
(2010) 09 AHC CK 0154
In the Allahabad High Court
Case No : C.M.W.P. No. 44408 of 2010

Virendra Deep Singh

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 09-09-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226
Trusts Act, 1882 — Section 6
Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1973 — Section 6
Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974 — Section 10(2), 2(1)
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10, 10(1), 10(2), 11, 11(1)
Uttar Pradesh Imposition of Ceiling on Land Holdings Rules, 1961 — Rule 8, 9
Uttar Pradesh Land Revenue Act, 1901 — Section 33, 34, 39
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 202, 229, 229B, 76

Citation : (2011) 2 AWC 2046

Hon'ble Judges : R.A. Singh, J;P.C. Verma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.C. Verma, J.—In all these writ petitions the dispute relates to plot Nos. 2M, 3M, 5/1, 5/2, 5/3, 5/4, 7, 8 and 9 area 197.3 bighas situated in village Bidwa Nagla, Tahsil Bilaspur, district Rampur.

2. Learned Counsel for the parties do not dispute, when the Writ Petition No. 44408 of 2010, Virendra Deep Singh v. District Magistrate, Rampur, was taken up for hearing for admission, to get the other three writ petitions mentioned above connected and prayed for deciding the said writ petitions together being the nature of dispute same in nature.

3. The other three writ petitions were cognizable by learned single Judge but it was agreed between the parties that the learned single Judge matter can be

heard by a Division Bench and therefore prayed that it may be heard together.

4. In Civil Misc. Writ Petition No. 16222 of 2000, Ramjeevan Charitable Hospital Trust v. Additional Commissioner and Ors. and Civil Misc. Writ Petition No. 16224 of 2004, Ramjeevan Charitable Hospital Trust v. Additional Commissioner (Judicial) and Ors. have been filed against the orders dated 26.11.1998 (Annexures 1 and 14 to the writ petitions) in Case No. 16 of 1992-93, State v. Narendra Sabbarwal, passed by the Prescribed Authority and the orders dated 25.1.2000 (Annexures 3 and 16 to the writ petitions) passed by the Commissioner, Moradabad in Appeal Nos. 8 and 9 of 1998-99, Ramjeevan Charitable Hospital Trust and Ors. v. State of U.P. and Ors.

5. Learned Counsel for the Petitioners contended that the entire ceiling proceedings drawn against the Petitioner are ex parte in nature and their entire land has been declared surplus and is now proposed to be taken by the State without affording any opportunity of hearing. The impugned judgments and orders have been passed in gross violation of principle of natural justice and in complete disregard of doctrine of audi alteram partem, as result of which, the fundamental rights guaranteed under Articles 14 and 19 of the Constitution of India have been violated. Both the trusts are still operating and carrying out their charitable objects, but no opportunity has been given to them to demonstrate the actual facts. Shri V.P. Gupta, Advocate having been appointed as receiver of the above trusts, has given the land of the trusts on lease from time to time and the lessee has been depositing the proceeds of the trusts with the Court of Civil Judge, Rampur and thus it cannot be said that the trusts have become a non-existing body. The judgments and orders dated 30.12.1974 and 26.2.1997 would operate as res judicata in the present proceedings, in which it has been held that there is no surplus land available with the trustees.

6. It appears from the record that the Prescribed Authority in his order dated 26.11.1998 has specifically recorded findings that the income accruing from the disputed land is not being utilised for purpose and work of both the trusts, because Civil Misc. Writ Petition Nos. 8622 and 8264 of 1996, Ramjeevan Charitable Hospital Trust and Kamla Charitable School Trust v. State of U.P., have been dismissed by this Court.

7. The learned Prescribed Authority has passed the judgment and order dated 28.12.1998 in Cases Nos. 10/83-84, 17/92-93 and 5/95-96 under Sections 10(2) and 2(1) of U.P. Imposition of Ceiling (Amendment) Act, 1974 declaring the land measuring 33.34 acres of Narendra Sabbarwal as surplus and the notice dated 18.11.1983 issued to him has been confirmed. It also appears from the record that Narendra Sabbarwal did not appear before the Prescribed Authority without any sufficient cause despite the notice was served upon him and he moved number of applications for time to file evidence but he failed to produce any evidence in his support, while sufficient opportunity was given to him for adducing evidence and hearing. In compliance of the orders passed by this Court in writ petitions the learned Prescribed Authority has also held that above trusts

have been created in order to save the land from being declared surplus. No activity has been found in school or hospital of above trusts. The learned Commissioner in Appeal Nos. 8 and 9/98-99 has confirmed the findings recorded by the Prescribed Authority and dismissed the appeals.

8. This contention of the learned Counsel for the Petitioners cannot be accepted that no opportunity of hearing has been afforded to the Petitioners and the impugned judgments and orders have been passed in violation of principle of natural justice or in violation of their fundamental rights under Articles 14 and 19 of the Constitution of India. Nothing has been found by Prescribed Authority or appellate authority on the basis of material available before them that these trusts are still operating or carrying out their charitable objects. The Petitioners have failed to adduce any evidence in support of their allegations despite sufficient opportunity has been afforded to them. It has been found that these trusts have become non-existing body and defunct and thus they have failed to carry out their objects in view of the provisions of Act 1960, as result of which, their properties have not been exempted. Consequently, these writ petitions have no merit and are liable to be dismissed.

9. The facts which have been admitted by the Petitioners are that both the trusts were created through the registered sale deed dated 18.7.1959 making Narendra Sabbarwal, Virendra Sabbarwal, Ravindra Sabbarwal and Mahendra Sabbarwal sons of Col. Gokul Chand Sabbarwal alongwith certain other persons to be trustees of the property.

10. The U.P. Imposition of Ceiling on Land Holdings Act, 1960 (Hereinafter called as Act No. 1 of 1961) came into force in the year 1961 on the date of publication in Gazette. Section 6 of the Act No. 1 of 1961 provides that 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. The relevant category No. 8 is excerpted below:

(viii) Land held by or under a religious or charitable waqf trust or endowment formed before the first day of May 1959 ;

Explanation. For purposes of this clause a charitable or religious waqf trust or endowment shall have the same meaning as in Section 76 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950.

11. This Act was further amended by U.P. Act No. 18 of 1973 titled as U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972. Section 6 of the Act was amended which provides that 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? (f) Land held from before the first day of May, 1959, by or under a public religious or charitable waqf, trust, endowment, or institution in the income from which is wholly utilized for religious

or charitable purposes, and not being a waqf, trust or endowment of which the beneficiaries wholly or partly are settlor or members of his family or his descendants;

Transitory provisions contained in Section 19 of the Act is also excerpted hereinbelow:

Section 19. Transitory Provisions.? (1) All proceedings for the determination of surplus land u/s 9, Section 10, Section 11, Section 12, Section 13 or Section 30 of the principal Act, pending before any Court or authority at the time of the commencement of this Act, shall abate and the prescribed authority shall start the proceedings for determination of the ceiling area under that Act afresh by issue of a notice under Sub-section (2) of Section 9 of that Act as inserted by this Act:

Provided that the ceiling area in such cases shall be determined in the following manner?

(a) firstly, the ceiling area shall be determined in accordance with the principal Act, as it stood before its amendment by this Act ;

(b) thereafter, the ceiling area shall be redetermined in accordance with the provisions of the principal Act as amended by this Act.

(2) Notwithstanding, anything in Sub-section (1), any proceeding u/s 14 or under Chapter III or Chapter IV of the principal Act, in respect of any tenure holder in relation to whom the surplus land has been determined finally before the commencement of this Act, may be continued and concluded in accordance with the provisions of principal Act, without prejudice to the applicability of the provisions of Sub-section (2) of Section 9 and Section 13A of that Act, as inserted by this Act, in respect of such land.

12. Thus the proceedings continued against the original tenure holders under the amending Act and after the subsequent amendment exemption clause contained in Section 6 of the amending Act of 1973 clearly provides that only those category of land held from before the first day of May, 1959 the income from which is wholly utilized for religious or charitable purposes and not being a waqf, trust or endowment of which the beneficiaries wholly or partly are settlor or members of his family or his descendants were exempted.

13. Thus in view of the aforesaid legal position the land held by the Petitioners" trusts were not liable to be exempted. The judgment passed by the prescribed authority as well as the appellate authority is perfectly in accordance with law.

14. In view of the aforesaid legal positions, the Civil Misc. Writ Petition No. 16222 of 2000, Ramjeevan Charitable Hospital Trust v. Additional Commissioner and Ors. and Civil Misc. Writ Petition No. 16224 of 2004, Ramjeevan Charitable Hospital Trust v. Additional Commissioner (Judicial) and Ors. are hereby dismissed.

15. In Civil Misc. Writ Petition No. 35056 of 2010, Kulvinder Singh and Ors. v. State of U.P. and Ors. Petitioners claim right over the land in dispute on the basis of revenue entries.

16. The facts stated in writ petition are that the plot Nos. 2M, 3M, 5/1, 5/2, 5/3, 5/4, 5/6, 7, 8 and 9 area 197.3 bighas situated in Village Bidwa Nagla, Tahsil Bilaspur, district Rampur was Khudkast land of Sardar Wali Khan son of Haider Ali Khan resident of Village Narkhera, Tehsil Shahbad, district Rampur recorded as Ziman-2 Khudkast in 1338 fasli. Since the Petitioners' fathers were continuing their possession over the said land in question since before the enforcement of the U.P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as the Act) and as such their names were recorded as Khudkast in pursuance of the order dated 25.7.1951 passed by the Collector on the enforcement of Act and Amaldaramad of their names was made by expunging the name of Sardar Wali Khan. The names of the Petitioners' father continued to be recorded in khatauni as khudkast from 1361 fasli to 1364 fasli and 1367 fasli to 1382 fasli, but they died in the years 1988, 1985, 1982, 2005, 1999, 2001 and 2006, as result of which, their sons/Petitioners were substituted as heirs in khatauni and thus they became bhumidhars of the said land by operation of law. On receipt of extract of khatauni on 17.4.2010 the Petitioners came to know that the names of the Petitioners were expunged in khatauni of the year 1383 fasli and the name of Kamla Charitable School Trust over plot Nos. 2, 3, 4, 5, 6, 7 and name of Ramjeevan Charitable Hospital Trust over plot Nos. 10, 11, 16m 17, 18, 19, 21, 22, 23, 24, 32, 34, 15/100 and 19/102 were found recorded and their names continued to be recorded up to year 1394 fasli and the names of the Petitioners were expunged without any order of competent court or authority and thus these entries were found fabricated, forged and recorded without any order of authority having no sanctity in the eye of law. The Petitioners enquired from Lekhpal of the area and came to know in the last week of April, 2010 that the writ petitions were filed by Respondents No. 4 and 5 challenging the orders passed in ceiling proceedings initiated against them in the year 1983 by issuing notices u/s 10(2) of the Ceiling Act and treating the said land to be illegally recorded in their names and ultimately the Prescribed Authority declared 33.34 acres land as surplus. The Petitioners also came to know in May 2010 that the Prescribed Authority declared the land of the Petitioners as surplus treating the same of Ramjeevan Charitable Hospital Trust and Kamla Charitable School Trust, against which the appeals filed by the Trusts were dismissed but writ petitions bearing Nos. 16222 of 2000 and 16224 of 2000 were still pending with certain interim orders passed on 6.4.2000. It was also found in above writ petitions that the orders dated 28.12.1998 and 25.1.2000 passed by the Prescribed Authority and Additional Commissioner respectively were challenged. No notice was ever issued either to the Petitioners or their fathers, nor any information with regard to ceiling proceedings was ever furnished to them, while they were recorded bhumidhars and initially as khudkast from 1359 fasli to 1382 fasli and even on the date of enforcement of Ceiling Act, i.e., on 3.1.1961 and 24.1.1971 and thus

they were liable to be issued the notices u/s 10(2) of the Ceiling Act read with Rules 8 and 9, which were mandatory provisions for issuance of notices to the tenure holders. Thus the names of the Petitioners could not be expunged and the names of the Respondents No. 4 and 5 could not be entered without any order of competent authority and without issuing any notice/opportunity to them and thus the entire proceedings were found to be illegal, because in view of the provisions of the Act the names of the tenure holders could be expunged only by way of sale, will or declaration u/s 229(b) or 202 of the Act or Section 34 of the U.P. Land Revenue Act but no such proceedings were ever held or initiated either by the State or by Respondent Nos. 4 and 5, consequently, the entries of the Respondent Nos. 4 and 5 in revenue record during period from 1383 fasli to 1394 fasli would have no sanctity in the eye of law and the said entries were void ab-initio. Thus, the forgery was committed by the Respondent Nos. 4 and 5 in connivance with the revenue authorities in getting their names entered without any order of the competent authority.

17. It has been further alleged in the writ petition that the Prescribed Authority (Ceiling) recorded findings that no documentary evidence was filed to show that the Respondent Nos. 4 and 5 were in existence or their names were recorded on 1.5.1959 in the revenue record. They failed to file any registration certificate or any evidence with regard to use of the land in question and thus they constituted the Trusts only to save the land from the provisions of Ceiling Act.

18. The Petitioners have also alleged in the petition that the Prescribed Authority recorded findings that in C.L.H. Form-3 the land was recorded in the name of Narendra Kumar Sabbarwal, who created above Trusts in a forged manner without getting it registered and got the entry recorded in the name of Trusts without any authority of law, whereas the Ceiling Authorities did not call for revenue record to ascertain whether Sri Narendra Kumar Sabbarwal was recorded in khatauni Nos. 14 and 52 or it was recorded in the names of the Petitioners' fathers and the Petitioners since 1359 fasli in khatauni as khudkast . Thus, it could not be the land of Charitable Trusts or Narendra Kumar Sabbarwal or Mahendra Singh, so the findings recorded by the ceiling authority was per-se illegal, arbitrary and without any jurisdiction, because, the Petitioners were in actual physical possession over the land in question. The Additional Commissioner dismissed appeals by reiterating the findings of the Prescribed Authority without ascertaining as to whether the trusts were ever created in accordance with law and the land was transferred to the above trusts, while the Petitioners were interested persons, who ought to be heard and the notices should have been issued to them before initiation of the ceiling proceedings. The Charitable Trust could be created only by adopting due process of law and it ought to be registered but no registration certificate was ever issued in the name of Trusts nor there was any evidence on record as to how the land was transferred by Col. Gokul Chand Sabbarwal or his sons, namely, Virendra Sabbarwal, Narendra Sabbarwal and Ravindra Sabbarwal to the above Trusts, because they were not recorded tenure holders either as khudkast or bhumidhar.

The land was recorded as khudkast in the name of Sardar Wali Khan in 1338 fasli and on the enforcement of the Act the land was recorded in the names of the Petitioners as khudkast and thereafter as bhumidhar. In the year 1971 the Petitioners were also recorded as tenure holders and the notices should have been issued to them before initiation of ceiling proceedings. The Petitioners could not know about the ceiling proceedings in absence of any notice or information, so the writ petition could not be filed earlier.

19. On behalf of the Respondent Nos. 4 and 5 it has been alleged in the counter-affidavit that the writ petition is misconceived and not maintainable in view of the fact that the plots referred to in the petition belongs to Ramjeevan Charitable Hospital Trust and Kamla Charitable School Trust as mentioned in Para-6 of the counter affidavit. These two trusts were created through a registered deed on 18.7.1959 executed by Col. Gokul Chand Sabbarwal appointing his sons, namely, Narendra Sabbarwal, Virendra Sabbarwal, Ravindra Sabbarwal and Mahendra Sabbarwal as trustees. In due course of time a dispute arose between the Trustees and their successors, as a result of which, Original Suit Nos. 28 and 29 of 1981, Ravindra Sabbarwal v. Leelawati and Ors. were filed in the District Court, Rampur, which were thereafter transferred to the Court of Special Judge (E.C. Act), Rampur for disposal and these suits could not be decided so far. The two revisions bearing No. 581 of 1984 and 582 of 1984 were preferred against two separate orders passed in above suits and ultimately further proceedings of original suits were stayed. In the year 1982-83 the trial court appointed Receiver of the property in dispute and the receiver permitted certain persons to occupy the land on lease basis. By an order dated 23.6.1998 the erstwhile Receiver was removed and Shri V.P. Gupta, advocate was appointed as Receiver of the said property. In the year 1974, a notice was contemplated u/s 10(2) of U.P. Imposition of Ceiling on Land Holdings Act, 1960 and served on the sons of Col. Gokul Chand Sabbarwal, because the lands, which stood recorded in their individual names were clubbed with the land of Respondent-trusts and it was proposed that certain land was excess to be declared surplus. The notices were contended with this allegation that the land of the trusts were wrongly clubbed with the personal land of above notices and they had no surplus land. The prescribed authority vide judgment and order dated 30.12.1974 accepted the pleas of the notices and found that they had no surplus land. In the year 1976 again proceedings u/s 12(1) of the Act 1960 in Case No. 136 of 1976 were drawn on the basis of same facts clubbing the land of the trusts with the land recorded in their personal names and an effort was made to declare the land as surplus. The aforesaid Case No. 136 of 1976 was decided on 26.2.1977 by which the Prescribed Authority held that the clubbing of the land was not permissible as the notices and Respondent-trusts were two different entities and thus the proceedings were withdrawn. In the year 1981 fresh proceedings were again drawn against above four individuals, in which the competent authority vide judgment and order dated 27.10.1984 declared the said land of the Respondent-trusts to be surplus, being aggrieved by which, Mahendra Sabbarwal preferred

appeal bearing No. 2215 of 1985 before the District Judge, Rampur, which was allowed and the matter was remanded to the Prescribed Authority for decision afresh after issuing notices to all the parties including the Respondent-trusts. Subsequently, ceiling proceedings were again initiated against Sabbarwal brothers through Case Nos. 16, 17, 18 and 19 of 1992-93, which were decided on 30.6.1993 and their land measuring 33.12 acres each was declared surplus. The Respondent-trusts then preferred appeals bearing Nos. 10, 11, 12 and 13 of 1994-95 and all these appeals were also dismissed by common judgment and order dated 29.9.1995. The Respondents then preferred four writ petitions bearing Nos. 8263, 8264, 6318 and 6321 of 1996. This Court in Writ Petition Nos. 6318 and 6321 of 1996 passed an order on 16.2.1996 directing the Respondents to move an application for recall of the order before Prescribed Authority and if the same was found to be ex parte, the Prescribed Authority was directed to consider the claim afresh. The Writ Petition Nos. 8263 of 1996 and 8264 of 1996 were dismissed by common judgment and order dated 27.6.1996. The Respondents then moved an application for restoration before the Prescribed Authority in above cases, who found the proceedings against the trusts to be ex parte vide order dated 30.6.1993 but the Writ Petition Nos. 6318 and 6321 of 1996 were dismissed on 27.6.1996. The Prescribed Authority in view of the orders passed in Writ Petition Nos. 6318 and 6321 of 1996 closed the case of the trusts on 26.11.1998 holding that they were not entitled to lead any evidence or opportunity of fresh hearing. The Respondent trusts preferred appeals before Commissioner, Moradabad in the year 1998-99, who summoned the record of the Prescribed Authority. The Prescribed Authority should have stayed the proceedings of the cases but the Prescribed Authority with mala fide intention passed an order dated 28.12.1998 hold their lands to be surplus and thus no land was left with the trusts, while the order dated 28.12.1998 was ex parte. The Respondent-trusts then moved separate appeals before the Commissioner, Moradabad, who vide judgment and order dated 1.2.1999 stayed the operation of the order passed by the Prescribed Authority and ultimately these appeals were dismissed by the Commissioner vide judgment and order dated 1.2.1999 stayed the operation of the order passed by the Prescribed Authority and ultimately these appeals were dismissed by the Commissioner vide judgment and order dated 25.1.2000. The Respondent trusts then preferred these two separate writ petitions bearing Civil Misc. Writ Petition No. 16222 of 2000, Ramjeevan Charitable Hospital and Anr. v. Addl. Commissioner and Ors. and Civil Misc. Writ Petition No. 16224 of 2000, Ramjeevan Charitable Hospital Trust and Anr. v. Addl. Commissioner and Ors. which came up for hearing before this Court on 6.4.2000, which stayed the operation of the orders dated 28.12.1998 and 25.1.2000 passed by the Prescribed Authority and Commissioner respectively.

20. Learned Counsel for the Petitioners has vehemently contended that the crucial date of enforcement of the Old Ceiling Act 1960 was 3.1.1961 and it was amended by U.P. Act 18 of 1973 and in view of the provisions of the Act a person who continued to be in actual cultivatory possession on the relevant date and the

name of such person was entered in the annual register, shall be deemed to be tenure holders as provided under Explanation II of Section 5 of the Act. Section 10(2) of the Ceiling Act provides the issuance of notice to tenure holder. The Petitioners' father and Petitioners No. 8, 9, 10, 11 and 18 were recorded tenure holders in the year 1961 as well as on 24.1.1971. The notices ought to have been issued to them u/s 10(2) of the Act, which was mandatory requirement and without issuing any notice to them, the land of the Petitioners could not be declared surplus nor could be clubbed with the land of Respondent Nos. 4 and 5.

21. It has been further contended on behalf of the Petitioners that they and their fathers were recorded tenure holders up to 1382 fasli right from 1359 fasli, i.e., on the date of enforcement of the Old Ceiling Act 1960 and on the date of enforcement of amended Ceiling Laws, then the Petitioners could not be deprived of their lands but the ceiling authorities initiated proceedings under the Ceiling Act which the mandatory requirement of issuing notice u/s 10(2) of the Ceiling Act was necessary and could not be ignored otherwise the whole ceiling proceedings, initiated contrary to the provisions of the Act, would be without jurisdiction.

22. The learned Counsel for the Petitioners has further contended that up to 1382 fasli, the names of the Petitioners or their ancestors continued to be recorded from 1359 fasli and thus their names could not be deleted without any order of the competent Court of Law and the entries recorded in khatauni right from 1383 fasli would be treated as forged as the entries could be corrected only by applying Sections 33, 34 and 39 of the U.P. Land Revenue Act but in the instant case no such proceedings were held before making entries of the names of the Respondent Nos. 4 and 5 and deleting the names of the Petitioners or their fathers. No such opportunity was given to the Petitioners and as such the whole proceedings were without jurisdiction. The names of the Respondent Nos. 4 and 5 were entered straightway in khatauni 1383 fasli without any order of the competent Court while deletion of the names of the recorded tenure holders could only be made by getting declaration u/s 229(b) of the U.P.Z.A. and L.R. Act.

23. The learned Counsel for the Petitioners further advanced his argument that the Prescribed Authority (Ceiling) as well as the appellate authority clearly recorded findings that the Charitable Trust ; i.e., the Respondents No. 4 and 5 failed to prove the fact that they were recorded in revenue record on 1.5.1959, nor the trusts filed any registration certificate or any evidence with regard to use of the land by the Respondents. The names of the trusts were recorded in khatauni for saving their property from Ceiling Act and thus the land could not be treated to be of the Trusts and thus ceiling authority did not commit any mistake in recording the said findings.

24. The learned Counsel for the Petitioners also contended that the Prescribed Authority (Ceiling) recorded the findings that in C.L.H. Form-3 the land was recorded in the name of Narendra Kumar Sabbarwal, who created Trusts in a forged manner without getting it registered and got the entries recorded without

any order, but at the same time the ceiling authority also committed gross error of law as it was incumbent upon the Authority to call the Revenue Authorities to ascertain as to whether the name of Narendra Kumar Sabbarwal was recorded in khatauni Nos. 14 and 52 or it was recorded in the names of the Petitioners or their fathers since 1359 fasli.

25. The learned Counsel for the Petitioners further contended that Charitable Trusts could be created only by applying provisions of Section 6 of the Indian Trust Act and the Trust should be registered, but neither any registration certificate was filed by the Respondents No. 4 and 5 nor any evidence was filed to prove as to how the land was given to the trusts by Col. Gokul Chand Sabbarwal or his sons as they were never recorded tenure holders.

26. The learned Counsel for the Petitioners relied on decision of Shantanu Kumar v. State of U.P. and Ors. 1979 All LJ 1174, wherein it was held that if a notice is not issued u/s 10(2) of the Ceiling Act to the parties concerned, it is in violation of the Rule 8, then the parties may take relief by invoking provisions of Article 226 of the Constitution of India. The learned Counsel for the Petitioners also relied upon the decision of Vijai Pratap Singh v. State of U.P. and Ors. 1986 All LJ 904, wherein it was held that the ceiling authorities can determine the question of title also and the entries made in khatauni or khasra against the provisions of law, would be liable to be rejected and the entries made without order of competent Court would be illegal.

27. On the other hand, the learned Counsel for the Respondents No. 4 and 5 of Civil Misc. Writ Petition No. 35056 of 2010 contended that in the year 1959, two trusts, namely, Ramjeevan Charitable Hospital Trust and Kamla Charitable School Trust were created through registered deed dated 18.7.1959 making Narendra Sabbarwal, Virendra Sabbarwal, Ravindra Sabbarwal and Mahendra Sabbarwal sons of Col. Gokul Chand Sabbarwal alongwith certain other persons to be trustees of the property, which was filed as Annexure 1 to the counter-affidavit. Later on a dispute arose among the trustees and their successors, in respect of which two suits bearing Nos. 28 of 1981 and 29 of 1981 were filed in the District Court, Rampur but these were stayed by order passed by this Court in Civil Revision Nos. 581 of 1984 and 582 of 1984 arising out of the said suits and the trial court in the year 1982-83 appointed receiver of the property in dispute, which thus became custodia legis and subsequently on 23.6.1998 Shri V.P. Gupta, advocate was appointed as receiver.

28. The learned Counsel for the Respondents further contended that in the year 1974 the ceiling proceedings were initiated against Sabbarwals, who contested the proceedings and the Prescribed Authority accepted their pleas and found no surplus land vide order dated 30.12.1974 (Annexure 4 to the Counter Affidavit). In the year 1976 again ceiling proceedings were initiated but withdrawn vide order dated 26.2.1977 (Annexure 5 to the counter-affidavit). In the year 1981 fresh proceedings were again drawn against Sabbarwals and their land was declared surplus by the prescribed authority vide order dated 27.10.1984,

against which appeals were filed by Sabbarwals and the matter was remanded back.

29. It has been further contended that ceiling proceedings were again initiated against Sabbarwals in Case Nos. 16, 17, 18 and 19 of 1992-93 and their land of 33.12 acres each was declared surplus vide order dated 30.6.1993, against which the Respondents No. 4 and 5 filed appeals, which were dismissed vide order dated 29.5.1995 (Annexures 7 and 8 to the counter-affidavit), as a result of which, the Respondents Nos. 4 and 5 filed Civil Misc. Writ Petition Nos. 6318 of 1996 and 6321 of 1996, in which the Respondents were directed to move an application for recall of the order passed by the prescribed authority but the remaining two Civil Misc. Writ Petitions bearing Nos. 8263 of 1996 and 8264 of 1996 were dismissed vide order dated 26.7.1997 (Annexure 10 to the counter-affidavit).

30. The learned Counsel for the Respondents went on to contend that the Prescribed Authority allowed the restoration application and permitted the trusts to lead evidence vide order dated 4.2.1997 (Annexure 12 to the counter affidavit) and fixed 17.2.1997 for hearing but the Prescribed Authority did not afford opportunity to lead evidence on account of dismissal of Civil Misc Writ Petition Nos. 8263 of 1996 and 8264 of 1994 vide order dated 26.11.1998 (Annexure 13 to the counter-affidavit) and thus the Prescribed Authority declared the entire land belonging to the Respondents as surplus by subsequent order dated 28.12.1998 (Annexure 14 to the counter-affidavit). The Respondents No. 4 and 5 preferred appeals before the Commissioner against order dated 28.12.1998, in which the stay order was granted on 1.2.1999 (Annexure 15 to the counter-affidavit) but the appeals were dismissed vide order dated 25.1.2000 (Annexure 16 to the counter-affidavit), feeling aggrieved by which, the Respondents preferred these two Civil Misc. Writ Petition Nos. 16222 and 16224 of 2000, in which this Court granted stay order dated 6.2.2000 staying the operation of the orders passed by ceiling authorities.

31. A perusal of record goes to show that the Respondent Nos. 4 and 5 continued to be recorded as bhumidhars for more than 50 years. The first effective alternative remedy available to the Petitioners was to file a suit u/s 229B of the Act for declaring their rights. The Petitioners have challenged the order of the Prescribed Authority dated 25.12.1998 and the order of the Commissioner dated 25.1.2000.

32. The remedy of unrecorded tenure holders for filing objections lies u/s 11(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960. The two Full Bench in Baldeo Singh v. State of U.P. and Ors. 1980 ACJ 451 and Ram Charan v. State of U.P. and Ors. 1978 ACJ 455, upheld the decision of Division Bench in Dilbagh Singh v. State of U.P. and Ors. It has been held by Full Bench in above cases that the Petitioners cannot directly come to the High Court against the judgment of Prescribed Authority and Commissioner passed in ceiling proceedings. The remedy available to the Petitioners is to file objections u/s 11(2) of the Act, and

after the orders to be passed by Prescribed Authority is to file appeal before Commissioner and thereafter to approach this Court under Article 226 of the Constitution of India. No writ petition can be filed directly by unrecorded tenure holders against the orders passed in ceiling proceedings against the recorded tenure holders in this Court.

33. In *Baldeo Singh v. State of U.P.* 1980 ACJ 451 Full Bench of this Court has made certain observations in paras 13, 14, 15, 16, 22 and 23 of the judgment, which are excerpted below:

13. In the case of *Upper Ganges Sugar Mills Ltd. Vs. Civil Judge, Bijnor and Others*, the scope of Sub-section (2) of Section 11 and Section 14(3) of the Act came up for consideration before a Full Bench of this Court. Ganeshwar Prasad, J. speaking for the majority observed:

In my opinion the words "a tenure holder aggrieved by such order" embrace even those tenure holders who have not been served with a notice u/s 10(2) and their scope is in no manner curtailed by the words "passed in his absence and on sufficient cause being shown for his absence". A tenure holder who has also not been made a party would be treated as having been absent and the fact that he was not a party would itself sufficiently account for his absence. Section 11(2) should not to my mind be interpreted as withholding its benefit from a person who has committed no default at all while extending it to a person who has committed a default but furnishes sufficient cause for it.

14. Considering the question as to whether a person who has not been served with a notice u/s 10(2) may have the order passed u/s 11(1) set aside and file an objection u/s 11(2), the majority view in *Upper Ganges Sugar Mills* (supra) was:

The objection contemplated by Section 11(2) is obviously an objection subsequent to the determination of the surplus land of a tenure holder u/s 11(1) and it entitles a tenure holder aggrieved by the order u/s 11(1) to file such objection. Determination of a land as surplus does not in itself amount to its acquisition but it cannot be doubted that it gives the tenure holder, who claims to hold the land but was not served with a notice u/s 10(2), a cause to be aggrieved ; and if that is so there appears to be no valid reason why the benefit of Section 11(2) may not be available to him and why Section 11(2) should be regarded as limited to those tenure holders only who have been served with a notice u/s 10(2).

We are in respectful agreement with the above view.

15. Dealing with the question as to whether the Act intended to provide two opportunities of filing an objection of the same kind to a tenure holder upon whom no notice u/s 10(2) had been served, one u/s 11(2) against the determination made u/s 11(1) and the other u/s 14(3), the majority view in *Upper Ganges Sugar Mills Limited's* case (supra) was:

The two opportunities are, however, not identical in their scope and their legal incidents. It will be seen that although only a person aggrieved by the determination of the surplus land made u/s 11(1) can file an objection u/s 11(2) the scope of the objection that he may file upon the order of determination being set aside is not limited by Section 11(2) to the land determined as surplus land. The determination having already been set aside, only the statement prepared by the Prescribed Authority u/s 10(2) is then intact and it is against that statement that the objection has necessarily to be directed as the words of Section 11(2) clearly show. The objection u/s 11(2) may, therefore, be in respect of any land mentioned in the statement prepared by the Prescribed Authority u/s 10(1): But, unlike the objection u/s 11(2) the objection u/s 14(3) has to be confirmed to the surplus land in respect of which notification u/s 14(1) has taken place.

With respect we subscribe to the above view as well.

16. In the case of *Dilbagh Singh v. State of U.P. and Anr.* 1978 ALJ 717 , it was urged that the Act did cover merely those tenure holders who were recorded in the revenue papers but it in fact applied to all tenure holders: Every tenure holder was entitled to the service of notice with a copy of the statement required to be served u/s 10(2). It is only then that he could file an objection either that the person mentioned in the statement as a tenure holder as not, while the objector, was a tenure holder or to dispute the declaration of any plot as surplus land as well as to give his choice of plots which may be declared surplus land. It was also stressed that the right given to person interested in the surplus land by Section 14 was de horse and independent of the statutory right of a tenure holder under Sections 10, 11 and 12, hence the Prescribed Authority or the Collector could not validly take possession from a tenure holder without adjudication of his rights. The learned Advocate General who had put in appearance in that case on behalf of the State and the Prescribed Authority, relying on the Full Bench decision in *Upper Ganges Sugar Mills Ltd. Vs. Civil Judge, Bijnor and Others*, submitted that the Petitioner had the alternative remedy of filing an objection u/s 11(2) of the Ceiling Act and getting his rights as a tenure-holder adjudicated. The Division Bench in *Dilbagh Singh's case* (supra) accepting the view expressed in *Upper Ganges Sugar Mills Ltd. v. Civil Judge, Bijnor* (supra) held that Section 11(2) permitted tenure-holders to file objections. Such tenure holders may be those who have been served with a notice and the statement u/s 10(2) and includes those who have not been given or served with any such notice or statement. Section 11(2) embraces person who claim to be tenure holders and who having come to know of the declaration of their land as surplus land of some other person, wish to challenge that declaration or notification thereof in the Gazette u/s 14. They are all entitled to file an objection u/s 11(2) and get adjudicated thereon as required by Section 12.

22. In my view, the expression "Vest" used in Section 14 of the Act bears the sense of "vesting in possession". The title in the land had already vested in the

State of U.P. On the abolition of zamindari. Now, u/s 14 of the Ceiling Act the right, title and interest of a tenure holder in the land declared surplus stands transferred to and vested in the State. What is transferred to and vested in the State is thus the possession of the land. The State resumes possession when notification declaring the land surplus is published and simultaneously the right, title and interest of the tenure holder in such land stand extinguished. This interpretation of the term "vest" which rationalises and integrates the initial vesting and subsequent resumption is preferable more plausible and better fulfils the purpose of the Ceiling Act.

23. A person whose right has been affected by an order of the Tribunal without giving him an opportunity of being heard can, in my view, seek redress before that authority and resist his dispossession. He can contend that neither the Prescribed Authority nor the Collector can lawfully take possession of the land from him without adjudication upon his rights therein and the statement prepared by the Prescribed Authority was wrong. In the case in hand the Prescribed Authority had passed an order dated 18th October, 1974 determining the surplus land in relation to the opposite party No. 5. The present Petitioners preferred an objection on 18th September, 1975 before the Prescribed Authority asserting that the land declared as surplus land of the opposite party No. 5 is in fact their land and not the land of the opposite party No. 5 and could not, therefore, be declared as surplus land. This objection could be entertained u/s 11(2) even after the surplus land had been notified u/s 14(1) of the Act. The deletion of Sub-section (3) of Section 14 of the Act will not effect the tenability of that objection.

34. In view of the above observation, made by Full Bench of this Court which has not been overruled by this Court or by Hon"ble Apex Court, the Petitioners are not entitled to maintain this writ petition under Article 226 of the Constitution of India straightway without moving any application or objection before the ceiling authorities.

35. Highly disputed questions of title is involved in this writ petition, which cannot be adjudicated sitting in writ jurisdiction under Article 226 of the Constitution of India. Therefore the Petitioners may avail the remedy u/s 229B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act for getting their right declared and also in view of the law laid down by the Full Bench, they may file objection u/s 11(2) of the U.P. Imposition of Ceiling on Land Holdings Act before the Prescribed Authority which shall be decided in accordance with the provisions of Ceiling Act and Rules framed therein.

36. With aforesaid direction, this writ petition is disposed of finally. However, in the meantime with regard to possession status quo shall be maintained by the parties (Petitioners and the State) till the disposal of interim relief application filed alongwith suit, if filed u/s 229B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act or till the disposal of the application u/s 11(2) of the U.P. Imposition of Ceiling on Land Holdings Act whichever is earlier.

37. Civil Misc. Writ Petition No. 44408 of 2010 filed by Virendra Deep Singh is not maintainable in view of the fact that the term of the lease granted by the receiver has already expired in September, 2010. Therefore, the Petitioner has no right and this writ petition is dismissed accordingly.