

**(2001) 12 RAJ CK 0010**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 2780 of 1989**

Ram Pyari and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

**Date of Decision :** 19-12-2001

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2002) 5 WLC 194 : (2002) 5 WLN 217

**Hon'ble Judges :** Bhagwati Prasad, J

**Bench :** Single Bench

**Final Decision :** Dismissed

## Judgement

Bhagwati Prasad, J.—In this writ petition, the petitioners has raised questions regarding the validity of initiation of proceedings under Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (for short the Act of 1973"), Rajasthan Tenancy Act, 1955 Chapter III-B (Old Ceiling Law) (for short "the Act of 1955") and the Rajasthan Imposition of Ceiling on Agricultural Holdings Rules, 1963 (for short "the Rules of 1963").

2. According to the petitioners, proceedings against Shri Sanwar Lal Mansinghka and his wife Smt. Ram Pyari one of the petitioners alongwith legal representatives of Sanwarmal were initiated in Ceiling Case No. 19/1973. These proceedings were decided by the then Authorised Officer by the judgment dt. 2.12.1975. It was held by the Authorised Officer that Sanwarmal was holding following lands :-

|                             |        |    |      |    |        |       |          |       |    |               |       |            |  |
|-----------------------------|--------|----|------|----|--------|-------|----------|-------|----|---------------|-------|------------|--|
|                             |        |    |      |    |        |       |          |       |    |               |       | S.         |  |
| Name of Village Measurement |        |    |      |    |        |       |          |       |    |               |       |            |  |
| No.                         | Bighas |    |      |    | Acres  |       | Standard |       |    |               | Acres |            |  |
|                             |        |    |      |    |        |       |          |       |    |               |       | 1.         |  |
| Arajiya                     | 61.12  | 33 | 9.52 | 2. | Kotiya | 63.03 | 39       | 22.50 | 3. | Lambiya Kalan | 95.03 | 56         |  |
| 16.05                       |        |    |      |    |        |       |          |       |    |               | Total | 219.18 128 |  |

3. According to the petitioners, in those proceedings, the Tehsildar reported that there is separate possession of various persons on various parcels of land. After calculation, it was held that late Shri Sanwarmal was entitled to hold 30 standard acres of land. He had 18.17 standard acres of surplus land, option was accordingly made for such land. Alongwith the proceedings initiated against late Shri Sanwarmal, proceedings were also initiated against Smt. Ram Pyari.

4. After the aforesaid proceedings, decided under the Old Act, proceedings were re-opened by resorting to the provisions of Sec. 15 of the Act of 1973. For this, notices were issued in the year 1983. The Tehsildar reported that various holdings in favour of the petitioners were as under:

| S.             | Name      | of     | Village   | Measurement |         |           |
|----------------|-----------|--------|-----------|-------------|---------|-----------|
|                |           |        |           | No.         | Bighas  | Acres     |
| Standard Acres |           |        |           |             |         |           |
|                | 1. Arajia | 464.04 | 249 73.52 | 2. Kotiya   | 486.08  | 289 82.50 |
| Lambiya        | Kalan     | 93.03  |           | 58          |         | 33.46     |
|                |           |        |           | Total:      | 1045.15 | 596       |
| 189.48         |           |        |           |             |         |           |

5. While considering holdings of the petitioners, sale of some of the lands measuring 279 bighas and 4 biswas made before the year 1958 were recognised. In various villages, holdings were recognised as under:

|      |        |         |       | Village | Measurement       |
|------|--------|---------|-------|---------|-------------------|
|      |        |         |       | Arajia  | 187 bighas Kotiya |
| 93.3 | bighas | Lambiya | Kalan | 95.03   | bighas            |

6. The claim of the petitioners is that lands in village Kotiya was standing on the name of Smt. Ram Pyari. Since, Smt. Ram Pyari is the wife of Sanwarmal, hence land was included in the ceiling area of Sanwarmal. Objections were submitted on behalf of late Sanwarmal. It was claimed that land in village Lambiya Kalan was not 486.5 bighas but it was only 95.03 bighas. The case of Sanwarmal was that land was purchased jointly and collectively by Sanwarmal, Smt. Vimla Devi, Surya Prakash, Sushila Bai, Basant Kumar and Shankerlal. However, it was contended that Sanwarmal being eldest among them Patta was issued by Thikana Baneda in the name of Sanwarmal. To recognise rights of other five persons, a document was executed by Sanwarmal on 10.10.1956 and it was detailed in the document that lands of some different descriptions belong to different persons. In that document, it was also mentioned that one of the beneficiaries, Shankerlal s/o Damodarlal had 51.17 bighas of land in his possession. The petitioners have produced document and affidavits of the parties

concerned as Annexs. 2, 3 and 4 in the writ petition.

7. The ceiling proceeding which was initiated against the petitioners after re-opening under Sec. 15 of the Act of 1973 was decided by the Addl. Collector vide order dt. 28.2.1984 (Ex. 1). It has been observed by the Addl. Collector that family arrangement relied upon by the petitioners, cannot be considered to be valid one. The said agreement is not in conformity with Sec. 53 of the Rajasthan Tenancy Act, 1955 and therefore, cannot be recognised. The transfers before the year 1958 were however recognised. The transfer of the land in favour of Shri Ram Krishan was also recognised. Similarly, the transfer in favour of Shri Suresh Kumar dt. 1.11.1968 for the land measuring 101 bighas 10 biswas was also recognised. However, the transfers in favour of Suresh Kumar s/o Sanwarmal for 33 bighas 19 biswas dt. 29.5.1970 and transfer in favour of Smt. Uma Devi for the land measuring 27 bighas 13 biswas dt. 1.11.1968 were not recognised. Further in village Kotiya, transfer in favour of Ram Avatar dt. 30.10.1968 was not recognised and various other transfers were also not recognised. The Addl. Collector came to the conclusion that there were 125.48 standard acres land belonging to Sanwarmal, out of which the assessee was entitled to hold only 30 standard acres. The Addl. Collector ordered that 95.48 standard acres be acquired, out of which 18 standard acres have already been surrendered and remaining 77.31 standard acres were required to be surrendered.

8. Against the order of the Addl. Collector, an appeal was preferred by the petitioners before the Board of Revenue. In appeal, the Board of Revenue was pleased to hold that petitioners were holding 116.54 standard acres. The petitioners were entitled to hold 30 acres. In earlier proceeds, 18.17 standard acres which have already been surrendered, the petitioners were judged to hold surplus land to the tune of 68.37 acres.

9. The petitioners had challenged the proceedings on the ground that re-opening of the ceiling case was wholly without jurisdiction. There had already been proceedings initiated against the petitioners and simultaneously also, new proceedings have been initiated under the new Ceiling Act. The re-opening was not justified. The case of the petitioners was further that re-opening was beyond the prescribed limitation under Sec. 15 of the Act of 1971. The petitioners have further claimed that the Courts below have erred in not recognising Ex. 2 Family Arrangement.

10. The Revenue Board in its order dt. 24.5.1989 which is available in the extra set and not in the main file, has observed that lands situated in village Kotiya has to be taken as such and the transfer which has been sought to be recognised cannot be recognised. The transfer is alleged to have been made for Rs. 90/- and 30 bighas of land have been transferred for this consideration. The Board has come to the conclusion that parcel of 30 bighas of land cannot be said to be believed to be sold for Rs. 90/-. Thus, the transfer which was sought to be recognised of the village Kotiya was not recognised.

11. As regards, land of village Lambiya Kalan, the land was sought to be reduced on account of family settlement. The family settlement was not recognised by the Board of Revenue. The Board of Revenue in its order has come to the conclusion that land settlement deed is not result of any dispute in between the families. The document does not show that any such dispute was settled by the deed in question. For a settlement deed, it is necessary that it may be signed by all the family members which has not been signed by other family members. In fact, this is a declaration made by Shri Sanwarmal and not a family settlement. The categoric finding of the learned Member of the Board of Revenue was that it was not a family settlement and thus, it was not relied upon. The Board of Revenue has further observed that there was suspicious circumstances that stamp paper was purchased on 5.10.1949 and the document has been written on 10.10.1956. No reason has been assigned as to why stamp papers were purchased seven years before after use for execution in the year 1956. This has not been sought to be explained by the petitioners.

12. The Board of Revenue has also observed that it has not been proved by the petitioners that purchase price of the land for Rs. 1248 and 10 Annas have been contributed by all the alleged shareholders. Thus, this fact has been negated before the Board of Revenue that 486.8 bighas were purchased alongwith five alleged persons. It has been claimed on behalf of the petitioners that land was in possession of various shareholders but revenue record shows that until Svt. 2025, the land had continued to be in the name of Sanwarmal alone.

13. It has been observed by the Board of Revenue that 20 years after purchase, the land stood solitary in the name of Sanwarmal. The document which was executed in the year 1956 was not put into effect even after 12 years after Svt. 2025. This has been observed by the Board of Revenue that it appears that this is only a play to defeat the ceiling proceedings. The land in question had in fact not been purchased by the alleged co-purchasers and it was only to defeat the provisions of law, any such document has come into existence. The property has not even been found to be assets of Joint Hindu Family Property because ladies, Smt. Vimla Bai and Smt. Sushila Bai have already been assigned shares which is not according to the law governing Hindu Undivided Family Property.

14. Regarding transfer of land to Smt. Uma Devi situated in village Arajia, the transfer to Smt. Uma Devi has not been recognised because such recognition was contingent to the fact that transferee was daughter in-law of the transferer and in this background, transfer was not recognised.

15. In the aforesaid circumstances, the Board of Revenue has come to the conclusion that under the old ceiling law, they possessed the following lands in different villages:

|       |          | Village |
|-------|----------|---------|
| Rakba | Standard | Acres   |
|       |          | Arajia  |

61.12 bighas 9.52 Kotiya 93.03 bighas 33.46 Lambiva Kalan 434.11 bighas 73.56  
Total:  
116.54 Standard Acres

16. The total holdings of the petitioners come according to the aforesaid calculation as 116.54 standard acres. The petitioners were held entitled to 30 standard acres of land. 86.54 standard acres remained surplus, out of which 118.17 standard acres has already been acquired. Thus, under the old law, the land to be acquired was 68.37 standard acres of land. After this, learned Member of the Board has held in this order that in a separate proceedings, he has held under the new ceiling law that the petitioners are required to surrender 190.35 standard acres of land. Since, the land which can be acquired under the new ceiling law is larger in quantity than the one ordered under these proceedings, therefore, the ultimate result, 190.35 standard acres of land were to be acquired.

17. Learned Counsel for the petitioner urged that the approach of the learned Member of the Board in not recognizing family settlement was erroneous. Learned Counsel submitted that it is not always necessary to get a family settlement registered and he has placed reliance on a Division Bench decision of this Court reported in 1995 All India High Court Cases, 2116 in the matter of Gulab Chand v. L. Rs. of Ganpatlal Learned Counsel has further submitted that it has been held by the Hon''ble Supreme Court in Taraknath and Another Vs. Sushil Chandra Dey by Lrs. and Others, that a family settlement can come into being even if there was no family dispute pending. A prospective dispute can be settled by a family settlement. Such settlement would not otherwise be required to be signed by all the family members. Such was the law declared by the Hon''ble Supreme Court while deciding the case of a tenant who challenged right and entitlement of the alleged landlord.

18. The petitioner has further relied on a decision rendered by the Hon''ble Supreme Court reported in 1966 S.C. 1836 Maturi Pullaiah and Anr. v. Maturi Narasimhamam and Ors. wherein the Hon''ble Court has held as under:

Although conflict of legal claims in presenti or in future is generally a condition of the validity of family arrangements, it is not necessarily so. Even bonafide disputes, present or possible, which may not involve legal claims, would be sufficient. Members of a Joint Hindu Family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an arrangement is entered into bonafide and the terms thereto are fair in the circumstances of a particular case, the Courts will more readily give assent to such an arrangement than to avoid it. In England also, the Courts are averse to disturb family arrangements but try to sustain them on broadest considerations of the family peace and security.

The family arrangement will need the registration only if it creates any interest in immovable property in presenti in favour of the parties mentioned therein. In case however no such interest is created, the document will be valid despite its

non-registration and will not be hit by Section 17 of the Registration Act.

19. Learned Counsel for the petitioner has further relied on Supreme Court decision reported in *Kale and Others Vs. Deputy Director of Consolidation and Others*, in the matter of *Kale and Ors. v. Director of Consolidation and Ors.* wherein it has been held as under:

The family settlement must be a bonafide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members the family.

The said settlement must be voluntary and should not induced by fraud, coercion or undue influence.

The family arrangement may be even oral in which case no registration is necessary. The registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case, the memorandum itself does not create or extinguish any rights in immovable properties and is, therefore, not compulsorily registrable.

The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property, which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the "antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same.

Even if bonafide disputes, present or possible, which may not involve legal claims, are settled by a bonafide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.

Where the family arrangement was oral and the mutation petition was merely filed before the Court of the Assistant Commissioner for information and for mutation in pursuance of the compromise, Held that the compromise was not required to be registered. Even if the family arrangement was not registered, it could be used for a collateral purpose, namely for the purpose of showing the nature and character of possession of the parties in pursuance of the family settlement.

20. Learned Counsel further placed reliance on Supreme Court decision reported in *Tek Bahadur Bhujil Vs. Debi Singh Bhujil and Others*, in which the Hon''ble Supreme Court relied on its earlier decision in the matter of *Sahu Madho Das v. Mukhand Ram* and has quoted with approval following observations:

It is well settled that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of the others as they had previously asserted it, to the portions allotted to them respectively. That explains why no conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving it under the family arrangement. It is assumed that the title claimed by the person receiving the property under the arrangement had always resided in him or her so far as the property falling to his or her share is concerned and therefore, no conveyance is necessary.

21. Learned Counsel relying on the aforesaid decisions has emphasized that settlement Annex. 2 ought to have been recognised by the authorities and due weightage should have been given. If weightage were given to the document, then the Board of Revenue and Addl. Collector would not have rendered the judgment in question. The learned Counsel has urged that in another proceedings, the settlement has been recognised.

22. The second limb of the argument of the learned Counsel of the petitioner was that the case of the petitioners had already been decided under the old ceiling law. Its re-opening u/s 15(2) of the Act of 1973 is bad in the eye of law. He has placed reliance on a decision of this Court in the matter of *Pari Devi v. State* reported in 1984 RLW 931 wherein this Court had held that once a ceiling case which has been initiated and culminated in favour of the petitioner, cannot be re-opened under new or old ceiling law. Learned Counsel has relied on a Division Bench Decision of this Court in *D.B. Civil Special Appeal No. 228/84 State v. Smt. Dakha* decided on 20.7.1984, which has approved the *Pari Devi's* case. According to learned Counsel, this Division Bench decision was not interfered by the Hon'ble Supreme Court wherein a SLP preferred by the State was dismissed and a liberty was given to the State to file a review. The review petition which was filed consequently was dismissed by this Court being No. 120/85 *State v. Smt. Dakha* decided on 24.9.1985.

23. Learned Counsel has further relied on a decision of this Court reported in 1997 (3) WLC 184 *Kishanlal v. State of Rajasthan* wherein this Court has followed *Pari Devi's* case. He further placed reliance on a decision of this Court reported in 1998 RRD 384 *Saudagar Singh v. Addl District Magistrate, Sri Ganganagar* wherein *Pari Devi's* case has also been followed. He also places reliance on 1998 RRD 476 *Hameer Singh v. State* decided on 28.1.1998 and *Khem Chand v. State*, decided on 20.2.1998 wherein *Pari Devi's* case has been followed.

24. Thus, learned Counsel has urged that law laid down in *Pari Devi's* case has assumed finality having been approved by a Division Bench and further has not been interfered by the Hon'ble Supreme Court. He has emphasized that aforementioned statement of law requires that re-opening of the case should be

considered to be illegal and consequently, the decision rendered by the Board of Revenue and Addl. Collector be quashed.

25. Per contra, learned Government Advocate contended that law laid down in Pari Devi's case was not after consideration of the substantive provisions of law. The Hon'ble Chief Justice while deciding Pari Devi's case have not cared to refer to various provisions of the Act of 1973. Section 15 of the Act of 1973 reads as under:

15. Power to re-open cases.-(1) Notwithstanding anything contained in this Act, if the State Government, after calling for the record or otherwise is satisfied that any final order passed in any matter arising under this Act is in contravention of the provisions of this Act and that such order is prejudicial to the State Government or that on account of the discovery of new and important matter or evidence which has since come to its notice, such order is required to be re-opened, it may direct any officer subordinate to it to re-open such decided matter, and to decide it afresh in accordance with the provisions of this Act:

Provided that no such direction shall be issued unless a notice to show cause against the proposed action has been served upon the person concerned:

Provided further that no notice referred to in foregoing proviso shall be issued after the expiry of five years from the date of the final order sought to be re-opened or after the expiry of 30.6.1979 whichever is later.

(2) Without prejudice to any other remedy that may be available to it under Rajasthan Tenancy Act, 1955 (Rajasthan Act 2 of 1955), if the State Government, after calling for the record or otherwise, is satisfied that any final order passed in any manner arising under the provisions repealed by Section 40, is in contravention of such repealed provisions and that such order is prejudicial to the State Government or that on account of the discovery of new and important matter or evidence which has since come to its notice, such order is required to be re-opened, it may direct any officer subordinate to it to re-open such decided matter and to decide it afresh in accordance with such repealed provisions:

Provided that no such direction shall be issued unless a notice to show cause against the proposed action has been served upon the person concerned:

Provided further that no notice referred to in the foregoing proviso shall be issued after the expiry of seven years from the date of the final order sought to be re-opened or after the expiry of 30.6.1979 whichever is later:

Provided that no final order passed by the Board in the matter referred to in Sub-section (1) or in Sub-section (2) shall be directed to be re-opened and decided afresh under the said sub-sections unless the State Government is satisfied that such order is required to be re-opened on account of the discovery of new and important matter or evidence which has since come to its notice or due to some mistake or error apparent on the face of the record.

(3) Where any person challenges the direction issued by the State Government to re-open a decided matter under Sub-section (1) or under Sub-section (2) in any Court and such direction is quashed by the Court on account of any procedural defect or on a technical ground or on the ground that the authority who issued the directions had no jurisdiction, the period during which the proceedings remained pending in the Court shall be excluded in computing the period of limitation provided by Second proviso to Sub-section (1) or Sub-section (2) for the purpose of making fresh directions for re-opening decided matters under the said sub-sections.

26. Section 15 of the Act of 1973 has specific intent behind its enactment. It speaks of re-opening when the case had already been decided. May it be under the old law or new law. The law laid down by *Pari Devi*'s case is in direct conflict with the legislative intent as contained in Section 15(1) and (2). That being the position, the law laid down in *Pari Devi*'s case and other cases wherein *Pari Devi*'s case has been relied on, is not correct proposition of law.

27. Learned Counsel relies proviso to Section 4(1) of the Act of 1973, which reads thus:

4(1)...Provided further that if the ceiling area applicable any person or family in accordance with this section exceeds the ceiling area applicable to such person or family according to the provisions of law repealed by Section 40, in that case the ceiling area applicable to such person or family will be the same as was under the provisions of the said repealed law.

According to the learned Counsel, proviso to Section 4(1) of the Act of 1973 would be rendered redundant if the power to make comparison is not available to the authority as to what would be the area applicable u/s 40, according to the provisions of law repealed by Section 40 of the Rajasthan Tenancy Act. Thus, this proviso mandates that such calculation have to be made in terms of both the laws and then arrive at a finding as to what is the ceiling area applicable to a particular assessee.

28. Learned Government Advocate has further emphasized that while deciding cases subsequent to *Pari Devi*'s case, the Courts have not considered the law laid down by the Division Bench of this Court in 1989(1) WLN 252 *Ram Gopal v. State of Rajasthan* wherein this Court after considering the judgments in the case of *Pari Devi*, *State v. Smt Dakhan*, *State of Rajasthan v. Prithvi Singh* and *Smt. Amarjeet Kaur v. State of Rajasthan*, has come to the conclusion thus:

7. A bare reading of the aforesaid extracted provisions will be that Sub-sections (1) and (2) of Section 15 have been made to met two different situations. Sub-section (1) of Section 15 will be attracted in case, the State Government, after ceiling for the record or otherwise is satisfied that any final order passed in any matter, arising under the new ceiling law is in contravention of the provisions of that Act and is prejudicial to the State Government or on account of the discovery of new and important matter or evidence which has come to the

notice, is required to be reopened. Sub-section (2) of Section 15 is applicable if the State Government is satisfied that final orders in any matter arising under the old ceiling law is in contravention of that law and is prejudicial to the State Government, it may direct any officer subordinate to it, to re-open such decided case and to decide it afresh in accordance with the old ceiling law. This power can be exercised after giving a show cause notice to the person concerned. Again a limitation has been prescribed for the exercise of powers under Sub-sections (1) and (2) of Section 15 of the new ceiling law. Under Sub-section (1) a ceiling case decided under the New Ceiling Law can be reopened whereas under Sub-section (2) of Section 15 the ceiling case decided under the Old Ceiling Law can be reopened. The power to reopen the case under either of those provisions can only be exercised once.

There can be no dispute that while deciding the ceiling area u/s 4(1) of the new ceiling law, by virtue of the provisions contained in Proviso 2 to Sub-section (1) of Section 4 of the Act, if exceeds the ceiling area applicable under the old ceiling law, then it shall be the same, as applicable under that law. A bare reading of Sub-section (2) of Section 15 of the Act will show that power can be exercised if the State Government is satisfied that any final order passed under the old ceiling law is in contravention of the provisions that law and is prejudicial to the State Government. Therefore, as stated earlier both the provisions of Sub-sections (1) and (2) of Section 15 of the new Ceiling Law have been made to meet two different fact situations and therefore, we are of the opinion that despite the fact that the ceiling area has been determined under the Old Ceiling Law as well as the New Ceiling Law. The State Government can order to re-opening also under Sub-section (2) of Section 15 of the New Ceiling Law. No doubt subject to other condition and within the prescribed period of limitation as contained therein.

29. This Court has further came to the conclusion that:

In our opinion the determination of the ceiling area and decision of the case both the old ceiling law as well as under the new ceiling law does not debar the State Government from re-opening the case under Sub-section (2) of Section 15 of the New Ceiling Law.

30. Thus, the law laid down in *Pari Devi's* case stands overruled by *Ram Gopal's* case. The other Single Benches have not even noticed *Ram Gopal's* case. Thus, it cannot be said to be case decided on sound principles after considering relevant law.

31. As regards, *Smt. Dakha's* case, it may be seen that learned Judges of the Division Bench has not gone in detail and has not discussed the provisions of law, rather they have not even noticed, niceties of law and thus is not an authority on the point. Learned Government Advocate has further argued that operation of the field of law on both counts is different. According to law, the landholder

incurs liability as on 1.4.1966. According to the new law, the liability is incurred on 1.1.1973. By operation of law, the liability stood incurred on both available dates.

32. What remained was only quantification, which can take place at any point of time, of course, keeping in view the provisions of the Limitation Act. In terms of proviso to Section 4 (1) even in proceedings under new law, quantification has to be considered under old law also considering the liability to be subsisting. Thus, to give effect to the proviso to Section 4 (1), re-opening is a necessary corollary. Learned Counsel further emphasized that the Full Bench of this Court has considered the law of permissibility of reopening which was approved by a Constitution Bench of Hon'ble Supreme Court reported in *Bansidhar and Others Vs. State of Rajasthan and Others*, and has effect of overruling the decision of *Pari Devi's* case.

33. It has also been urged by the learned Counsel for the State that the family settlement has rightly been ignored by Courts below. As regards the argument that the same has been relied in another case, suffice it to say that the same was done in particular circumstances. The law was considered for one assessment. The same could not have been taken into consideration in another assessments.

34. I have considered the rival submissions and have given my thoughtful consideration.

35. First, I take up the argument of learned Counsel for the petitioner regarding powers of re-opening u/s 15 of the Act of 1973. The petitioners' case is based on findings of this Court in the judgment of *Pari Devi* (supra). While deciding *Pari Devi's* case, it has been held as under:

After the proceeding had been initiated, and culminated in favour of the petitioner u/s 15(4) of the New Ceiling Law, it is not open to the respondent to proceed again under the Old Ceiling Law, or, in other words, both the Old Ceiling Law and the New Ceiling Law cannot occupy the same field or in the same subject matter. Admittedly, in this case, New Ceiling Law was in favour of the petitioner, and therefore, in my opinion, the proceeding u/s 15(2) was, on the face of it, without jurisdiction.

36. The judgment proceeds on the basis of culmination of proceedings in favour of the petitioner u/s 15(4), which appears to be a mistake. In any case, this Court while rendering aforesaid decision in *Pari Devi's* case, has not addressed itself on the language of Sub-section (2) of Section 15 which clearly mentions that without prejudice to any other remedy, the State Government may after calling of the record, may examine the case. If on examination, it is found that the order passed u/s 40 of the Repealed Act is prejudicial to the State, then re-opening can be ordered. On other grounds as mentioned in sub-section may only direct to re-open. The case is thus to be decided afresh in accordance with the such repealed provisions. Before such action is ordered, the section provides that

a show cause notice is also to be given. No such action should be taken after expiry of seven years from the appointed date. The scheme of Section 15 (2) is a complete code in itself, which provides for re-opening. Thus, there was no scope for holding that any re-opening ordered by the State would be without jurisdiction if it were u/s 15 (2). The law laid down in *Pari Devi's* case has no doubt been followed in certain other decisions but all these cases have not noticed the Division Bench decision of this Court in *Ram Gopal's* case.

37. The law laid down in *Ram Gopal's* case is in conformity with the law laid down in the case of *Banshidhar* (supra), by a Full Bench of this Court. The judgment in the case of *Banshidhar* (supra), has been affirmed by the Hon'ble Supreme Court.

38. A reference may also be made to a Division Bench decision of this Court in *State v. Prathvi Singh* 1986 RLR 32 wherein this Court has held as under:

In our view, much of the controversy raised by learned Counsel for the landholders and decided by learned Single Judge of this Court, in cases referred to above, is unnecessary and unreal. If the proceedings had already been initiated or commenced under the old ceiling law, the Full Bench of this Court in *Banshidhar's* case (supra), has already decided that the same would be completed and decided under the old law, and even learned Counsel for the landholders before us were not assailing that position. So far as the proceedings, having already been initiated under the old ceiling law and also completed have been permitted to be reopened u/s 15(2) of the new ceiling Act, notwithstanding the provisions of repeal contained in Section 40. It cannot be the intention of the Legislature to put at a more advantageous position, such landholders who had failed to file returns under the old Ceiling law, though it was their duty to do so, from such land holders who were law abiding and had filed returns under the Old Ceiling law. In order to remove such anomalous situation, the legislature itself had laid down proviso two to Act. In the cases before us, the petitioners have themselves filed returns u/s 10 of the new ceiling law. Section 11 of the new ceiling law gives a power to the authorised officer to collect information in cases where a person fails to furnish the return u/s 10 or furnishes an incomplete or Incorrect return. The SDO, Ramganj Mandi had issued notice (Annexure-4) and had fixed 7.8.1975 for deciding the question of land in excess of ceiling area. According to this notice, the SDO had received reports from the Tehsildar and thereafter, he had issued notice. In this notice, the SDO had mentioned that on the aforesaid date, the petitioner should appear and in case the petitioner would not appear, then, orders in accordance with law shall be passed under the provisions of Chapter-III-B of Rajasthan Tenancy Act, 1955 and Ceiling Rules of 1963. Thus, in case the SDO, after receiving the report from the Tehsildar thinks it proper to determine the ceiling area under proviso 2 to Section 4(1), he can do so even under the new law. Mention of any particular rule or section in such notice is not of much substance and the entire proceedings cannot be quashed merely on the ground of wrong mention of any Rule or section in such notice. If

the intention of the petitioners by filing these writ petitions is that their ceiling area cannot be determined under the old law, even if such area was less under the old ceiling law and more under the new ceiling law, they cannot succeed in violation of the clear provisions contained in the proviso. It makes no difference whether the proceedings are called as being continued under the old ceiling law or the new ceiling law, but the substance of the matter is whether the authorised officer can apply or not the provisions of the proviso 2 to Section 4(1) of the new ceiling law. If in the opinion of the authorised officer, the ceiling area applicable to such person under the new ceiling law, exceeds, the ceiling area applicable to such person or family under the old ceiling law, then he is certainly entitled to make an enquiry and ask the petitioner to submit a reply or other information as clearly laid down in proviso 2 to Section 4(1). Even the learned Chief Justice while deciding all these cases in the impugned order has observed that whether the respondent can give notice under the new Act and decide the matter under the old Act was not for him to be decided because it has been already decided by Division Bench of this Court in *Sumitra Kaur v. Authorised Officer, Sri Ganganagar* 1977 RLW 423. It was further observed that he could take proceeding under the new Act, but the same must be decided under the old Act and in the matter of computation of the quantum, the old Act must be given effect to in proceeding u/s 11 of the new Act of 1973. In the last portion of the impugned order it was further observed that the respondents would be at liberty to take such proceedings if they are entitled to for the purpose of deciding the ceiling area of the petitioners. The notice and orders thus passed by the Dy. Secretary to Government, Revenue (Ceiling) Deptt. and the Authorised Officer cannot in our view be quashed in toto and the direction should have been given to continue the proceedings under the new ceiling Act, but to allow the authorised officer to act under proviso 2 to Sub-section (2) of Section 3 of the new ceiling law, if he chose to do so.

39. The law laid down by the Division Bench of this Court in *State v. Prathvi Singh* in terms supports the contention that a proceeding, which has already been initiated under old ceiling law and completed, can be re-opened u/s 15(2) of the Act of 1973. Thus, this case has also the effect of overruling decision in *Pari Devi's* case. Thus, in view of the law stated hereinabove, I am of the considered opinion that law laid down in *Ram Gopal's*, case states correct law and being a Division Bench decision overrules *Pari Devi's* case (*supra*).

40. Even on first principles", the enactment of Section 15 after repeal of Section 30 of the Rajasthan Tenancy Act, clearly stipulates about re-opening. When law specifically provides for reopening, then there is no warrant to hold that Legislature has not intended for re-opening and in this view of the matter, the argument of learned Counsel for the petitioners deserves to be repelled that there was no power with the respondent authority to re-open the case once it was already decided.

41. Now, I take the argument of learned Counsel for the petitioners in regard to

non-recognition of the family arrangement by the Courts below. The law cited at the Bar by the learned Counsel for the petitioners is more or less on the particular facts and circumstances of every case.

42. In the instant case, the alleged family settlement has not been recognised by the Courts below on various grounds. One of them is that notwithstanding execution of family arrangement for 20 years, Sanwarmal's name continued in the revenue record. The agreement was thus not given any effect for twenty years. Thus, it was not a bonafide family arrangement. It has further been held by the Revenue Board that there is no proof of the fact that the members of the family contributed any amount. Thus, it was not considered to be a Joint Hindu Family property. The property has been said to be coparcenery of the ladies, which is not provision of Mitakshara Hindu Law. There was no ostensible reason to go for a family settlement because there was no dispute and further the document has been observed to be styled to defeat the provisions of ceiling law.

43. The findings cannot be said to be perverse or devoid of any support to them from law. Thus, on this count also, findings of the Courts below are not likely to be interfered with.

44. Learned Counsel for the petitioners has further observed that certain transfers have wrongly been ignored by the Courts below. The revenue authorities have given cogent reasons for not allowing the transfers, claimed to have been wrongly allowed by the Courts below. Therefore, it cannot be said that there was any manifest error committed by the Courts below. In view thereof, I am of the opinion that no interference is called for in writ petition under Article 226 of the Constitution of India. There is no force in the writ petition. The writ petition is therefore, dismissed.