(2003) 03 AHC CK 0151

In the Allahabad High Court

Case No : C.M.W.P. No. 7540 of 1978

Seth Banarsi Dass (D.) through L.Rs. and Others APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 24-03-2003

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 3(4), 4, 4A, 5(2), 5(4)

Citation : (2003) 3 AWC 1967 : (2003) 94 RD 516

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : M.K. Gupta, Bharatji Agarwal, Piyush Agarwal, R.P. Singh, Ravi Kant, V. Chaudhari and Anil Sharma, for the Appellant; S.N. Verma, R.P. Srivastava, K.B. Sinha and R.K. Agnihotri and S.C., for the Respondent

Final Decision : Allowed

Judgement

R.H. Zaidi, J.—By means of this petition filed under Article 226 of the Constitution of India, petitioners pray for issuance of a writ, order or direction in the nature of certiorari quashing the orders dated 11th May, 1978 and 9th December, 1976, passed by the appellate authority and the prescribed authority respectively under the U. P. Imposition of Ceiling on Land Holdings Act, (for short ''the Act'') as well as the notices dated 26th June, 1974, 7th December, 1974 and 3rd June, 1976, contained in Annexures-3 to 14 to the writ petition.

2. The relevant facts of the case giving rise to the present petition, as stated in the writ petition, in brief, are that the land in dispute was stated to have been acquired by Hindu Undivided Family of the petitioners of which Seth Banarsi Das was the karta before the enforcement of the U. P. Zamindari Abolition and Land Reforms Act. The land in dispute was also shown as owned by H.U.F. in Income Tax department. After the enforcement of the U. P. Zamindari Abolition and Land Reforms Act, the petitioners acquired bhumidhari rights in the same after following the procedure prescribed under the law. The petitioners before 1st May,

1959, planted fruit bearing trees of Malta, Mausmi, Aloocha, Lichi, Naspati, Chakrata, etc. in the land in dispute measuring 3,683 bighas. The land was, thus covered by the definition of "grove land" within the meaning of Section 3 (8) of the Act. The remaining land was covered by residential buildings, servant quarters, farm roads, temple, etc. It was in the year 1961 that the Act was enforced. After enforcement of the Act, notices u/s 10 (2) of the Act, were issued to the petitioners calling upon them to show cause as to why the land described in the said notices be not declared as surplus. On receipt of the said notices, the petitioners filed their objections contending that no land out of their holdings was liable to be declared as surplus as they were holding the land within their ceiling limit and that grove land was exempted from the operation of the Act. On the basis of the said notices, four cases, i.e., Nos. 12 of 1962, 13 of 1962, 14 of 1962 and 18 of 1962 were registered. Parties produced evidence, oral and documentary, in support of their cases. The prescribed authority after going through the evidence on the record discharged the notices by its Judgment and order dated 12.3.1962 holding that there was no land to be declared as surplus in the holdings of the petitioners. Long thereafter, in the year 1969, four notices were again issued against the petitioners u/s 10 (2) read with Section 29/30 of the Act to the petitioners allegedly on the basis of a report by the Tehsildar. The petitioners on receipt of the said notices, again filed objections contending that the grove in question continued to exist on the land in dispute and the remaining land was covered by abadi, temple etc. as before. While the aforesaid proceedings were pending before the Prescribed Authority, U. P. Act No. 18 of 1973 was enforced, by which the Act was amended. The ceiling limit was reduced from 40 acres to 18 acres of a tenure holder besides several other amendments were made. Section 19 of the said Act provided that the proceedings after commencement of the said Act, if any, pending before the authorities below shall abate and the prescribed authority was permitted to start fresh proceedings for re-determination of ceiling area by issuing notices u/s 9 (2) of the Principal Act as inserted by Act No. 18 of 1973. In view of the provisions of Act No. 18 of 1973, the proceedings initiated on the basis of notices dated 13.1.1969, were abated and fresh notices were issued against the petitioners u/s 9 (2) on 26.6.1974 calling upon them to show cause as to why the land shown in the said notices be not declared as surplus. In the meanwhile, it has been stated that on 7.5.1969, a co-operative society known as Meeduwala Sahkari Krishi Samiti Limited was formed and got registered under the Co-operative Societies Act, which consisted of 99 members, who have pooled their lands including the petitioners. Again on 17.12.1974, four fresh notices were issued against the petitioners. The said notices were presumed to have been issued under the amended provisions of the Act. On receipt of the said notices, objections were again filed by the petitioners pleading that originally the land in dispute was acquired by Hindu Undivided Family of which Seth Banarasi Das was the karta and each member of the family was the owner of the land, that the grove, which was standing in the land in dispute still existed, the land covered by temple, buildings, roads, etc. was also liable to be exempted. It was also pleaded that a co-operative society was formed and got registered on 7.5.1969, the proceedings could be taken u/s 5 (4) of the Act only. In the meanwhile, the Act was again amended by U. P. Act No. 20 of 1976. Sub-section (3) of Section 31 of the said Act provided that if there was order of determination of surplus land in relation to a tenure-holder made under the Principal Act before 10.10.1975, the prescribed authority could at any time within two years from the said date, re-determine the surplus land. In the present case, according to the petitioners, the proceedings started for determination of ceiling land on the basis of notices dated 26.5.1974 (Annexures-3 to 7) and notices dated 17.12.1974 (Annexures-7 to 10) were pending. Consequently, no fresh proceedings could be initiated under the provisions of U. P. Act No. 20 of 1976. However, the prescribed authority issued fresh notices to the petitioners on 3.6.1976, the copies of which are contained in Annexures-11 to 14 to the writ petition. In the said notices, the ceiling limit of the petitioners was reduced. On receipt of the said notices, the petitioners again filed objections contending that no land out of their holdings was liable to be declared as surplus. The prescribed authority, after permitting the parties to produce evidence in support of their cases, treating the Case No. 230 of 1968, State v. Mohan Lad, as the leading case, decided the four cases by its Judgment and order dated 23.7.1976, as copy of which is contained in Annexure-20 to the writ petition and declared an area measuring 3,398 bighas 3 biswas equivalent to 2123,84 acres as surplus land with 1/4th share of each of tenure-holders after determining the ceiling area under the Principal unamended Act. The prescribed authority accepted the objections of the petitioners with respect to the transfers made before 24.1.1971 while deciding the case under the U. P. Act No. 18 of 1973. He also gave benefit to Mohan Lal and Jitendra Lal with respect to their adult sons and gave them two hectares each additional land. The petitioners challenging the validity of the said order, preferred eight appeals before the appellate authority but no appeal was filed by the State against the order passed by the prescribed authority. The appellate authority dismissed all the eight appeals and also refused to give benefit regarding sale deeds and additional land to the sons which was granted by the prescribed authority by its judgment and order dated 11.5.1978, hence the present petition for the above mentioned reliefs.

3. In reply to the facts stated in the writ petition, a counter-affidavit has been filed on behalf of the respondents controverting and denying the facts stated in the writ petition but the facts, which are relevant for the purposes of the present petition have not been denied specifically. The petitioners also filed rejoinder-affidavit controverting the facts stated in the counter-affidavit, reasserting and reiterating the facts stated in the writ petition.

4. Under the orders of this Court, the petitioners have also filed supplementary affidavit after inspecting the record of the case which, was summoned. It has been stated that there was no report of Tehsildar, Najibabad of the year 1968 on the record on the basis of which notices dated 31.1.1969 u/s 29/30 read with Section 10 (2) of the Act were issued. Further, the Tehsildar was not examined

on oath to prove the alleged reports. On the other hand, one Shri V. D. Tyagi, Naib Tehsildar was examined who had absolutely no knowledge of the facts of the case, as P.W. 1. The report, if any, submitted by the Tehsildar in any other proceedings remained inadmissible in evidence. It has also been stated that the procedure prescribed for determination of the nature of land irrigated or un-irrigated as provided u/s 4A of the Act was not followed. No local inspection was made by the authority concerned or the relevant khasras were perused in spite of applications/ requests made by the petitioners. According to the petitioners, the grove as provided u/s 3 (8) of the Act still exists in the land in dispute and is also recorded in the relevant khasras. There also exist servant quarters, temple and water tank, threshing floor, etc. in the land in dispute which are exempted from the operation of the Act. The land covered by them was wrongly clubbed in the holding of the petitioners. It has also been stated that the petitioners have executed sale deeds in respect of certain land in favour of third persons, which were bona fide before 24.1.1971. According to the petitioners, notices Issued u/s 29 of the Act dated 31.1.1969 were wholly illegal and without jurisdiction. According to them, the entire proceedings initiated on the basis of the said notices were misconceived.

5. On behalf of the respondents, a supplementary counter-affidavit has been filed annexing therewith report submitted in the proceeding under the U. P. Large Holding Tax Act, 1957 and the order passed in the same, which were not relevant for the purposes of the present case as on the basis of the same the proceedings cannot be initiated against the petitioners under the Act. It has not been denied in the supplementary counter-affidavit that the Tehsildar was not examined to prove the alleged report filed as Annexures-S.C.A.-1 and S.C.A.-2 in the proceedings under the U. P. Large Holding Tax Act, 1957 and the said report was not on the record of this case. Therefore, the said report was irrelevant and inadmissible in evidence and could not be relied upon by the authorities below. Two proceedings, according to the petitioners, could not be mixed up and on the basis of the said reports, orders could not be passed under the Act against the petitioners.

6. Learned counsel for the petitioners vehemently urged that the land in dispute was owned and possessed by the co-operative society known as Meeduwala Sahkari Krishi Samiti Limited. The said co-operative society was got registered under the U. P. Co-operative Societies Act in the year 1969 in accordance with law. Therefore, the ceiling limit of the members of the co-operative society had to be determined in accordance with the provisions of Sub-section (4) of Section 5 of the Act. Mere impleadment of the society as a party in the present case was not sufficient. The authorities below have acted illegally in ignoring this aspect completely. It was also urged that legally there existed no report of Tehsildar on the basis of which it was presumed that the grove which existed in the land in dispute ceased to exist. The so-called report relied upon by the authorities below was inadmissible in evidence as the same was neither filed in the present proceedings nor the same was proved in accordance with law nor the same forms

part of the record. The groves which were in existence in the year 1962 still existed, that the procedure prescribed u/s 4A of the Act for determination of the nature of land irrigated or un-irrigated was also not followed, that the entire land owned by the society was mortgaged with New Bank of India, the same was, thus, exempted u/s 5 (2) and Section 12 (A) of Act No. 19 of 1973 and the view taken to the contrary by the authorities below is erroneous, that as proceedings initiated under Act No. 18 of 1973 were pending disposal, fresh notices could not be Issued after enforcement of U. P. Act No. 2 of 1975, and that the authorities below had acted illegally in refusing to grant exemption with respect to the land which was covered by the temple, residential houses situated around it and the residential houses situated inside and around the sugar factory. The appellate authority has also erred in law in not granting additional land for the adult sons of the petitioners and wrongly clubbed the land which was covered by sale deeds which were bona fide and were executed in the year 1965 in respect of which the claim of the petitioners was accepted by the prescribed authority, in spite of the fact that the part of the judgment of the prescribed authority. The appellate authority acted in excess of its Jurisdiction in reversing that finding. It was also urged that the authorities below have also acted Illegally in not entertaining the plea of acquisition of land by Hindu Undivided Family before enforcement of the U. P. Zamindari Abolition and Land Reforms Act, of which every member of the family was the owner. Therefore, according to him, the judgments and orders passed by the authorities below were liable to be quashed.

7. On the other hand, learned standing counsel supported the validity of the impugned orders passed by the authorities below. It was submitted that the authorities below have acted in accordance with law as the Act was amended from time to time and the ceiling limit was also varied, therefore, fresh notices had to be issued. It was urged that the questions raised on behalf of the petitioners have rightly been answered and not accepted by the authorities below and their claims have rightly been rejected by them. According to him, the writ petition has got no force and the same deserves to be dismissed.

8. I have considered the submission made by the learned counsel for the parties and carefully perused the record of the case.

9. The first question which calls for decision is as to whether the land was owned and possessed by the agricultural co-operative society, registered under the U. P. Cooperative Societies Act and as to whether the procedure prescribed for determination of the ceiling limit was followed by the authorities below in the present case. The co-operative society has been defined under Sub-section (4) of Section 3 of the Act as under :

"3 (4) ''co-operative society'' means a co-operative society registered under the Uttar Pradesh Co-operative Societies Act, 1965."

10. It is not disputed that Meeduwala Sahkari Krishi Samiti Limited was a co-operative society which was registered under the U. P. Co-operative Societies

Act, 1965 on 7.5.1969 and consisted of 99 members. The registration certificate has been filed as Annexure-23 to the writ petition. After registration the name of the said co-operative society was also mutated in the revenue papers under the orders of the competent authority, i.e., Naib Tehsildar, Nazibabad vide order dated 18.8.1971, a true copy of which has been filed as Annexure-24 of the writ petition. The appellate authority dealing with the said question held as under ;

"So far as the objection regarding the land being held by co-operative society is concerned, that top is not of any avail to the appellants. It is true that from the evidence on the record, it is sufficiently proved that the appellants and some other persons named in the Annexure-23 have formed co-operative society and contributed their land to the property of the said society."

11. Sub-section (4) of Section 5 of the Act provides as under :

"5. Imposition of Ceiling.--(1)

.... (4) Where any holding is held by a firm or co-operative society or association of persons (whether incorporated or not, but not including a public company), its members (whether called partners, share-holders or by any other name) shall, for purposes of this Act, be deemed to hold that holding in proportion to their respective shares in that firm, cooperative society or other society or association of persons :

Provided that where a person immediately before his admission to the firm, co-operative society, or other society or association of persons, held no land or an area of land less than the area proportionate to his aforesaid share, than he shall be deemed to hold no share, or as the case may be, only the lesser area, in that holding, and the entire or the remaining area of the holding, as the case may be, shall be deemed to be held by the remaining members in proportion to their respective shares in the firm, cooperative society or other society or association of persons."

12. Thus, according to the provisions of Sub-section (4) of Section 5 referred to above, the members of the co-operative society had to be treated as tenure holders and notices had to be issued to all of them by the prescribed authority. Admittedly, the notices were not issued to them but only to the petitioners. Therefore, the notices contained in Annexures-3 to 14 are illegal. Thus, the entire procedure followed for determination of ceiling limit was contrary to the provisions of the Act. The notices and the proceedings are, therefore, liable to be quashed on this ground.

13. In Writ Petition No. 14648 of 1995, Rural Trust Private Limited v. State of U. P. and Ors., connected with Writ Petition No. 16578 of 1996, Jain Farm and Industries Private Limited v. State of U. P. and Ors. dealing with the case of private limited company relying upon the decisions in Writ Petition No. 3317 of 1977 and in the case of Dhanwant Singh and Ors. v. State of U. P. and Ors., 1978 RD 360, this Court held as under :

"In the present case, admittedly, the petitioner is a private limited company or a firm as held by the authorities below and admitted by the respondents in their affidavit, therefore, notice could not be issued u/s 10 (2) of the Act only to the petitioner. The petitioner was incorporated as private limited company on 31.10.1947 under the Companies Act, 1956, as it is evident from Annexure-S.A.-l. The list of registered shareholders is contained in Annexure-S.A.-1. Had the opportunity of hearing and to produce the evidence been given to the petitioner by the prescribed authority as provided under the Act, the aforesaid documents along with other evidence, oral and documentary, would have been produced before it by the petitioner. Thus, the entire procedure adopted by the authorities below was wholly illegal and without jurisdiction and contrary to the provisions of the Act and the Rules framed thereunder. The orders passed by the authorities below, thus, cannot be sustained. The authorities were bound to follow the procedure prescribed under the Act, referred to above,"

14. As stated above, in the present case also, members of the cooperative society, whose names are mentioned in Annexure-16A to the writ petition, pooled their land and got registered it under the U. P. Cooperative Societies Act. Thus, the members of the co-operative society who have pooled their land and constituted a co-operative society could not get opportunity to contest the cases and to prove their cases. The appellate authority after quoting the proviso referred to above arbitrarily held as under :

"A perusal of the provision leaves no room for doubt that the appellants did not get any benefit on "the basis of the land being held by the co-operative society. Their objection in this respect was rightly turned down by learned prescribed authority and is without any substance."

15. It is apparent from the aforesaid finding that the appellate authority did not record any reason as to why the petitioners and other members of the co-operative society will not get any benefit if the land is held to be owned by the co-operative society. No valid reason was also recorded by the prescribed authority. The appellate authority had no jurisdiction to make the said observation without issuing notices to the members of the society and without affording them an opportunity of being heard. Thus, the view taken by the appellate authority is manifestly erroneous and illegal.

16. So far as the question of determination of the nature of the land, irrigated or unirrigated is concerned, the same is to be determined in accordance with the - provisions of Section 4A of the Act as inserted by the U. P. Act No. II, of 1975 with effect from 8.5.1973, Section 4A of the Act provides as under :

"4 A. Determination of irrigated land.--The prescribed authority shall examine the relevant khasras for the year 1378 Fasli, 1379 Fasli and 1380 Fasli, the latest village map and such other records as it may consider necessary, and may also make local inspection where it considers necessary, and thereupon if the prescribed authority is of opinion :

Firstly, (a) that, irrigation facility was available for any land in respect of any crop in any one of the aforesaid years ; by :

(i) any canal included in Schedule No. 1 of irrigation rates notified in Notification No. 1579-W/ XXIII-62-W-1946, dated March 31, 1953, as amended from time to time ; or

(ii) any lift irrigation canal ; or

(iii) any State tube-well or a private to irrigation work ; and

(b) that at least two crops were grown in such land in any one of the aforesaid years ; or

Secondly, that irrigation facility became available to any land by a State Irrigation Work coming into operation subsequent to the enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, and at least two crops were grown in such land in any agricultural year between the date of such work coming into operation and the date of issue of notice u/s 10 ; or

Thirdly, (a) that any land is situated within the effective command area of a lift irrigation canal or a State tube-well or a private irrigation work ; and

(b) that the class and composition of its soil is such that it is capable of growing at least two crops in an agricultural year ;

then the prescribed authority shall determine such land to be Irrigated land for the purpose of this Act.

Explanation 1 : For the purposes of this section the expression ''effective command area'' means an area, the farthest field whereof in any direction was irrigated ;

(a) in any of the years 1378 fasli, 1379 fasli and 1380 fasli ; or

(b) in any agricultural year referred to in the clause ''secondly''.

Explanation II.--The ownership and location of a private irrigation work shall not be relevant for the purpose of this section.

Explanation III. -- Where sugarcane crop was grown on any land in any of the years 1378 fasli, 1379 fasli and 1380 fasli it shall be deemed that two crops were grown on it in any of these years, and that the land is capable of growing two crops in an agricultural year.

17. A reading of the aforesaid provision clearly reveals that it is the duty of the prescribed authority to examine the khasras for the years 1378 fasli to 1380 fasli, the latest village map and such other records as it may consider necessary, and may also make local inspection where it considers necessary. In the present case, the authority below has taken into consideration khasra extract for the year

1377 fasli, which was irrelevant and not the extracts of the relevant khasras and came to the wrong conclusion. It was noted that there was no perennial source of water and water was not supplied throughout the year. It has accepted the argument made by learned counsel for the petitioners but refused to give any benefit of the same as two plot Nos. 102 and 116 were allotted to them and ignored the fact that several plots were claimed to be unirrigated as it is evident from the objection filed by petitioners and not only the aforesaid two plots. The authorities below have also acted illegally in laying the burden for filing the khasra extracts and for applying for inspection upon the petitioners. The aforesaid statutory provision cast duty upon the prescribed authority to peruse the relevant khasras and to make inspection if it is felt necessary, therefore, before rejecting the claims of the petitioners, it was necessary for the prescribed authority as well as for the appellate authority to make local inspection if it was required to be made and not to rely upon the extract of khasra for the year 1,377 fasli, which was irrelevant. It may be noted although it was not required but the petitioners have filed the extract of relevant khasras and also applied for local inspection before the prescribed authority as it is evident from the record of the case. Thus, the finding recorded by the authorities below even on this question is perverse and against the provisions of the Act.

18. Clause (1) of Section 4 of the Act provides as under :

"4. Determination of area for purposes of ceiling and exemptions.--For purposes of determining the ceiling area u/s 5 or any exemption u/s 6 :

(i) subject to the provisions of Clause (ii), one and one-half hectares of grove-land or two and a half hectares of usar land shall count as one hectare of irrigated land ;

....

Had the authorities below determined nature of land in accordance with the provisions of Section 4A of the Act, the petitioners and other members of the society would have been entitled to the benefit as provided u/s 4 of the Act referred to above.

19. To prove that the grove in question still existed, the petitioners produced documentary as well as oral evidence. The documentary evidence consisted extract of khasras, the copies of which have also been filed as Annexures-18 and 19 to this petition and as many as 24 persons were examined on oath who proved that the grove still exists in the land in dispute. All plots which were initially recorded as grove, are still recorded as grove land, no evidence whatsoever, oral and documentary, was produced by the other side to contradict or disprove the evidence filed by the petitioners particularly the relevant khasra extracts and the oral evidence. The authorities below have, therefore, acted illegally in holding that the grove-land ceased to be grove land. The said finding is not based on any relevant evidence. In case, the prescribed authority or the appellate authority felt doubt regarding existence of the grove in the land in

dispute, they should have made local inspection. No reason whatsoever has been recorded as to why local inspection was not made and as to why inspection note was not prepared which should have removed the controversy on this point. Further, no admissible evidence has been produced on this point by the State. They Illegally presumed that the grove ceased to exist. For the petitioners. It was not necessary to make a prayer for issuing commission but the prayer was made to remove the doubt from the minds of the authorities below. If commission was not to be issued for any reason whatsoever, the authorities themselves could make inspection to remove the doubt if there existed grove in the land in dispute, as stated above. The finding on the existence of grove in the land in dispute is also not based on any relevant evidence on the record.

20. So far as the question of acquisition of land by Joint Hindu Family is concerned, in the year 1962, the grove land was exempted u/s 6 of the Act. Since the entire land was covered by grove, buildings, etc., the petitioners, therefore, under the advice of their counsel, raised the only objection that no land out of their holding was liable to be declared as surplus as the same ''was grove, etc. It was not necessary at that time for them to raise the question of acquisition of land by Joint Hindu Family. The appellate authority has acted illegally in not considering the question of acquisition of land in dispute by Joint Hindu Family merely on the ground that in the year 1962, such objection was not taken by the petitioners.

21. Here, it may be noted that the prescribed authority, as stated above, has accepted the validity of the sale deeds executed by the petitioners before 24.1.1971. It has also given Mohan Lal and Jitendra Lal the benefit of two major sons by granting each of them two additional hectares land. Against the order passed by the prescribed authority, no appeal was filed by the State, as such the appellate authority had no jurisdiction to reverse the said findings recorded by the prescribed authority to refuse the benefit of additional hectares land for the major sons of the petitioners. Appeals were filed, as stated above, only by the petitioners against the order passed by the prescribed authority and not by the State. The order passed by the appellate authority in this regard is wholly illegal and in excess of its jurisdiction.

22. The authorities below are also not right in rejecting the claims of the petitioners with respect to the land, which was mortgaged with the New Bank of India. The moment loan is granted after mortgaging the immovable property to a tenure holder, the mortgagee bank becomes the holder of the land. Sub-section (2) of Section 5 of the Act provides as under :

(Only relevant quoted)

"2. Nothing in Sub-section (1) shall apply to land held by the following classes of persons, namely :

(a) ....

(b) ....

(c) ....

(d) bank as defined in Clause (c) of Section 2 of Uttar Pradesh Agricultural Credit Act, 1973, or a Cooperative Bank or a Cooperative Land Development Bank ;

23. Clause (c) of Section 2 of the U. P. Agricultural Credit Act, 1973, defines the word ''bank'' as under :

"2. Definitions. --...........

(a) ....

(b) ....

(c) "Bank" means :

(i) a banking company, as defined in the Banking Regulation Act, 1949 (Act X of 1949) ;

24. The New Bank of India is a banking company as defined in the Banking Regulation Act, 1949. Thus, the same is fully covered by Section 5 (2) (d). referred to above. The rejection of the impleadment application made by the New Bank of India prior to 1976 is of no consequence in view of Section 38B of the Act and does not deprive the petitioners and the said bank to assert its right in the land in dispute. In any view of the matter, the petitioners can take and press the said point in the present petition as it is for their benefit.

25. Further, it is a matter of common knowledge that for agricultural purposes, loans are granted by the bank to the tenure holders sometimes for purchasing the tractors, for constructing tube-wells and for other such agricultural purposes, which is repayable within the specified time. Banks do not grant loans without mortgaging immovable property (land), therefore, in view of Clause (d) of Sub-section (2) of Section 5 of the Act, the land mortgaged with the bank is exempted from the operation of the Act. The authorities below have acted illegally in holding that granting of loan and mortgaging agricultural land will defy the provisions of the Act without mentioning as to how and why the provisions of the Act shall be defined. The moment loan is either paid or recovered, the land becomes subject to the provisions of the Act. In that event, fresh notices u/s 29 read with Section 10 (2) of the Act can always be issued, if the area of the tenure holder exceeds his ceiling limit. The view taken to the contrary by the authorities below is manifestly erroneous and illegal.

26. Similarly, the authorities below have acted illegally in not giving the benefits to the petitioner with respect to the land covered by residential houses contrary to the provisions of the Act. Clause (b) of Sub-section (1) of Section 6 of the Act provides as under ;

"6. Exemption of certain land from the imposition of ceiling.--(1) Notwithstanding anything contained in this Act, land falling in any of the categories mentioned below shall not be taken into consideration for the purposes of determining the ceiling area applicable to, and the surplus land of a tenure holder, namely :

(a) ....

(b) land occupied by a residential house ;

27. A reading of Clause (b) of Section 6, noted above, clearly indicates that the residential houses are exempted from the operation of the Act. In my opinion, the temple is also exempted, as according to Hindu faith and religion, God (Bhagwan) resides in it and the tenure holders, devotees and other persons offer prayers in the same residential houses situated around it as well as around the sugar factory are also exempted under the aforesaid clause. The roads connecting the said houses with the main road or the nearest abadi are necessary part of the said houses without which the same cannot be approached and used. Therefore, they are also to be exempted from the operation of the Act. The view taken to the contrary, by the authorities below is apparently erroneous and illegal.

28. In view of abovenoted discussion and findings recorded by this Court, present petition deserves to be allowed.

29. The writ petition succeeds and is hereby allowed. A writ of certiorari is issued quashing the orders dated 11th May, 1978 and 9th December. 1976, passed by the appellate authority and the prescribed authority respectively. The notices dated 26th June. 1974. 7th December, 1974 and 3rd June, 1976, contained in Annexures-3 to 14 to the writ petition, are also quashed.