

ADDITIONAL COMMISSIONER REVENUE AND OTHERS A

v.

AKHALAQ HUSSAIN AND ANOTHER

(Civil Appeal No. 7346 of 2010)

MARCH 03, 2020 B

**[R. BANUMATHI, S. ABDUL NAZEER AND  
A. S. BOPANNA, JJ.]**

*U.P. Zamindari Abolition and Land Reforms Act, 1950 – ss.157-B, 161, 166, 167 – Respondents entered into an exchange with a member of Scheduled Tribe by way of registered exchange deed – Respondents gave 4½ Muthi of land in return for 12 Nali of agricultural land – Assistant Collector held that the exchange violates s.161(1) and the exchange deed being in violation of provisions of the 1950 Act is void – Respondents filed appeal – Dismissed – Revision petition – Dismissed – Writ petition filed by the respondents – Allowed – Held: s.161 pertains to exchange of land, as per which a bhumidhar may exchange land with another bhumidhar or with any Gaon Sabha or local authority, with the prior permission of an Assistant Collector – Insofar as the land belonging to a member of Scheduled Tribe, exchange is not permissible – Under s.157-B, no bhumidhar or asami belonging to a Scheduled Tribe, shall have the right to transfer by way of “sale, gift, mortgage or lease or otherwise any land to a person not belonging to a Scheduled Tribe” – Language used in s.157-B “or otherwise” emphasizes that the land belonging to a Scheduled Tribe cannot be transferred in any manner whatsoever – Further, in the instant case admittedly, even no prior permission was sought from the Assistant Collector – Also, respondents did not explain as to why a member of Scheduled Tribe wanted to exchange his large extent of land i.e. 12 Nali (2400 sq. mtrs.) with a much smaller piece of land i.e. 4½ Muthi (56.25 sq. mtrs.) – This raises doubt about the genuineness of exchange deed strengthened by the fact that respondents’ names were mutated in the land exchanged while that of the member of Scheduled Tribe was not – Since the exchange deed violated s.157-B, the transfer is void u/s.166 – No justification to consider respondents’ request on the basis they are running Hotel on the land – No ground for*

- A *considering questions of equity – When there is a clear statutory provision barring the transfer, it was not open to the High Court to substitute its view in place of that provision – Such interpretation would defeat the benevolent object of the provisions of the 1950 Act and the constitutional scheme providing for social and economic empowerment of the Scheduled Tribes – Judgment of High Court set aside – Appellants at liberty to proceed in accordance with law – Interpretation of Statutes – Equity – Indian Stamp Act – Article 31 of Schedule 1-B.*
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*U.P. Zamindari Abolition and Land Reforms Act, 1950 – s.161*

- C *– Exchange of land – Requirement of prior permission u/s.161 – Discussed.*

*U.P. Zamindari Abolition and Land Reforms Act, 1950 – ss.3(14), 143, 144 – Respondents entered into a land exchange with a member of Scheduled Tribe and gave 4½ Muthi of land in return for 12 Nali of agricultural land – Exchange deed was held*

- D *to be void being in violation of provisions of the 1950 Act – Respondents inter alia pleaded that the land in question is not an “agricultural land” and does not fall within the definition of “land” u/s.3(14) thus, provisions of Chapter VIII of the Act are not applicable – Held: For changing the nature of land from “agricultural” to “abadi”, declaration as stipulated in ss.143 & 144 is required – Respondents did not produce any such document which shows that such declaration was made much less registered – In absence thereof, the land is deemed to be an “agricultural land” as per s.3(14) and the provisions of the 1950 Act are applicable to the land in question.*
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- F *U.P. Zamindari Abolition and Land Reforms Act, 1950 – ss.157-A, 157-B – Restrictions on transfer of land by members of Scheduled Castes vis-a-vis Scheduled Tribe – Discussed.*

#### **Allowing the appeal, the Court**

- G **HELD:1.1** Mangal Singh is a member of Scheduled Tribe and this factum has not been disclosed in the exchange deed. As per Section 157-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (the Act), a *bhumidhar* or *asami* belonging to Scheduled Tribe cannot transfer his land to a person not belonging to Scheduled Tribe. As per Section 166 of the Act, any transfer
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made in contravention of the provisions of the Act shall be void. Since the exchange deed has been executed in violation of the provisions of Section 157-B of the Act, the transfer is void and is liable to be set aside and the land is liable to be vested in the State Government. For changing the nature of land from “agricultural” to “abadi”, declaration as stipulated in Sections 143 and 144 is required. The provisions under Section 143 of the Act are initiated *suo motu* or on an application moved by a *bhumidhar* with transferable rights and an enquiry is required to be conducted by the Assistant Collector as prescribed under the Act.[1010-D; 1010-F; 1011 E-G]

In the present case, the respondents have not produced any such document which shows that declaration required under Section 143 of the Act has been made much less registered. In the absence of such declaration, the land is deemed to be an “agricultural land” as per the provisions of Section 3(14) of the Act. In the absence of such declaration, the land cannot be said to be “abadi land”. Since the land is an “agricultural land”, the provisions of U.P. ZA & LR Act are applicable to the land in question. [Paras 12, 15, 17 and 18][1013 E-G; 1014B-C]

1.2 Section 161 of the Act pertains to exchange of land. As per Section 161, a *bhumidhar* may exchange land with another *bhumidhar* or with any *Gaon Sabha* or local authority, with the prior permission of an Assistant Collector. Insofar as the land belonging to a member of Scheduled Tribe, exchange is not permissible. Under Section 157-B, no *bhumidhar* or *asami* belonging to a Scheduled Tribe, shall have the right to transfer by way of “sale, gift, mortgage or lease or otherwise any land to a person not belonging to a Scheduled Tribe”. The language used in Section 157-B of the Act “or otherwise” emphasizes that the land belonging to a Scheduled Tribe cannot be transferred in any manner whatsoever. In Section 157-A of the Act which deals with restrictions on transfer of land by members of Scheduled Castes, the language used is “by way of sale, gift, mortgage or lease to a person not belonging to a Scheduled Caste”. Absence of word “or otherwise” in Section 157-A of the Act shows that while exchange may be permissible of a land belonging to members of

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- A **Scheduled Caste to a person belonging to Scheduled Caste, such an exchange is prohibited under Section 157-B of the Act – Restriction on transfer of land of a member of a Scheduled Tribe.** Use of the word “shall” in the proviso to Section 161 of the Act clearly indicates that for a valid exchange, it is mandatory to obtain permission of the Assistant Collector. In the instant case, admittedly, no prior permission was sought from the Assistant Collector as mandated. In the absence of fulfilling of pre-requisite condition as laid down in Section 161 of the Act, the exchange has to be necessarily held to be void. [Paras 19, 20][1014 B-C; 1014 F-H; 1015 A-D]
- B **1.3 There is no merit in the contention that for exchange of land prior permission under Section 161 of the Act is not required.** The pre-requisite condition for grant of permission is the calculation of the rental value and if the difference between the rental value of land given in exchange and of land received in exchange is more than 10%, then the Assistant Collector shall refuse the permission. The pre-requisite condition of calculation of the rental value clearly suggests that the permission of the Assistant Collector is a pre-requisite condition for a valid exchange. [Paras 22, 23][1015 F-G; 1016 B-D]
- C **1.4 The respondents have not explained as to why Mangal Singh (a member of Scheduled Tribe) wanted to exchange his large extent of land i.e. 12 Nali (2400 sq. mtrs.) with a much smaller piece of land i.e. 4½ Muthi (56.25 sq. mtrs.). This aspect raises doubt about the genuineness of the exchange deed. This is further strengthened by the fact that the names of the respondents have been mutated in the land of Mangal Singh in Bandobast Khatuni Khata No.43; whereas the name of Mangal Singh has not been mutated in village Khata No.36, Bandobast Khatuni Khata No.91. These circumstances clearly indicate that the exchange deed relied upon by the respondents is not a valid exchange and has been executed in violation of the provisions of the U.P. ZA & LR Act. [Para 24][1016 D-G]**
- D **1.5 U.P. ZA & LR Act is a beneficial legislation which has been enacted to protect the interest of the exploited rural masses. There is no merit in the contention that the order passed by the**
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Pargana Magistrate dated 19.07.2000 is barred by limitation. The exchange deed dated 16.03.1994 being in contravention to the provisions of the U.P. ZA & LR Act is void. The consequences have to follow as per Section 167 of the Act. In case, if the transfer is void under the provisions of the Act, there is no justification to consider the request of the respondents on the ground that they are running the Hotel by availing loan from the financial institutions. When there is a clear statutory provision barring the transfer, it was not open to the High Court to substitute its view in the place of that provision. Any such interpretation would defeat the benevolent object of the provisions of the U.P. ZA & LR Act and also the constitutional scheme providing for the social and economic empowerment of the Scheduled Tribes. The order of the High Court is contrary to the express provisions of U.P. ZA & LR Act and the impugned judgment cannot be sustained.

[Paras 25, 28-30][1016-G; 1018-G; 1019-B; 1019 C-F]

*Chandrika Singh and others v. Raja Vishwanath Pratap Singh and another* (1992) 3 SCC 90 : [1992] 2 SCR 640; *Samatha v. State of A.P. and others* (1997) 8 SCC 191 : [1997] 2 Suppl. SCR 305 – relied on.

*Life Insurance Corporation of India v. Escorts Ltd. and others* (1986) 1 SCC 264 : [1985] 3 Suppl. SCR 909 – referred to.

## **Case Law Reference**

[1992] 2 SCR 640	relied on	Para 16
[1985] 3 Suppl. SCR 909	referred to	Para 21
[1997] 2 Suppl. SCR 305	relied on	Para 25

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7346  
of 2010.

From the Judgment and Order dated 18.09.2008 of the High Court of Uttarakhand at Nainital in Writ Petition No. 670 of 2002 (M/S).

Jatinder Kumar Sethi, Dy. A.G., Ashutosh Kumar Sharma, Jatinder Kumar Bhatia, Advs. for the Appellants.

Manohar Pratap, Sanpreet Singh Ajmani, Varun Mishra, Ms. Rabia Wani, Ms. Manju Jetley, Advs. for the Respondents.

- A        The Judgment of the Court was delivered by  
**R. BANUMATHI, J.**
- B        1. This appeal arises out of the impugned judgment dated 18.09.2008 passed by the High Court of Uttarakhand at Nainital in Writ Petition No.670 of 2002 in and by which the High Court has set aside the orders of the Additional Commissioner (Revenue) dated 02.07.2002 and Additional Judicial Commissioner dated 30.06.2001 and also earlier order dated 19.07.2000 passed by the Assistant Collector/Pargana Magistrate.
- C        2. Brief facts which led to filing of this appeal are as under:-  
Respondents Akhalaq Hussain and Saqir Hussain entered into an exchange with one Mangal Singh (a member of Scheduled Tribe) by way of a registered exchange deed dated 16.03.1994 whereby the respondents gave 4 ½ Muthi of land, one Muthi is equal to 12.5 sq.mtrs. totalling 56.25 sq. mtrs., in village Khata No.36, Bandobast Khatuni Khata
- D        D No.91 situated in village Vim Patti in District Pithoragarh in return for 12 Nali, one Nali is equal to 200 sq.mtrs. totalling 2400 sq.mtrs. of agricultural land in Bandobast Khatuni Khata No.43 situated in village Mall Ghorpatta, Muniari, District Pithoragarh. Thereafter, mutation application was moved before the Tehsildar who vide order dated 25.04.1994 allowed
- E        the mutation on the basis of exchange under Section 161 of U.P. Zamindari Abolition and Land Reforms Act, 1950 (for short “U.P. ZA & LR Act”). The respondents claim that they have constructed a hotel on the land obtained in exchange and the said hotel is being run in the name and style of “Zara Resort”.
- F        3. On 19.07.2000, the Pargana Magistrate/Assistant Collector issued an order under Section 167 of the U.P. ZA & LR Act stating that the parties to the aforementioned exchange have violated the provisions of sub-section (1) of Section 161 of U.P. ZA & LR Act while getting the registration done. It was held that according to the provisions, a *bhumidhar* can only exchange his land with another *bhumidhar* after
- G        he obtains prior permission from the Assistant Collector. But in the instant case, no prior permission has been obtained from the Assistant Collector. Exchange deed has been made in contravention of the provisions of the U.P. ZA & LR Act and hence void. According to the provisions of sub-section 1 (a) of Section 167 of U.P. ZA & LR Act, the land admeasuring
- H        12 Nali under Khata No.43 stands vested in the Government of Uttar

Pradesh from the date of its transfer. The respondents were ordered to remove all their movable/immovable properties existing on the land within thirty days.

4. On 04.12.2000, Tehsildar, Pithoragarh inspected the revenue record and found that 4 ½ Muthi land alleged to have been given to Mangal Singh as per the exchange deed was still owned by the respondents and there was no noting in the name of Mangal Singh in village Khata No.36, Bandobast Khata No.91.

5. The respondents appealed against the order dated 19.07.2000 contending that the exchange has been performed by the mutual consent of both the parties as per rules and the registration has also been lawfully done on 16.03.1994. The respondents claimed that the provisions of Sections 161 and 167 of U.P. ZA & LR Act do not apply, but the provisions of the Transfer of Property Act would apply and therefore, the exchange cannot be declared as illegal transfer under the provisions of U.P. ZA & LR Act. Vide order dated 30.06.2001, the Additional Commissioner (J) Kumaon Zone, Nainital held that the lands which have been exchanged by both the parties is shown under the category of “transferrable lands” which fall under the definition of “agricultural lands” under Section 3(14) of U.P. ZA & LR Act and the parties have not obtained prior permission. Therefore, the exchange cannot be held to be legal. It was held that Mangal Singh is a person belonging to Scheduled Tribe whereas, the respondents are non-Scheduled Tribes. The transfer of lands by persons belonging to Scheduled Tribe is prohibited under the provisions of Section 157-B of U.P. ZA & LR Act. According to Section 157-B, no *bhumidhar* or *asami*, subject to restrictions as mentioned in Sections 153 to 157 has any right to transfer by way of sale, gift, mortgage or lease or otherwise any land to any person not belonging to Scheduled Tribe. The appeal was thus dismissed.

6. The respondents thereafter filed a revision petition before the Additional Revenue Commissioner who vide order dated 02.07.2002 dismissed the petition as being without merits. The Additional Revenue Commissioner accepted the contention of the Government of Uttarakhand that the exchange of lands in question is in fact not an exchange but a sale; because total land of 4 ½ Muthi has been exchanged with larger extent of land i.e. 12 Nali of land which is not in any way justified. It is the law that the rental value of the land given in exchange and of land received in exchange calculated at the hereditary rates cannot be more

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- A than 10% of the lower rental value and in this case, the difference is a considerable one. According to Section 166 of the Act, the said transfer is against the provisions of law and is therefore, void.
7. A writ petition was filed by the respondents for quashing of orders dated 19.07.2000, 30.06.2001 and 02.07.2002 and for issuing a direction to the appellants not to interfere with the peaceful possession of the respondents. Vide impugned judgment dated 18.09.2008, the High Court accepted the contention of the respondents that the provision of Section 161 of U.P. ZA & LR Act does not apply when the exchange is being made by exchange deed. The High Court opined that the provisions of Sections 161 and 157-B of U.P. ZA & LR Act do not apply in case of exchange of the land as is made by executing the document and the stamp duty as has been provided is paid as per Article 31 of Schedule 1-B of Indian Stamp Act, which is duly registered. The High Court further held that the authorities have committed error of law in holding that the permission under Section 161 of U.P. ZA & LR Act was necessary to be obtained before making exchange of the land. It was held that the provision of Section 157-B does not bar making exchange of the land by Scheduled Tribe persons because they are also getting land in exchange. The writ petition was accordingly allowed.
8. Learned counsel for the appellants contended that the High Court erred in holding that the provisions of Sections 161 and 157-B of the Act do not apply in case of exchange of the land whether exchange is made by executing a registered document where stamp duty is provided under Article 32 of Schedule 1-B of Indian Stamps Act has been paid. Taking us through Section 157-B of the Act, the learned counsel submitted that Section 157-B imposes a complete bar on the right of a *bhumidhar* or *asami* belonging to the Scheduled Tribe to transfer their land by way of sale, gift, mortgage or otherwise to a person not belonging to the Scheduled Tribe. It was submitted that the reasoning of the High Court is contrary to and in conflict on statutory provisions under Sections 157-B and 166 of the Act as well as the legislative scheme and intentment of the U.P. ZA & LR Act. The learned counsel submitted that the High Court exceeded its power and jurisdiction under Article 227 of the Constitution in setting aside the concurrent findings of the Assistant Collector (dated 19.07.2000) and Additional Judicial Commissioner (dated 30.06.2001) and the Additional Commissioner (Revenue) (dated 02.07.2002). It was submitted that the High Court did not appreciate
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that the provisions of U.P. ZA & LR Act and the mere payment of stamp duty will not wipe down the statutory and mandatory bar under Sections 157-B and 161 of the Act. A

9. Per contra, learned counsel appearing for the respondents submitted that the land in question does not fall within the definition of "land" under Section 3(14) of the Act and therefore, the provisions of U.P. ZA & LR Act are not applicable. Taking us through the exchange deed dated 16.03.1994, the learned counsel submitted that the fact that the land was not an "agricultural land" is supported by the fact that the exchange deed specifically mentions that the land was not an "agricultural land". It was further contended that the failure to seek permission for exchange under Section 161 can never result in vesting under Section 167 of the Act. It was urged that the Pargana Adhikari who is of the same level as Tehsildar was not having the jurisdiction to pass the vesting order and the Assistant Collector alone is empowered to issue such an order. It was further urged that the *ex-parte* order of vesting under Section 167 of the Act without giving opportunity of hearing to the respondents is not sustainable. Taking us through Appendix-III of the U.P. ZA & LR Act, the learned counsel submitted that the limitation for proceedings under Section 161 at Item No. 20 in Appendix-III has been specifically mentioned as six years from the date of transfer and thus, the proceedings in the case is barred by limitation; on the contrary, there is no question whether they are running a hotel/resort from the year 1998 or not and the act of consequent taking over possession of the State will create great hardship to the respondents who are already burdened by various loans from the financial institutions. C D E

10. We have carefully considered the submissions and perused the impugned judgment and materials on record. The following points arise for consideration in this appeal:- F

- (i) Whether the exchange deed dated 16.03.1994 is in contravention of the provisions of U.P. ZA & LR Act in view of complete bar for the transfer of land by a member of Scheduled Tribe under Section 157-B of the U.P. ZA & LR Act? G
- (ii) Whether the High Court was right in saying that permission required under Section 161 of the U.P. ZA & LR Act is not a requisite condition for the exchange of land? H

- A        11. By the exchange deed dated 16.03.1994, the respondents Akhalaq Hussain and Saqir executed a registered exchange deed with Mangal Singh (a Member of Scheduled Tribe) whereby the respondents are said to have given 4 ½ Muthi of land (one Muthi is equal to 12.5 sq.mtrs. totalling 56.25 sq. mtrs.) in village Khata No.36, Bandobast Khatuni Khata No.91 situated in village Vim Patti in District Pithoragarh in return for 12 Nali (one Nali is equal to 200 sq.mtrs. totalling 2400 sq.mtrs.) of agricultural land in Bandobast Khatauni Khata No.43 situated in village Mall Ghorpatta, Munsiari, District Pithoragarh. In this exchange deed, possession of the land consisting 3½ Muthi of land from Khata No.553 and 1 Muthi of land from Khata No.554 is said to have been handed over to Mangal Singh by the respondents. Similarly, Mangal Singh is said to have handed over possession of the land consisting of Khatauni Khata Bandobast No.37 and 12 Nali out of Panchshala Khatauni No.43, the area of which admeasures 12 Nali.
- B        12. Mangal Singh is a member of Scheduled Tribe and this factum has not been disclosed in the exchange deed. As per Section 157-B of the Act, a *bhumidhar* or *asami* belonging to Scheduled Tribe cannot transfer his land to a person not belonging to Scheduled Tribe. Section 157-B reads as under:-
- C        **157-B. Restrictions on transfer of land by members of Scheduled Tribes.** – (1) Without prejudice to the restrictions contained in Sections 153 to 157, no *bhumidhar* or *asami* belonging to a Scheduled Tribe shall have the right to transfer by way of sale, gift, mortgage or lease or otherwise any land to a person not belonging to a Scheduled Tribe.
- D        As per Section 166 of the Act, any transfer made in contravention of the provisions of the Act shall be void. Since the exchange deed has been executed in violation of the provisions of Section 157-B of the Act, the transfer is void and is liable to be set aside and the land is liable to be vested in the State Government.
- E        13. As soon as the exchange came to the notice of the competent authority, cognizance was taken and the Sub-Divisional Officer/Assistant Collector invoked the provisions of Section 166 of the Act and declared the exchange deed dated 16.03.1994 void as it was executed in violation of Section 157-B and Section 161 of the Act. The Assistant Collector by order dated 19.07.2000 ordered the subject land to vest in the State as
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per Section 167 of the Act and directed the respondents to handover A possession of the land within thirty days.

**14. Re. Contention – Land is not an agricultural land:-** On behalf of the respondents, it was contended that the land in question is not an “agricultural land” and that it does not fall within the definition of “land” under Section 3(14) of the Act and therefore, provisions of Chapter VIII of the Act are not applicable. The question as to whether a particular land is “land” as defined under Section 3(14) of the Act to which the provisions of U.P. ZA & LR Act are applicable would require determination. The question whether such land is held or occupied for purposes connected with agriculture, horticulture or animal husbandry has to be determined in accordance with the provisions of Sections 143 and 144 of the Act. Section 3(14) of the Act defines “land” as under:-

**3. Definitions.**

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(14) “Land” except in Sections 109, 143 and 144 and Chapter VIII means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming.

15. The respondents have placed reliance upon the recitals in the exchange deed in which it is mentioned that the land in question is not an “agricultural land” and also the counter affidavit of the State filed before the High Court wherein it is mentioned that the Hotel in the disputed land is situated in the market area of Muniari township. In this regard, it is pertinent to note that for changing the nature of land from “agricultural” to “*abadi*”, declaration as stipulated in Sections 143 and 144 is required. The provisions under Section 143 of the Act are initiated *suo motu* or on an application moved by a *bhumidhar* with transferable rights and an enquiry is required to be conducted by the Assistant Collector as prescribed under the Act. Section 143 of the Act reads as under:-

**“143. Use of holding for industrial or residential purposes.**

-(1) Where a *bhumidhar* with transferable rights uses his holding or part thereof for a purpose not connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming, the Assistant Collector-in-charge of the sub-division may, *suo motu* or on an application, after making such enquiry as may be prescribed, make a declaration to that effect.

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- A (2) Upon the grant of the declaration mentioned in sub-section (1) the provisions of this chapter (other than this section) shall cease to apply to the bhumidhar with transferable rights with respect to such land and he shall thereupon be governed in the matter of devolution of the land by personal law to which he is subject.
- B (3) Where a bhumidhar with transferable rights has been granted, before or after the commencement of the Uttar Pradesh Land Laws (Amendment) Act, 1978, any loan by the Uttar Pradesh Financial Corporation or by any other Corporation owned or controlled by the State Government, on the security of any land held by such bhumidhar, the provisions of this Chapter (other than this section) shall cease to apply to such bhumidhar with respect to such land and he shall thereupon be governed in the matter of devolution of the land by personal law to which he is subject.”
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Where such a declaration is made under Section 143 of the Act, the provisions of Chapter-VIII of the U.P. ZA & LR Act (except Section 143) ceased to apply to the *bhumidhar* with transferable rights with respect to such land.

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- E 16. It has been held in *Chandrika Singh and others v. Raja Vishwanath Pratap Singh and another* (1992) 3 SCC 90 that in order to exclude the applicability of provisions of U.P. ZA & LR Act on the ground that the land is *abadi* land, it is necessary to determine that it is in accordance with the provisions of Sections 143 and 144 of the Act and whether such a declaration under Sections 143 and 144 of the Act has been made in accordance with the provisions of the Act. In para Nos. (9) and (15), it was held as under:-
- F “9. The aforesaid provisions show that under Section 331(1) exclusive jurisdiction in respect of suits, applications and proceedings referred to in Schedule II of the Act has been conferred on the courts specified in the said schedule and the said proceedings, suits and applications cannot be entertained by the civil courts. The proviso to Section 331(1) lifts the said bar in relation to any holding or part thereof where a declaration has been made under Section 143. Section 143 empowers the Assistant Collector after making enquiry as may be prescribed, to make a declaration that a holding or part thereof is being used or held by a bhumidhar for purposes not connected with agriculture,
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horticulture or animal husbandry. Where such a declaration is made in respect of a part of the holding, the Assistant Collector is required to demarcate the said part. The effect of the grant of such a declaration is that the provisions of Chapter VIII (except Section 143) cease to apply to the bhumidar with transferable rights with respect to such land.

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**15.** .....In our opinion, the question as to whether a particular land is “land” under Section 2(14) to which the provisions of the Act are applicable would require determination of the question whether the land is held or occupied for purposes connected with agriculture, horticulture or animal husbandry and that is a matter which has to be determined either in accordance with the provisions of Sections 143 and 144 and if such a determination has not been made and such a question arises or is raised in a suit before a court, the procedure laid down in Section 331-A must be followed by the court. This would be so even in a case where a building exists on the land and the land is claimed to be appurtenant to the building because in such a case it will be necessary to determine the extent of the land that is appurtenant to the building, i.e. whether the entire land or only a part of it is so appurtenant to the building and for that reason is not held or occupied for purposes connected with agriculture, horticulture or animal husbandry. This determination has to be made in accordance with the provisions of Sections 143 and 144 or Section 331-A of the Act.”

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17. In the present case, the respondents have not produced any such document which shows that declaration required under Section 143 of the Act has been made much less registered. In the absence of such declaration, the land is deemed to be an “agricultural land” as per the provisions of Section 3(14) of the Act.

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18. The respondents placed reliance upon the recitals in the exchange deed to show that the land is not an “agricultural land”. The recitals in the exchange deed can be of no help to the respondents as the said document is a self-serving document and cannot operate as a document to prove that the land is an “*abadi* land”. Likewise, the respondents sought to place reliance upon the counter affidavit filed by the appellants where it is averred that the suit property is situated in the

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- A market area of Muniari township. The averments in the counter affidavit filed by the State can be of no assistance to the respondents. For claiming the nature of the land as “*abadi* land”, a declaration as stipulated in Section 143 is required and the said declaration is also required to be registered. As pointed out earlier, the respondents have not produced any document which shows that the declaration as required under Section 143 of the Act has been made. In the absence of such declaration, the land cannot be said to be “*abadi* land”. Since the land is an “agricultural land”, the provisions of U.P. ZA & LR Act are applicable to the land in question.
- B 19. Section 161 of the Act pertains to exchange of land. As per Section 161 of the Act, a *bhumidhar* may exchange land with another *bhumidhar* or with any *Gaon Sabha* or local authority, with the prior permission of an Assistant Collector. Section 161 reads as under:-

**“161. Exchange. – (1)** A *bhumidhar* may exchange with –

- D (a) any other *bhumidhar* land held by him; or
- (b) any *Gaon Sabha* or local authority, lands for the time being vested in it under Section 117:

- E Provided that no exchange shall be made except with the permission of an Assistant Collector who shall refuse permission if the difference between the rental value of land given in exchange and of land received in exchange calculated at hereditary rates is more than 10 per cent of the lower rental value.

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- F Insofar as the land belonging to a member of Scheduled Tribe, exchange is not permissible. Under Section 157-B of the Act, no *bhumidhar* or *asami* belonging to a Scheduled Tribe, shall have the right to transfer by way of “*sale, gift, mortgage or lease or otherwise any land to a person not belonging to a Scheduled Tribe*”. The language used in Section 157-B of the Act “*or otherwise*” emphasizes that the
- G land belonging to a Scheduled Tribe cannot be transferred in any manner whatsoever. It is pertinent to note that in Section 157-A of the Act which deals with restrictions on transfer of land by members of Scheduled Castes, the language used is “*by way of sale, gift, mortgage or lease to a person not belonging to a Scheduled Caste*”. Absence of word “*or otherwise*” in Section 157-A of the Act shows that while exchange may
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be permissible of a land belonging to members of Scheduled Caste to a person belonging to Scheduled Caste, such an exchange is prohibited under Section 157-B of the Act – Restriction on transfer of land of a member of a Scheduled Tribe.

20. For the sake of arguments, even assuming that Section 161 of the Act is applicable, according to Section 161 of the Act, exchange by a *bhumidhar* with another *bhumidhar* or with any Gaon Sabha or local authority is permissible only with the prior permission of the Assistant Collector. Use of the word “shall” in the proviso to Section 161 of the Act clearly indicates that for a valid exchange, it is mandatory to obtain permission of the Assistant Collector. In the instant case, admittedly, no prior permission was sought from the Assistant Collector as mandated. In the absence of fulfilling of pre-requisite condition as laid down in Section 161 of the Act, the exchange has to be necessarily held to be void.

21. Contention of the learned counsel for the respondents is that even post-facto approval for the exchange is sufficient and need not necessarily be prior permission. In this regard, learned counsel for the respondents has submitted that the Tehsildar, Muniari effected mutation in the revenue record which amounts to ex-post facto approval for the exchange. It was also submitted that the respondents preferred project report for construction of a Hotel at Muniari and after obtaining necessary approval from the concerned authorities and by taking loan from the financial institutions, the Hotel was constructed and commissioned in the year 2000 and the approval from various authorities for construction and running the Hotel would amount to ex-post facto approval. In support of his contention, learned counsel placed reliance upon *Life Insurance Corporation of India v. Escorts Ltd. and others (1986) 1 SCC 264*.

22. There is no merit in the contention that for exchange of land prior permission under Section 161 of the Act is not required. It is to be pointed out by a reading of the provisions of Section 161 of the Act that the Assistant Collector shall refuse permission if the difference between the rental value of the land given in exchange and of the land received in exchange calculated as hereditary rates is more than 10% of the lower rental value. In the instant case, the respondents exchanged 4½ Muthi land (56.25 sq. mtrs. of land) with Mangal Singh’s 12 Nali land (2400 sq. mtrs. of land), the annual rental value for 12 Nali is Rs.2.50/- and for 4½

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- A Muthi, it is Rs.0.05/- . The difference between the value of the two is clearly more than 10%. Even assuming that Section 161 of the Act is applicable, on this ground, the Assistant Collector was bound to refuse the permission even if the respondent had applied for it.

23. As per proviso to Section 161 of the Act, it is incumbent upon B the Assistant Collector to calculate the rental value of the land given in exchange and of the land received in exchange and if the difference is more than 10% of the lower rental value then the Assistant Collector shall refuse the permission. Thus, the pre-requisite condition for grant of permission is the calculation of the rental value and if the difference C between the rental value of land given in exchange and of land received in exchange is more than 10%, then the Assistant Collector shall refuse the permission. The pre-requisite condition of calculation of the rental value clearly suggests that the permission of the Assistant Collector is a pre-requisite condition for a valid exchange. We have referred to Section D 161 of the Act only for the sake of completion. As pointed out earlier, Section 157-B of the Act prohibits even exchange of the land to a person not belonging to a Scheduled Tribe.

24. The respondents have not explained as to why Mangal Singh (a member of Scheduled Tribe) wanted to exchange his large extent of land i.e. 12 Nali (2400 sq. mtrs.) with a much smaller piece of land i.e. E 4½ Muthi (56.25 sq. mtrs.). This aspect raises doubt about the genuineness of the exchange deed. This aspect casting doubt upon the validity of the exchange deed is further strengthened by the fact that the names of the respondents have been mutated in the land of Mangal Singh in Bandobast Khatuni Khata No.43; whereas the name of Mangal Singh has not been mutated in village Khata No.36, Bandobast Khatuni F Khata No.91. These circumstances clearly indicate that the exchange deed relied upon by the respondents is not a valid exchange and has been executed in violation of the provisions of the U.P. ZA & LR Act.

25. U.P. ZA & LR Act is a beneficial legislation which has been G enacted to protect the interest of the exploited rural masses. The Preamble of the U.P. ZA & LR Act shows that it is an Act to provide for the abolition of zamindari system which involves intermediaries between tiller of the soil and the State in U.P. (adopted by the State of Uttarakhand) and for the acquisition of the rights, title and interest and to reform the law relating to land tenure consequent upon such abolition and acquisition H and to make provisions for other matters connected therewith. Observing

that agriculture is the only source of livelihood for Scheduled Tribes apart from the collection and sale of minor forest produce to supplement their income and that it is a source of economic empowerment, in *Samatha v. State of A.P. and others*(1997) 8 SCC 191, it was held as under:-

“9. *Agriculture is the main part of the economy* and source of livelihood to the rural Indians and a source and succour for social status and a base for dignity of person. Land is a tangible product and sustaining asset to the agriculturists. In *Waman Rao v. Union of India* (1981) 2 SCC 362 a Constitution Bench had observed that India being a predominantly agricultural society, there is a “strong linkage between the land and the person’s status in social system”. The strip of land on which they till and live assures them equal justice and “dignity of their person by providing to them a near decent means of livelihood”. Agricultural land is the foundation for a sense of security and freedom from fear. Assured possession is a lasting source for peace and prosperity.

10. Agriculture is the only source of livelihood for Scheduled Tribes, apart from collection and sale of minor forest produce to supplement their income. Land is their most important natural and valuable asset and imperishable endowment from which the tribals derive their sustenance, social status, economic and social equality, permanent place of abode and work and living. It is a security and source of economic empowerment. Therefore, the tribes too have great emotional attachment to their lands. The land on which they live and till, assures them equality of status and dignity of person and means to economic and social justice and is a potent weapon of economic empowerment in social democracy.”

The U.P. ZA & LR Act being a beneficial legislation, the provisions need to be interpreted in a manner so as to achieve the rationale behind the legislation.

26. Despite the alleged exchange said to have been effected in 1994, the land in village Khata No.36, Bandobast Khata Khatuni No.91 have not been mutated in the name of Mangal Singh. As per the Report of the Tehsildar dated 04.12.2000, village Khata No.36, Bandobast Khata Khatuni No.91 continue to remain in the name of respondents Akhalaq Hussain and Saqir Hussain and there is no noting in the name of Mangal Singh.

- A        27. As per Section 166 of the Act, every transfer made in contravention of the provisions of the U.P. ZA & LR Act shall be void. Section 167 of the Act refers to the consequences which shall ensue in respect of every transfer which is void by virtue of Section 166 of the Act. Taking us through Appendix-III of U.P. ZA & LR Act, learned counsel for the respondents submitted that under Section 167 of the Act, the limitation period is six years from the date of illegal transfer. It was therefore submitted that *suo motu* action taken by the Assistant Collector/ Pargana Magistrate vide order issued on 19.07.2000 (which is beyond the period of six years) is barred by limitation. Serial No.20 of Appendix-III to U.P. ZA & LR Act reads as under:-
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- | Serial No. | Section of the Act | Description of suit, application and other proceeding | Period of limitation | Time from which period begins to run | Proper Court fees                                      |
|------------|--------------------|---|----------------------|--------------------------------------|--|
| .....      | .....              | .....   | .....                | .....                                | .....  |
| D          | 20.                | Suits for ejectment of a sirdar or asami              | Six years            | From the date of illegal transfer    | As in the Court Fees Act, 1870, on the year's revenue. |
|            |                    |   |                      |                                      |  |

- E        28. Even at the outset, it is to be pointed out that Serial No.20 of Appendix-III relates to suit for ejectment of a *sirdar* or *asami* and is not relevant insofar as void transfers which are made in contravention of the provisions of the U.P. ZA & LR Act. If the period of limitation is to be applied for the void transfers which are made in contravention of the provisions of the Act, the very object of the U.P. ZA & LR Act would be defeated. There has to be a harmonious construction of the provisions of the Act. The instant exchange being void since its inception, the transfer being void in terms of Section 166 of the Act, the consequences enshrined in Section 167 of the Act shall automatically follow. Cognizance of the exchange deed was taken by the Pargana Magistrate and it cannot be said that the order passed on 19.07.2000 is barred by limitation. There is no merit in the contention that the order passed by the Pargana Magistrate dated 19.07.2000 is barred by limitation.
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29. Learned counsel for the respondents has submitted that the respondents have availed loan from financial institutions and have been running a hotel under the name of "ZARA Resort" and it is their only source of livelihood. As discussed earlier, Section 157-B of the Act puts

a complete bar on a *bhumidhar* or *asami* belonging to Scheduled Tribe to transfer their land by way of sale, gift, mortgage or lease or otherwise to a person not belonging to Scheduled Tribe. The exchange deed dated 16.03.1994 being in contravention to the provisions of the U.P. ZA & LR Act is void. The consequences have to follow as per Section 167 of the Act. In case, if the transfer is void under the provisions of the Act, there is no justification to consider the request of the respondents on the ground that they are running the Hotel by availing loan from the financial institutions. When the transfer has been made in contravention of the provisions of U.P. ZA & LR Act, there is no ground for considering the questions of equity. Lest, it would defeat the provisions of the Act.

30. The High Court has ignored the provisions of U.P. ZA & LR Act and held that the provisions of Sections 161 and 157-B of the Act do not apply in case of exchange of land which has been made by executing a document where the stamp duty has been paid as per Indian Stamp Act and the document duly registered. The High Court erred in saying that Section 157-B of the Act does not bar making of exchange by a person of Scheduled Tribe because he is getting a land in exchange. As discussed earlier, there is clear bar under Section 157-B of the Act for transfer of land by a Scheduled Tribe even by way of exchange as the word "or otherwise" indicates. When there is a clear statutory provision barring the transfer, it was not open to the High Court to substitute its view in the place of that provision. Any such interpretation would defeat the benevolent object of the provisions of the U.P. ZA & LR Act and also the constitutional scheme providing for the social and economic empowerment of the Scheduled Tribes. The order of the High Court is contrary to the express provisions of U.P. ZA & LR Act and is also against the benevolent provisions of the Act and the impugned judgment cannot be sustained.

31. In the result, the impugned judgment of the High Court is set aside and this appeal is allowed. The appellants are at liberty to proceed in accordance with law.