Arvind Kumar vs State Of U.P.& Ors on 8 August, 2016

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Bench: Dipak Misra, Rohinton Fali Nariman

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7165 of 2016

ARVIND KUMAR …APPELLANT

VERSUS

STATE OF U.P. & ORS. …RESPONDENTS

J U D G M E N T

R.F. Nariman, J.

1. The present case involves the Court going through a dense jungle which consists of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 [hereinafter referred to as "the principal Act"] and three Amendment Acts made thereto. With the help of learned counsel for both the sides, we have waded through the various Sections and sub-sections of these Acts, only for the purpose of having to decide one basic question: as to whether ceiling proceedings in respect of the land in question have lapsed owing to Section 31 of the 1976 Amendment Act.

2. The brief facts necessary to decide the present case are as follows. A notice under Section 10(2) of the principal Act, was served upon the tenure-holder, one Kamla Devi, to file objections against a proposal to declare 51.29 acres as surplus land. Pursuant to the said notice, objections were filed by the late Kamla Devi as also by appellants 1 to 3, her legal heirs. According to the appellants, on a correct construction of the Act, there was no surplus land. Meanwhile, the Prescribed Authority

under the Act passed an order dated 13.1.1975 by which order the entire land that was the subject matter of the notice, was declared surplus. An appeal filed against the Prescribed Authority's order met with the same fate and was dismissed on 13.12.1987. It is important to note that an argument was raised that the proceedings had abated, which argument was answered by the Appellate Authority by saying that no fresh notice had been issued under Section 9(2) of the Amendment Act and as this was so, the proceedings had not abated. A writ petition that was filed in 1987 was ultimately disposed of on 6.8.2007 where, by the judgment under appeal, the writ petition was dismissed. Several points were argued with which we are not at present concerned. The argument on abatement met the same fate as the judgment by the appellate authority.

3. Before adverting to the submissions of learned counsel for both parties, it is first important to put the horse before the cart. A brief survey of the principal Act as well as the three Amendment Acts must now be undertaken.

4. The 1960 Act is an Act to provide for the imposition of ceiling on land holdings in the State of Uttar Pradesh. Under the principal Act, the ceiling area of a tenure-holder was said to be 40 acres of "fair quality land", and where the tenure-holder has a family consisting of more than 5 members, to the ceiling area of such tenure- holder is to be added 8 acres of fair quality land for every additional member of the family, subject to a maximum of 24 acres. "Fair quality land" was defined in the principal Act as meaning land, the hereditary rate of which is above Rs.6/- per acre under the Act. A general notice was to be given to tenure-holders holding land in excess of the ceiling area so that they could submit a statement in respect thereof. A quasi-judicial determination is then to be made of surplus land, where objections are filed and the prescribed authority, after affording the parties a reasonable opportunity of being heard, and of producing evidence, is then to decide their objections after recording reasons, and then determine the extent of surplus land. An appeal is provided to the District Judge whose decision is then made final and conclusive. The prescribed authority is then to notify in the Official Gazette the surplus land so determined. On the date of such notification, such surplus land shall vest in the State free from all encumbrances, and on/from that date, all right, title and interest of all persons in such land shall stand extinguished. The principal Act then contains machinery for distribution of surplus land inter alia to cooperative societies of landless agricultural labourers. Compensation is given by the principal Act for vesting of surplus land of land-holders. With this prefaratory note, it is important now to set out the relevant Sections of the aforesaid Act.

"Section 3. Definitions. In this Act, unless there is anything repugnant in the subject of context –

(b) "Fair Quality Land" means land the hereditary rate whereof is above rupees six per acre;

Section 4. Ceiling area.

1) Subject to the provisions of this Act, the ceiling area applicable to a tenure-holder shall be calculated after taking into account all the land in any holding in the state held by him, in his own right, whether in his own name or ostensibly in the name of any person.

2) (a) The ceiling area of a tenure-holder shall be forty acres of Fair Quality Land.

(b) Where the tenure-holder has, or consists of, a family having more than five members, the ceiling area of such tenure-holder shall be the area mentioned in clause (a) together with eight acres of Fair Quality Land for every additional member of the family subject to a maximum of twenty-four such acres:

> Provided that, if at any time, the family comes to consist of not more than five members, all land held by the tenure- holder in excess of the ceiling area under clause (a), shall become liable to be treated as surplus land.
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> Explanation – In calculating the ceiling area under this sub-section in respect of land other than Fair Quality Land, one and one-half acre of such land, the hereditary rate whereof is above rupees four per acre, but does not exceed rupees six per acre, and two acres of such land the hereditary rate whereof is rupees four or less per acre, will be deemed to be equal to one acre of Fair Quality Land.
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> Section 5. Imposition of ceiling on existing land holdings.-
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> 1) As and from the date of enforcement of this Act, no tenure-

holder shall, except as otherwise provided by this Act, be entitled to hold an area in excess of the ceiling area applicable to him, anything contained in any other law, custom, or usage for the time being in force, or agreement, to the contrary notwithstanding.

2) In determining the ceiling area applicable to a tenure-holder at the commencement of this Act, any transfer or partition of land made after the twentieth day of August, 1959, which, but for the transfer or partition, would have been declared surplus land under the provisions of this Act, shall be ignored and not taken into account.

3) The provisions of sub-section (2) shall have no application to –

(a) a transfer in favour of the State Government ;

(b) a partition under the U.P. Consolidation of Holdings Act, 1953, or

(c) a partition of the holding of a Joint Hindu Family made by a suit or proceeding pending on twentieth day of August, 1959.

Section 9. General notice to tenure-holders holding land in excess of ceiling area for submission of statement in respect thereof.– As soon as may be, after the date of enforcement of this Act, the Prescribed Authority shall, by general notice, published in the Official Gazette, call upon every tenure-holder holding land in excess of the ceiling area applicable to him on the date of enforcement of this Act, to submit to him within 30 days of the date of publication of the notice, a statement in respect of all his holdings in such form and giving such particulars as may be prescribed. The statement shall also indicate the plot or plots for which he claims exemption and also those which he

would like to retain as part of the ceiling area applicable to him under the provisions of this Act.

Section 12. Determination of the surplus land by the Prescribed Authority where an objection is filed. – (1) Where an objection has been filed under sub-section (2) of section 10 or under sub-section (2) of Section 11, or because of any appellate order under Section 13, the Prescribed Authority shall, after affording the parties reasonable opportunity of being heard and of producing evidence, decide the objections after recording his reasons, and determine the surplus land.

(2) Subject to any appellate order under Section 13, the order of the Prescribed Authority under sub-section (1) shall be final and conclusive and be not questioned in any court of law.

Section 13. Appeals – (1) Any party aggrieved by an order under sub-section (2) of Section 11 or Section 12, may, within thirty days of the date of the order, prefer an appeal to the District Judge within whose jurisdiction the land or any part thereof is situate.

(2) The District Judge shall dispose of the appeal as expeditiously as possible and his decision thereon shall be final and conclusive and be not questioned in any court of law.

(3) Where an appeal is preferred under this section, the District Judge may stay enforcement of the order appealed against for such time and on such conditions as may be considered just and proper.

Section 14. Acquisition of surplus land. – (1) The Prescribed Authority shall –

(i) in case, where the order passed under sub-section (1) of Section 11 has become final; or

(ii) in case, where no appeal has been preferred under Section 13, after the expiry of the period of limitation provided therefor; or

(iii) in case, where an appeal has been preferred under Section 13, after its decision;

notify in the Official Gazette the surplus land determined under Sections 11, 12 or 13, as the case may be.

(2) As from the beginning of the date of the notification under sub-section (1), all such surplus land shall stand transferred to and vest, except as hereinafter provided, in the State, free from all encumbrances and all rights, title and interests of all persons in such land shall, with effect from such date, stand extinguished.

(3) On the publication of the notification under sub-section (1), any person claiming interest as a tenure-holder or a lessee in possession from the tenure-holder, in the surplus land in respect of which the notification has been published, may, within thirty days thereof, file an objection before the Prescribed Authority indicating the extent of his interest in such land.

(4) The Prescribed Authority shall, for reasons to be recorded in writing, dispose of the objections after affording to the objector, the tenure-holder concerned and the State Government, reasonable opportunity of being heard and of producing evidence.

(5) Any person aggrieved by an order under sub-section (4) may, within thirty days of the date of the order, prefer an appeal to the District Judge in whose jurisdiction the land or any part thereof is situate. The order of the District Judge shall be final and conclusive and be not questioned in any Court of law.

(6) In disposing of an objection of an appeal under this section, the Prescribed Authority or the District Judge, as the case may be, shall accept any decision of a court of competent jurisdiction in respect of the rights of the parties.

(7) No person, other than a tenure-holder or a lessee of the tenure-holder whose right, title or interest in the surplus land has been recognized under the provisions hereinbefore contained, shall for purposes of this Act, be considered to have any right, title or interest in the surplus land.

(8) The Collector may, at any time, after the publication of the notification under sub-section (1) and subject to any order passed under sub-sections (4) and (5) take possession of the surplus land and may for that purpose use such force as may be necessary.

Section 27. Settlement of surplus land.

1) The State Government shall settle out of the surplus land in a village in which no land is available for community purposes or in which the land as available is less than 15 acres with the Gaon Samaj of the village so however that the total land in the village available for community purposes after such settlement does not exceed 15 acres. The land so settled with the Gaon Samaj shall be used for planting trees, growing fodder or for such other community purposes, as may be prescribed.

(2) Subject to the provisions of sub-section (1), where any surplus land had immediately preceding the date of vesting in the State under this Act, been held by a member of a co- operative society, such land may, if the society so desires, be settled by the State Government with the society.

(3) Any surplus Land remaining unsettled under the provisions of the preceding sub-sections may be settled by the State Government:

> (a) If the remaining land is less than 15 acres in the village, with a co-operative society of such tenure-holders, at least three-

fourths of whom are holders of less than 3? acres of land each; and

(b) If the remaining land is more than 15 acres in the village, with a co-operative society of landless agricultural labourers so however that the total land allotted to such society, under this clause, if equally divided between all the members would give to each one not more than 3? acres of land.

(4) Any surplus land remaining after settlement under clause

(b) of sub- section (3) may be settled by the State Government with any co-operative society no member whereof prior to such settlement holds more than 3? acres of land in his own right."

5. By an Amendment Act of 1972, being U.P. Act 18 of 1973, which came into force on 8.6.1973, a wholesale substitution of various Sections of the principal Act was carried out. This is for the simple reason that the erstwhile scheme of determining surplus "fair quality land" was now substituted by a scheme which determined surplus irrigated land. Even the ceiling limit of such land was changed to 7.3 hectares of irrigated land, plus a maximum of 6 hectares of additional land depending upon the size of the family. A new Section 13A was inserted conferring a power of review to the appellate authority under the Act. The transitory provision contained in Section 19 of the 1972 Amendment Act then provided for abatement of proceedings that were pending at the time of commencement of the Amendment Act, with a saving of proceedings that had already become final under the principal Act.

6. The relevant provisions of the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 are set out hereunder:-

> "Section 3. Substitution of new sections for sections 3, 4, 5, 6, 7 and 8 of U.P. Act I of 1961. For sections 3, 4, 5, 6, 7 and 8 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960, hereinafter referred to as the principal Act, the following sections shall be substituted, namely:-
>
> "...
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> 4. Determination of area for purposes of ceiling and exemptions.

For purposes of determining the ceiling area under section 5 or any exemption under section 6—

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

ii) two and a half hectares of any unirrigated land, in the following areas, namely-

a) Bundelkhand;

b) trans-Jamuna portions of Allahabad, Etawah, Mathura and Agra districts;

c) cis-Jamuna portions of Allahabad, Fatehpur, Kanpur, Etawah, Mathura and Agra districts up to 16 kilometers from the deep stream of the Jamuna;

d) the portion of Mirzapur district south of Kaimur Range;

e) Tappa Upraudh and Tappa Chaurasi (Balai Pahar) of Tahsil Sadar in Mirzapur district;

f) the portion of Tahsil Robertsganj, in Mirzapur district which lies north of Kaimur Range;

g) Pargana Sakteshgarh and the villages mentioned in lists 'A' and 'B' of Schedule VI to the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, in hilly patties of Parganas Ahraura and Bhagat of Tahsil Chunar in Mirzapur district; and

h) the area comprised in the former Taluka of Naugarh or Tahsil Chakia in Varanasi district;

i) hilly and Bhabar area of Kumaun and Garhwal Divisions and Jaunsar Bawar Pargana of Dehra Dun district;

shall count as one hectare of irrigated land.

5. Imposition of ceiling.

1) On and from the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, no tenure- holder shall be entitled to hold in the aggregate, throughout Uttar Pradesh, any Land in excess of the ceiling area applicable to him.

xx (3) Subject to the provisions of sub-sections (4), (5) and (6), the ceiling area for purposes of sub-section (1) shall be –

a) In the case of a tenure-holder having a family of not more than five members, 7.30 hectares of irrigated land (including land held by other members of his family), plus two additional hectares of irrigated land or such additional land which together with the land held by him aggregates to two hectares, for each of his adult sons, who are either not themselves tenure- holders or who hold less than two hectares or irrigated land, subject to a maximum of six hectares of such additional land;

b) In the case of a tenure-holder having family of more than five members, 7.30 hectares of irrigated land (including land held by other members of his family), besides, each of the members exceeding five and for each of his adult sons who are not themselves tenure-holders or who hold less than two hectares of irrigated land, two additional hectares of irrigated land or such additional land which together with the land held by such adult son aggregates to two hectares, subject to a maximum, of six hectares of such additional land.

Explanation – The expression 'adult son' in clause (a) and (b) includes an adult son who is dead and had left surviving behind him minor sons or minor daughters (other than married daughters) who are not themselves tenure-holders or who hold land less than two hectares of irrigated land;

c) In the case of a tenure-holder being a degree college imparting education in agriculture, 20 hectares of irrigated land;

d) In the case of a tenure-holder being an intermediate college imparting education in agriculture, 12 hectares of irrigated land;

e) In the case of any other tenure-holder, 7.30 hectares of irrigated land.

Explanation – any transfer or partition of land which is liable to be ignored under sub-sections (6) and (7) shall be ignored also-

(p) for purposes of determining whether an adult son of a tenure-holder is himself a tenure-holder within the meaning of clause (a);

(q) for purposes of service of notice under section 9." Section 4. Amendment of Section 9.

Section 9, of the principal Act, shall be re-numbered as sub- section (1) thereof, and after sub-section (1) as so re- numbered, the following sub-section shall be inserted, namely – "(2) As soon as may be after the enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, the prescribed authority shall, by like general notice, call upon every tenure-holder holding land in excess of the ceiling area applicable to him on the enforcement of the said Act, to submit to him within 30 days of publication of such notice, a statement referred to in sub-section (1).

(3) Where the tenure-holder's wife holds any land which is liable to be aggrieved with the land held by the tenure-holder for purposes of determining of the ceiling areas, the tenure- holder shall, along with his statement referred to in sub- section (1) also file the consent of his wife to the choice in respect of the plot or plots which they would like to retain as part of the ceiling areas applicable to them and where his wife's consent is not so obtained, the prescribed authority shall cause the notice under sub-section (2) of section 10 to be served on her separately." Section 7. Insertion of new Section 13-A. After Section 13 of the principal Act, the following section shall be inserted, namely:-

> 13-A. Re-determination of surplus land in certain cases.
>
> 1) The prescribed authority may, at any time, within a period of two years from the date of the notification under sub-section (1) of section 14, rectify any mistake apparent on the face of the record:
>
> Provided that no such rectification which has the effect of increasing the surplus land shall be made, unless the prescribed authority has given a notice to the tenure-holder of its intention to do so and has given him a reasonable opportunity of being heard.
>
> 2) The provisions of sections 10, 11, 12, 12-A, 13, 14 and 15 shall mutatis mutandis apply in relation to any proceeding under sub-

section (1), and for purposes of application of section 10, the notice under the proviso to sub-section (1), shall be deemed to be a notice under section 9." Section 19. Transitory provisions.

1) All proceedings for the determination of surplus land under section 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 re-determined in accordance with the provisions of the principal Act as amended by this Act.
>
> 2) Notwithstanding, anything in sub-section (1), any proceeding under section 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 the principal Act, without prejudice to the applicability of the provisions of sub-section (2) of section 9 and section 13-A of that Act, as inserted by this Act, in respect of such land."
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> 7. On 17.1.1975, the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1974, being U.P. Act No.2 of 1975, came into force.

Interestingly, certain changes were made to the new legislative scheme contained in the 1972 Amendment. This Act, except for Sections 1 and 9, was brought into force with effect from 8.6.1973, which, as we have already seen, was the date of coming into force of the 1972 Amendment Act. This 1974 Amendment Act only added to the new substituted scheme the concept of "single crop land". The relevant provisions of this Act are set out hereinbelow:-

> "Section 1. Short title and commencement.
>
> 1) This Act may be called the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974.
>
> 2) This Section and section 9 shall come into force at once, and the remaining sections shall be deemed to have come into force on June 8, 1973.

Section 4. Amendment of Section 4.

In section 4 of the principal Act, in clause (ii)

a) For the words “two and half hectares of any unirrigated land”, the words “one and one-half hectares of single crop land or two and a half hectares of any other un-irrigated land”, shall be substituted;

b) At the end the following Explanation shall be inserted, namely :-

> “Explanation – For the purposes of clause (ii), the expression ‘single crop land’ means any un-irrigated land capable of producing only one crop in an agricultural year, in consequence of assured irrigation from any State Irrigation Work or private irrigation work.” Section 9. Transitory Provision.
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> Where an order determining the surplus land in relation to a tenure-holder has been made under the principal Act, before the commencement of this Act, the prescribed authority may, at any time within a period of two years from the commencement of this Act, re-determine the surplus land in accordance with the principal Act as amended by this Act.”
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> 8. An Ordinance, which further amended the principal Act, came into force on the 10th day of October, 1975. After the said Ordinance lapsed, the third Amendment Act of 1976 was brought into force, being U.P. Act 20 of 1976, but with effect from the date of the Ordinance, namely, 10.10.1975. In this Amendment, various other changes were made with which we are not directly concerned, except that the fate of this appeal hinges on the correct construction of the transitory provision of this Act, namely, Section 31. The relevant Sections of this Amendment Act are set out hereunder:-
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> “Section 1. Short title and commencement.
>
> 1) This Act may be called the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1976.
>
> 2) It shall be deemed to have come into force on October 10, 1975.

Section 8. Amendment of section 9.

In section 9 of the principal Act,-

a) In sub-section (2), the following proviso thereto shall be inserted namely:-

> “Provided that at any time after October 10, 1975, the Prescribed Authority may by notice, call upon any tenure- holder holding land in excess of the ceiling area applicable to him on the said date, to submit to him within thirty days from the date of service of such notice a statement referred to in sub-section (1) or any information pertaining thereto.”;

b) after sub-section (2) the following sub-section shall be inserted namely:-

"(2-A) Every tenure-holder holding land in excess of the ceiling area on January 24, 1971, or at any time thereafter who has not submitted the statement referred to in sub- section (2) and in respect of whom no proceeding under this Act is pending on October 10, 1975 shall, within thirty days from the said date furnish to the Prescribed Authority a statement containing particulars of all Land—

a) held by him and the members of his family on January 24, 1971;

b) acquired or disposed of by him or by members of his family between January 24, 1971 and October 10, 1975." Section 11. Amendment of section 14.

In section 14 of the principal Act-

a) for sub-section (2), the following sub-section shall be substituted, namely:-

"(2) As from the beginning of the date of the notification under sub-section (1), all such surplus land shall stand transferred to and vest in the State Government free from all encumbrances and all rights, title and interests of all persons in such land shall, with effect from such date, stand extinguished:

Provided that the encumbrances, if any, shall be attached to the amount payable under section 17 in substitution for the surplus land.";

b) sub-section (3), (4), (5), (6) and (7) shall be omitted;

c) for sub-section (8), the following sub-section shall be substituted, namely:-

"(8) The Collector may at any time after the publication of the notification under sub-section (1) take possession of the surplus land and also of any ungathered crop or fruits of tree not being crops or fruits to which sub-section (1) of section 15 applies, after evicting the tenure-holder or any other person found in occupation of such land, and may, for that purpose, use or cause to be used such force as may be necessary:

Provided that a tenure-holder may, at any time voluntarily deliver possession to the Collector over the whole or any part of the land held by him which has been or is likely to be declared surplus under and in accordance with the provisions of this Act, and thereupon the provisions of sub-section (2) shall apply to such land as they apply to any surplus land specified in a notification under sub-section (1)." Section 31. Transitory Provisions.

1) All proceedings under sub-section (3) to (7) of section 14 of the principal Act, as it stood immediately before the commencement of the Uttar Pradesh Imposition of

> Ceiling on Land Holdings (Amendment) Ordinance, 1976, pending before any Court or authority immediately before the date of such commencement shall be deemed to have abated on such date.
>
> 2) Where an order determining the surplus land in relation to a tenure-holder has been made under the principal Act before January 17, 1975 and the Prescribed Authority is required to re-determine the surplus land under section 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974, then notwithstanding anything contained in sub-

section (2) of section 19 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, every appeal under section 13 of the principal Act or other proceedings in relation to such appeal, preferred against the said order, and pending immediately before the tenth day of October, 1975, shall be deemed to have abated on the said date.

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

4) The provisions of section 13 of the principal Act shall mutatis mutandis apply to every order re-determining surplus land under sub-section (3) of this section or section 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974:

> Provided that the period of thirty days shall, in the case of an appeal against the order referred to in section 9 of the Uttar Pradesh Imposition of Ceiling or Land Holdings (Amendment) Act, 1974, be computed from the date of such order or October 10, 1975, whichever is later.
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> 5) The provisions of section 13-A of the principal Act shall mutatis mutandis apply to every re-determination of surplus land under the section or under section 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974.
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> 6) Where any Assessment Roll has become final under sub-section (4) of section 21 before the sixteenth day of February, 1976, this same shall not be reopened, notwithstanding any amendment made in Chapter III of the principal Act read with the Schedule thereof by this Act."
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> 9. Given this thicket of statutory law made by the legislature of U.P., we have heard learned counsel on either side. Shri C.U. Singh, learned senior advocate appearing on behalf of the appellants, has made several submissions before us, but ultimately submitted that on a correct construction of Section 31, the entire proceedings had

> abated, and that therefore the appellate authority which passed an order dated 13.12.1987 had no jurisdiction to do so. He argued that a conjoint reading of Sections 31(2) and 31(3) would show that as all the requisite conditions of these sub-sections had been fulfilled, the appeal preferred under section 13 of the principal Act which was pending before the 10th day of October, 1975 shall be deemed to have abated on the said date. As no re-determination of surplus land was made in accordance with the principal Act as amended by the 1976 Amendment Act, according to learned counsel, the period of two years having gone long ago and no re-determination having been made, the surplus land that is said to have been determined by the prescribed authority no longer has any legal sanctity. He made a faint argument that under Section 19 of the 1972 amendment, proceedings had lapsed in any case, but we were not inclined to accept that argument inasmuch as a general notice under Section 9 of the Amendment Act had been given to the tenure-

holder which notice was not replied to by the said tenure-holder. This being the case, Section 19 of the 1972 Act obviously cannot apply.

10. Learned senior counsel also cited before us two judgments of this Court being State of Uttar Pradesh v. Mithilesh Kumari & Others, 1987 (supp.) SCC 21, and Mansoor Ali Khan & Others v. State of U.P. & Others, (1992) 1 SCC 737. However, since these judgments have no direct application to the facts of the present case, we do not consider it necessary to deal with them.

11. Shri Garg, on the other hand, vehemently argued on behalf of the State of U.P. that the conditions under Section 31(2) not having been met, the said Section is inapplicable, and that being the case, the appellate authority correctly went ahead and heard the matter on merits and dismissed the appeal. His principal argument is that there are two conditions precedent to the applicability of Section 31(2) of the 1976 Amendment Act. First, there should be an order determining the surplus land which is made under the principal Act before 17.1.1975; and second, the prescribed authority must be required to re-determine surplus land under Section 9 of the 1974 Amendment Act. In his submission the second pre-requisite is not met on the facts of the present case. This, he argued, is because Section 9 of the 1974 Amendment Act gave a discretion to the prescribed authority who "may re-determine surplus land" in accordance with the amendment made by the 1972 Amendment. According to learned counsel, the occasion for re- determination of surplus land on the present facts did not arise, as on facts there is little or no un-irrigated land that needs to be converted into irrigated land as per the formula contained in Section 4 of the 1972 Act, and that therefore the determination made in accordance with the 1972 Amendment Act, which was in fact made by the order dated 13.1.1975 would lead to the conclusion that that order would stand and does not need to be revisited.

12. The argument of learned counsel for the State, therefore, leads us to analyze the four Acts in question a little closely. One thing becomes clear at the outset: that the original statutory scheme of 1960 which spoke of surplus "fair quality land" was substituted in its entirety by a completely new and different scheme by the Amendment Act of 1972 read with the Amendment Act of 1974. Both of these Acts, as has been noticed above, with certain minor exceptions, came into force on the same

date, namely, 8.6.1973. The new statutory scheme would necessarily involve "fair quality land" being substituted by "irrigated land", the ceiling area in the two cases also being entirely different. This being the case, it is important to now construe Section 9 of the 1974 Amendment Act in this backdrop. Be it noted that Section 9 itself comes into force only on 19.1.1975. For Section 9 to apply, an order has to be made determining surplus land in relation to a tenure-holder before the commencement of the Amendment Act. By Section 1(2), "this Section" and Section 9 both come into force at once i.e. on 17.1.1975. The expression "this Section" refers to Section 1(1) which in turn refers to the Act as the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1974. This being the case, it is clear that the Act has commenced only on 17.1.1975, even though a number of Sections shall be deemed to have come into force retrospectively i.e. on 8.6.1973. The order passed by the prescribed authority being on 13.1.1975, the first condition of Section 9 is met, namely, that this order has been passed before 17.1.1975. It is the second part of the Section on which a lot of the debate featured. According to learned counsel for the State a discretion is vested in the prescribed authority by use of the expression "may". We may hasten to add that the very expression "may at any time within a period of two years..." also occurs in Section 31(3) of the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1976. This sub- section makes it clear that the expression "may" goes along with the words "at any time within a period of two years..." as it is clear that on a correct reading of the sub-Section, the prescribed authority has, in every case, to re-determine surplus land if an order determining surplus land has been made before the 10th day of October, 1975. The idea is that a period of two years is given to re-determine surplus land in accordance with the principal Act as amended by the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1974. This being the case, it is clear that no discretion is vested in the prescribed authority to re-determine surplus land. Surplus land has, in all cases, to be re-determined, as a completely different and new scheme applicable to all lands has replaced the existing scheme. The only exception is where, prior to 8.6.1973, a determination of surplus land has been made finally, that is, an appeal has been disposed of under Section 13.

13. The matter may be looked at from a slightly different angle. Section 19 of the 1972 Amendment Act, which is a transitory provision, provides for abatement of proceedings that are pending on the commencement of the said Act. We have already indicated that the pending proceedings of 1967 had to start afresh on the issue of a general notice under Section 9(2) as inserted by the Amendment Act of 1972, which was in fact done. Thus, the 13.1.1975 order is a consequence of section 19(1) of the Act. Section 19(2) on facts has no application for the simple reason that surplus land had not in this case been determined finally before commencement of the 1972 Act – that is, an appeal had not been decided under Section 13 of the principal Act prior to this date.

14. This brings us then to the transitory provision contained in the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1976. Under Section 31(2), clearly, the order determining the surplus land in the present case had been made four days before 17.1.1975 and thus the first condition or pre-requisite for the application of the Section is met. The second pre-requisite is also met for the simple reason that Section 9 of the 1974 Act, which forms part of the same legislative scheme as the 1972 Amendment Act, would apply for the reason that an order determining surplus land had been made prior to commencement of the said Act, namely, 17.1.1975, (which happens to be the same as the first pre-requisite for the application of Section 31(2) of the Amendment Act of

1976). This being the case, the language of Section 31(2) makes it clear that every appeal preferred against such orders and pending immediately before the 10th day of October, 1975, shall be deemed to have abated on the said date. On facts, we are informed that an appeal had been filed prior to this date.

15. This being the case, it was necessary for the prescribed authority to re-determine surplus land under Section 31(3) in accordance with the principal Act as amended by the 1976 Act, for which purpose, the provisions of section 13 of the principal Act shall apply mutatis mutandis to every order re-determining surplus land under sub-section 3 of this Section or Section 9 of the 1974 Amendment Act – (vide Section 31(4) of the 1976 Amendment Act). This never having been done on facts in the present case, it is clear that the appeal filed in 1975 has abated and could not therefore have been heard by the Additional Commissioner, Agra on merits. This being so, the judgment and order passed by the Commissioner dated 13.12.1975 is without jurisdiction.

16. It only remains to consider the reasoning of the appellate authority and the High Court. Both the appellate authority and the High Court were of the view that no fresh notice had been issued under Section 9(2) of the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972. It has been pointed out to us, on facts, that in fact such a notice had been issued on 24.11.1975. Despite this, the appellate authority and the High Court, in their anxiety to decide against abatement, have wrongly held no such notice was proved to have been issued. Be that as it may, it is clear that abatement under Section 31 does not depend upon the issuance or non- issuance of any notice under Section 9(2) as amended. This being the case, the finding of fact of non-issuance of notice itself being a non-issue, it is unnecessary for us to pursue the same. It is only necessary to reiterate that no fresh exercise under the 1976 Amendment Act was undertaken by the prescribed authority as is required by section 31(3) of the 1976 Amendment Act. This being the case, the impugned judgment of the High Court has necessarily to be set aside. The appeal is, therefore, allowed with no order as to costs.

.....J.

(Dipak Misra)

.....J.

New Delhi; (R.F. Nariman)

August 8, 2016