, under both the circumstances non passing of the order is irregularity. Principle enunciated by the Supreme Court and this High Court is to adjudge the situation of sustaining the appeal on the facts and circumstances of each case. Neither the Supreme Court nor the High Court ever intended to hold that non passing of such order is nullity. Against this background we have to examine what is the meaning of the word nullity.

As per Black's Law Dictionary Sixth Edition meaning of nullity is as follows:

Nullity. Nothing; no proceeding; an act or proceeding in a cause which the opposite party may treat as though it had not taken place, or which has absolutely no legal force or effect.

As per Law Lexicon 1997 Edition meaning of nullity is as follows:

Nullity. A thing which is null and void; an error in litigation which is incurable (Wharton L. Lex.); a proceeding that is taken without any foundation for it, or that is essentially defective, or that is expressly declared to be "nullity" by a statute.

Nullity means nonest in the eye of law. It is available in a situation where the court or Tribunal having no authority to pass an order but passed. Such situation can not be compared with a situation where court or Tribunal having jurisdiction failed to pass an order or passed wrong order. Self corrective method can rectify the same.

5. Chandrika Misir and Another Vs. Bhaiya Lal,

6. It is from this order that the present appeal has been filed by special leave. It is to be noticed that the suit had been filed in a Civil Court for possession and the Limitation Act will be the Act which will govern such a suit. It is not the case that U. P. Act No. 1 of 1951 authorises the filing of the suit in a Civil Court and prescribes a period of limitation for granting the relief of possession superseding the one prescribed by the Limitation Act. It was, therefore, perfectly arguable that if the suit is one properly entertain able by the Civil Court the period of limitation must be governed by the provisions of the Limitation Act and no other. In that case there would have been no alternative but to pass a decree for possession in favour of the Plaintiffs. But the unfortunate part of the whole case is that the Civil Court had no jurisdiction at all to entertain the suit. It is true that such a contention with regard to the jurisdictions had not been raised by the Defendant in the Trial Court but where the court is inherently lacking in jurisdiction the plea may be raised at any stage, and, it is conceded by Mr. Yogheshwar Prasad, even in execution proceedings on the ground that the decree was a nullity. If one reads Sections 209 and 331 of the U. P. Act No. 1 of 1951 together one finds that a suit like the one before us has to be filed before a Special Court created under the Act within a period of limitation specially prescribed under the rules made under the Act and the jurisdiction of the ordinary Civil Courts is absolutely barred. S. 209 so far as we are concerned reads as follows:

209. Ejectment of persons occupying land without title.

(1) A person taking or retaining possession of land otherwise than in accordance with the provisions of the law for the time being in force, and

(a) where the land forms part of the holding of a bhumidhar, sirdar or asami, without the consent of such bhumidhar, sirdar or asami, and

(b) shall be liable to ejectment on the suit, in cases referred to in Clause (a) above, of the bhumidhar, sirdar or asami concerned,....., and shall also be liable to pay damages.

(2) To every suit relating to a land referred to in Clause (a) of Sub-section (1) the State Government shall be impleaded as a necessary party.

In the present case it has been held that the Defendant has been retaining possession of the land contrary to law, being a trespasser; that the land is bhumidhari land and the Plaintiffs are bhumidhars. Therefore, the suit was of a description falling u/s 209. Section 331 so far as it is relevant is as follows:

331. Cognizance of suits, etc., under this Act.

(1) Except as provided by or under this Act no Court other than a Court mentioned in Column 4 of Schedule II shall, notwithstanding anything contained in the CPC Code, 1908, take cognizance of any suit, application, or proceedings mentioned in column 3 thereof.

Schedule II at serial No. 24 shows that a suit for ejectment of persons occupying land without title u/s 209 should be filed in the court of the Assistant Collector, First Class, which is described as the Court of Original Jurisdiction. In view of Section 331 (1) quoted above it is evident that the suit made cognizable by a special court i.e. the Court of the Assistant Collector, First Class, could not be filed in a Civil Court and the Civil Court was, therefore, inherently lacking in jurisdiction to entertain such a suit. It is unfortunate that this position in law was not noticed in the several Courts through which this litigation has passed, not even by the High Court which had specifically come to the conclusion that the period of limitation was the one laid down by the rules under U. P. Act No. 1 of 1951. Since the Civil Court which entertained the suit suffered from an inherent lack of jurisdiction, the present appeal filed by the Plaintiffs will have to be dismissed."

6. 1966 ALJ 318 Jaggan v. Dular

12. In view of aforesaid facts and circumstances, learned Counsel for Petitioners submits that as proceeding initiated by Respondents is vitiated in law and without jurisdiction, the order passed by authority is liable to be quashed.

13. On the other hand, State has filed a counter affidavit stating therein that Petitioners have sought relief for quashing the order dated 25.9.1983 cannot be granted by this Court as there is no challenge to the said order in the earlier proceeding by Petitioners, rather without being chosen not filed any writ petition against the said order. The writ petition filed by State before this Hon"ble Court was dismissed as abated. Dismissal of writ petition even after as abated would not abate the entire proceedings under the Act already concluded till the stage of appeal. The jurisdiction under Article 226 of the Constitution is an extra ordinary jurisdiction of the High Court and it is not treated to be in continuity with suit or appeal and dismissal of the writ petition would not attach finality to the proceedings already concluded. As regards substitution of legal heirs in place of tenure holder under the provisions of U.P. Imposition of Ceiling of Land Holding Rules, is for the purposes of representing the interest of a tenure holder only, whereas the determination of ceiling area applicable to the tenure holder is with respect to relevant date i.e. the date of commencement of the Act, which in the present case is 8.6.1973. The original tenure holders themselves contested the

proceeding who died subsequently to the order passed by Appellate Authority. Therefore, dismissal of the writ petition would not effect the order already passed.

14. Further submission has been made by Sri Goswami, learned Standing Counsel that order dated 25th September 1983 is an order of remand, is also not correct in as much as the Appellate Authority was hearing the appeal against the judgment and order dated 30.4.1979 passed by Prescribed Authority in the subsequent proceeding held under the provisions of amended Act declaring the earlier proceedings abated in view of issuance of notice as per provisions amended by Act No. 28 of 1976. The Appellate Authority has held that subsequent proceedings and orders passed by prescribed authority was contrary to law and earlier proceedings would not abate, as directed by prescribed authority to proceed in accordance with earlier determination. The declaration of surplus land under the orders impugned is in accordance with provisions of the Act and therefore, there needs no interference.

15. It has also been submitted by State that provisions under the statute provide a remedy against an order is legislative Act. The legislature is further empowered to provide a forum for redressal of grievance including the authority to entertain an appeal and decide the same. It was a legislative exercise and in consonance with the statute, therefore, it cannot be challenged by Petitioners. Petitioners have already availed a remedy provided to them under the Act before the authority appointed for the said purposes. It is not a re-determination of the ceiling area of the tenure holder under the provisions of Act No. 20 of 1976 but determination was made in pursuance of the earlier order as per directions contained in the order dated 25th September, 1983. Sri Goswami, learned Standing Counsel has submitted that contention of Petitioners to this effect that redetermination cannot be made and proceeding is not maintainable, is not correct. He has placed reliance upon a judgment of this Court reported in 1979 AWC 203 Gur Prasad v. Smt. Ram Dulari and has placed reliance upon para 2 of the said Judgment. The same is being quoted below:

2. Learned Counsel has contended that this section should be so construed as to apply only to such redetermination as may be necessitated by amendments made by the Legislature in the principal Act after 10-10-75. the matter is concluded by authority. In Ram Lal Vs. State of U.P. and Others, Hon"ble Gopi Nath, J. has considered the matter at some length. The constitutional position, as discussed by him, with regard to the proper scope of legislative power in relation to judicial decisions, which have become final, is that the Legislature can render the decisions ineffective only to the extent those decisions are affected by any changes in the law subsequently brought about with retrospective effect. In view of this basic principle, although the language of Section 38-B, on the fact of it, is wide enough to cover even redetermination of issues unaffected by the legislative amendment, the provision has to be limited, by the principle of "reading down", to only those matters in respect of which the findings are affected by amendments carried out in the principal Act.

16. Further reliance has been placed upon a judgment of this Court reported in 1979 AWL 557 *Ram Sahai v. The Additional District Judge, Jhansi and Ors.* and has placed reliance upon para 7 of the said Judgment. The same is being quoted below:

7. Sub-section (1) of Section 31 provides that the proceeding under Sub-sections (3) to (7) of Section 14 of the Principal Act shall be deemed to have abated. This provision was incorporated because by the amending Act Sub-sections (3) to (7) of Section 14 were deleted. Sub-section (2) of Section 31 provides that where the determination has been made and redetermination is sought the appeal pending in relation to such proceedings shall be deemed to have abated on the said date. This sub-clause also envisages a situation where the determination has to be made in accordance with the amending Act. Sub-section (3) also provides that notwithstanding the earlier order determining surplus land the Prescribed Authority may redetermine the same in accordance with the provision of the Principal Act as amended by U.P. Act XX of 1976. This redetermination is notwithstanding any appeal (whether pending or decided) against the original order of determination of surplus land. By the analysis of these provisions it becomes imperative and beyond any doubt that the Prescribed Authority has power to redetermine the surplus area under the U.P. Imposition of ceiling on land Holdings Act if the earlier determination is effected by the U.P. Amending Act XX of 1976. the other condition which had to be fulfilled is that the same can be done only within a period of two years from the commencement of the amending Act. It means if any judgment has been given by the Prescribed Authority or appellate authority and if it has become final under the Principal Act unless the determination is effected by amending Act the orders so passed will be binding on the ceiling authorities in subsequent proceedings and the ceiling authorities will have no jurisdiction to reopen the matter. Similar view has been expressed by this Court in *Ghana Ram and Others Vs. State of Uttar Pradesh and Others*, and *Ram Lal Vs. State of U.P. and Others*,

17. Further reliance has been placed upon a judgment reported in *Ram Lal Vs. State of U.P. and Others*, and has placed reliance upon para 10 and 20 of the said Judgment. The same are being quoted below:

10. In our opinion, a general review of the earlier orders was not the interment of the provisions permitting redetermination. It was confined to cases which required redetermination in view of the amendments incorporated in the Principal Act. The question in this case is; whether the amendments incorporated in the Principal Act affected the decision in the earlier proceeding as regards a part of the Petitioner's holding as ancestral Sir and Khudkasht. If they did not affect that question, it seems to us that a reopening of the earlier proceedings was not called for and the findings recorded and the decision reached in them could not be set aside in the instant proceedings. We shall examine the scope of Section 38-B of the Act in this regard. While examining its scope and effect, it will have to be borne in mind that judicial and legislative

fields are distinct from one another. Courts cannot legislate while legislature cannot decide. In *Madan Mohan Pathak v. Union of India*, *Ram Prakash Manchanda v. Union of India* AIR 1978 SC 50, it was held that an Act of legislature cannot annul a final judgment conferring rights on parties. It can only amend a law either prospectively or retrospectively, but the judgment rendered in a case stands unless reversed in an appeal or review.

20. This provision in our mind was introduced to achieve the object of the various amendments introduced in the Principal Act and to give effect to them. Section 38-B, in our view, contemplates that if by the amendments made in the Principal Act certain findings or decisions had become contrary to law, those findings or decisions could be reopened and the principle of *res judicata* would not bar a retrial of those issues in accordance with the provisions of the Principal Act as amended. This provision, in our opinion, did not authorise the ceiling authorities to ignore the decisions rendered or decrees passed by competent courts, tribunals or authorities in respect of matters which were not affected by the changes made in the Principal Act. Such decisions, in our opinion, would continue to be binding on the parties and would operate as *res judicata* between them, see *State of U.P. Vs. Nawab Hussain*, No change was made in the law relating to ancestral Sir and Khudkasht land of a tenure holder.

18. In such circumstances, learned Counsel for Respondents has submitted that writ petition is liable to be dismissed as there was a power to re-determine and it has rightly been redetermined.

19. After consideration of respective submissions made on behalf of parties and after perusal of record, question for consideration by this Court is to the effect whether subsequent notice in view of amendment under the Act for re-determination of ceiling area of Petitioners was valid in view of fact that in view of Section 31(3) of the amending Act No. 20 of 1976, an order determining surplus land in relation to tenure holder as has been made under the Principle Act before 10.10.1975, the prescribed authority has to decide within a period of two years from the said date. It appears that Petitioners were given notice showing certain agriculture land as surplus. Objections were filed and case was registered u/s 10(2) of the Ceiling Act. It was pleaded that certain lands were already been sold which has wrongly been held in their holding and there were certain groves which have been wrongly shown as cultivated land. It was decided by a common judgment dated 28.2.1975 and prescribed authority declared certain lands surplus of Petitioners. An appeal was filed which was allowed and appeal filed by State was dismissed directing prescribed authority to re-determine the land of the tenure holder in the light of the Judgment. The said judgment was given on 21.2.1976 and Ceiling Act was amended by U.P. Act No. 20 of 1975 which was published in the official gazette on 17.1.1975 and was made effective from 8th June, 1973 retrospectively. Further it was amended by Act No. 19 of 1975 which came into force on 15.1.1975. Further ordinance was issued which came into force on 10.10.1975 and it was given retrospective

effect. Thereafter Ceiling Act was amended by Act No. 20 of 1976 which was given retrospective effect from 10.10.1975 and this Act No. 20 of 1976 repealed the Ordinance 11 of 1976. It provides that an order determining surplus land in relation to tenure holder if has been made under the Principle Act before 10.10.1975, the prescribed authority may at that time, within a period of two years from the said date re-determine the surplus land in accordance with the Principle Act as amended by this Act whether or not an appeal was filed against such order and notwithstanding any appeal (whether pending or decided) against the order of determination of surplus land against the original order. It appears that Naib-Tehsildar made an application before the prescribed authority for abating the earlier proceeding in Case No. 212 of 1974 and 214 of 1974 with a request for re-determination of surplus land of Petitioners in accordance with the Principal Act as amended by Act No. 20 of 1976. By order dated 10.1.1977, the earlier proceeding was ordered to be abated.

20. Fresh notice was given to tenure holders. Aggrieved by aforesaid notice it was challenged before this Court regarding issuance of notice challenging validity of the said notice. Writ petition was dismissed by order dated 23.10.1978 and has held that as prescribed authority has determined surplus land before October 2010, 1975, he had an authority to redetermine. It was pleaded that second notice under the Act is not valid and liable to be discharged. The Court has abated the earlier proceeding on 10.1.1977 and proceeded for redetermination of the ceiling areas of Petitioners on the basis of second notice for re-determination of surplus land. It was submitted that in view of Section 31(3) of the Ceiling Act, Prescribed authority could redetermine surplus land in accordance with the Principal Act but that has been done within a period of two years from 10.10.1975. As redetermination of surplus land was delivered on 30.4.1979 beyond the period from 10.10.1975, therefore, the order is without jurisdiction. Section 31(3) of the Act provides that where an order determining surplus land in relation to a tenure holder has been made under the Principal Act before 10th day of October, 1975, the prescribed authority may at any time within a period of two years from the said date, redetermine surplus land in accordance with the Principal Act as amended by U.P. Act No. 20 of 1975 whether or not any appeal was filed against such order or whether or not any appeal is pending against the original order of determination of surplus land. In the present case, admittedly, on the basis of redetermination, notice was given to tenure holder but admittedly from the record it is clear that proceeding has not commenced within a period of two years from the date of notice in view of Section 31(3) of the Ceiling Act. In the earlier proceeding certain lands have been declared surplus and appeal filed by Petitioners was allowed and matter was remanded back for consideration in view of observation made and in the meantime, provision of amending Act made applicable, therefore, proceeding was abated in view of application moved by concerned authority before the prescribed authority for abating the earlier proceeding.

21. There is no dispute to this effect that authority concerned in view of

amending provisions can issue a notice for redetermination but there is a rider to this effect that redetermination has to be made within a period of two years. Admittedly, that has not been done so. In *Nahar Singh v. The Sub-Divisional Magistrate, Meerut and Ors.* reported in 1983 All L.J. 391, this Court has taken a view that in view of Amending Act No. 20 of 1976, Section 31(3) provides regarding redetermination of surplus land, if it has been passed after expiry of period of two years then order will be treated to be without jurisdiction. It provides that prescribed authority is to redetermine surplus land within the period of two years from the said date. This can only mean that the final redetermination should be made by the prescribed authority within a period of two years from 10th day of October, 1975. Para 5 is relevant for the said purpose. The same is being quoted below:

5. Now I take up the first submission of the learned Counsel for the Petitioner for consideration.

Sub-Section (3) of Section 31 reads thus:

Where an order determining surplus land in relation to a tenure-holder has been made under the principal Act before the tenth day of October, 1975, the Prescribed Authority (as defined in the Principal Act) may, at any time within a period of two years from the said date, re-determine the surplus land in accordance with the Principal Act as amended by this Act, whether or not any appeal was filed against such order and notwithstanding any appeal (whether pending or decided) against the original order of determination of surplus land.

The language of the above Sub-section is very clear. This Sub-section does not say that the proceedings for re-determination of surplus land in accordance with the provisions of the amended principal Act may be initiated within a period of two years from 10th day of October, 1975. It says that the Prescribed Authority is to re-determine the surplus land within the period of two years from the said date. This can only mean that the final re-determination should be made by the Prescribed Authority within a period of two years from the 10th day of Oct, 1975. S. 12 of the Act also speaks of determination of Surplus land. This determination is final determination, so far as the Prescribed Authority is concerned. It will, therefore, be reasonable to take the view that re-determination of surplus land referred to in Sub-section (3) means final re-determination and not mere initiation of fresh proceedings for re-determination of surplus land. If the intention of the Legislature was that the Prescribed Authority may initiate the proceedings within a period of two years from the 10th day of Oct., 1975, it would have said so explicitly by using appropriate language. The learned Standing Counsel has not pointed to any other provision of the Act which would justify taking of the view that sub-sect.(3) refers only to initiation of proceedings for re-determination of surplus land within two years from the 10th day of Oct.1975. No authority, wherein this aspect of Sub-section (3) might have been considered, has been cited before me. I am of the view that the natural and reasonable interpretation of Sub-section (3) is that the final order determining

the surplus land in accordance with the provisions of the amended Act should be passed by the Prescribed Authority within a period of two years from 10th day of October, 1975. Any order of determination passed by the Prescribed Authority after the expiry of such period of two years would be barred by time, and without jurisdiction.

22. In Smt. Mithilesh Kumari (Supra), this Court has further taken a view in consideration of the amending Act 20 of 1976 that redetermination of surplus land is to be done within a period of two years though it has taken a view that it does not mean merely subsequent notice u/s 10(2) within a period of two years but it transcribes that the order passed by prescribed authority must be passed within that period. Para 13 is relevant. In 1987 SCC 21 State of Uttar Pradesh v. Mithlesh Kumari, Nahar Singh and Ors. the Apex Court has taken same view that a plain reading of this transitory provision along with proviso to Section 9(2) of the Principal Act (as amended) makes it clear that what was contemplated by Section 31(3) of the Amending Act was the re-determination of the surplus land, that is to say, the conclusions of proceeding initiated by the notice issued under the proviso 2 to Section 9(2) of the Principal Act and while interpreting the said provision has taken a view that proceeding for redetermination in view of the amending act has to be completed within a period of two years from the said date.

23. From the record, it clearly appears that on 9.1.1977, on the basis of information given by Naib Tehsildar concerned, determination which was made earlier in lieu of the notice issued in the year 1974 was abated, in view of amending Act as per Section 31(2) of the Act No. 20 of 1976. Therefore, notice was given on 17.2.1977 meaning thereby re-determination according to amending Act should have been done within a period of two years but admittedly, same has not been done. Appeals which were allowed by the IInd Additional District Judge dated 25.9.1983 was not passed within a period of two years as per Section 31(3) of the Act No. 20 of 1976 and therefore, appeals were allowed taking into consideration Nahar Singh's case, therefore, now the question for consideration before this Court only to this effect that whether in such circumstances, if after abatement of proceeding in view of the amending Act if the proceeding has not been decided within a period of two years, whether it can be treated to be valid or not. Against the order passed by District Judge dated 25.9.1983, two writ petitions were filed by the State of U.P. Admittedly, no interim order was granted. In spite of death of the father of Petitioners no substitution was made and ultimately both writ petitions were dismissed as abated by this Court. Admittedly, after second remand dated 25.9.1983, there was no interim order even then the prescribed authority kept the proceeding pending till disposal of the writ petition and again started after 2003 when writ petitions of the State were dismissed. Prescribed Authority on 13.9.2004 has decided both the cases vide its judgment and order dated 13.9.2004 by declaring certain lands as surplus. Admittedly, this order dated 13.9.2004 has been passed after a lapse of two years in view of Section 31(3) of the Act. From the record it

appears that cross objections were filed by Petitioners in the appeals filed by the State of U.P. on the ground that the order dated 13.4.2004 is without jurisdiction and trial court has not considered reduction of area and the State has already acquired 10.5.10 beghas of land of Petitioners. According to Petitioners, cross objections filed is to be treated to be an appeal which ought to have been decided as it is in the nature of appeal.

24. Submission made by learned Standing Counsel to this effect that writ petition of the State before this Hon''ble Court was dismissed as abated. Dismissal of the writ petition will not abate the entire proceeding already concluded till the stage of appeal. Contention of Respondents to this effect that as Petitioners have already availed a remedy provided to them under the Act before the authority appointed for the said purposes and as it is not re-determination of the ceiling area of a tenure holder under the provisions of the Act No. 20 of 1976 but determination was made in pursuance of the earlier order as per direction contained in the order dated 25th September, 1983. Contention of Mr. Goswami in view of facts and circumstances of the case cannot be accepted being fact that if on the basis of application filed by the authority, earlier proceeding was abated and if subsequent notice is given for redetermination of the area in view of amending Act then Section 31(3) provides that a decision to that effect has to be taken within a period of two years from the date of notice then it has to be done within that period. If it has not been done, then, in my opinion, proceeding will be treated to be without jurisdiction in view of judgment of this Court, in such circumstances, if the proceeding is not completed within that period, it will be treated to be a nullity.

25. From perusal of Sub-Section 3 of Section 31 it is clear that intention of legislature was that where an order determining surplus land in relation to a tenure holder has been made under the Principal Act before 10th day of October, 1975, the prescribed authority may at any time within a period of two years, in view of Section 31(3) of the Amending Act has to re-determine surplus land in accordance with the Principal Act whether or not any appeal was filed against such order, meaning thereby intention of the legislature was that tenure holder should not be harassed for a considerable period of time and immediately after enforcement of amending Act and after abatement of the earlier proceeding if State wants to redetermine the area of a tenure holder then that has to be done within a period of two years and if it has not been done, then according to Act, proceeding will be treated to be without jurisdiction. Contention of the State to this effect that it is not redetermination of ceiling area under the provisions of Act No. 20 of 1976 but as determination was made in pursuance of the earlier order, therefore, period prescribed for redetermination of area will not be applicable, cannot be accepted.

26. After perusal of judgment of Mithlesh Kumar Nahar Singh's case (supra) the question for consideration before the Apex Court was whether the period of two years prescribed by Section 31(3) of Act No. 20 of 1976 is the period stipulated

for issuance of notice contemplated by proviso of Section 9(2) of the Principal Act in connection with re-determination of surplus land to be made as a result of amendment introduced by Section 20 of 1976 or whether it is the period stipulated for completion of proceeding for redetermination of surplus land consequent upon the notice issued under the proviso of Section 9(2) of the Act. The Apex Court in para 5 has considered the provisions and has ultimately held that any order of re-determination passed by prescribed authority after the expiry of such period of two years would be barred by time and can be treated without jurisdiction.

27. In the present case also admittedly, proceeding for redetermination after amendment has been done after a lapse of two years, therefore, in view of Apex Court judgment as well as Nahar Singh's case of this Court it can easily be held that proceeding against Petitioners was without jurisdiction.

28. In view of aforesaid facts and circumstances, the writ petition is allowed. The order dated 28.6.2006 passed by Respondent No. 1 (Annexure 13 to writ petition) order dated 13.9.2004 passed by Respondent No. 2 (Annexure 7 to writ petition) and remand order dated 25.9.1983 passed by IInd A.D.J. Muzaffar Nagar (Annexure 4 to writ petition) are hereby quashed.

29. No order as to costs.