A.F.R.

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HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW

WRIT - C No. - 2780 of 2019

Kamlesh Prasad and another
…..Petitioner(s)

Versus

Prescribed Authority Celing/Addl.Collector Admin.Lko.Andors.
…..Respondent(s)

Along with :

1. **Writ - C No. 3000016 of 2010:**
Kamlesh Prasad and another
Versus
Prescribed Authority Ceiling / Additional Collector Lko.

2. **Writ - C No. 3000061 of 2010:**
Rajesh Chand S/o Late Amir Chand Lal and Ors.
Versus
Prescribed Authority Ceiling/Additional Collector Administr

3. **Writ - C No. 3000062 of 2010:**
Satish Chandra Srivastaa S/o Gokaran Nath Srivastava
Versus
Prescribed Authority Ceiling/Additional Collector Administr

Counsel for Petitioner(s)	:	Nirmal Kumar Tewari, Deepak Tewari, Shobhit Mohan Shukla
Counsel for Respondent(s)	:	C.S.C., Ashok Shukla, Atulesh Kr. Singh, Girish Chandra Verma, Rakesh Pal, V.k. Pandey

Court No. - 4

HON'BLE IRSHAD ALI, J.

1. Heard Sri Jaideep Mathur, learned Senior Advocate assisted by Sri Shobhit Mohan Shukla, learned counsel for the petitioners, Sri Vivek Raj Singh, learned Senior Advocate assisted by Sri Shantanu Sharma, learned counsel for the petitioners, Sri U.S. Sahai, learned counsel for the petitioners, learned Standing Counsel for the State-respondent Nos.1 to 3 and 7, Ms. Radhika Singh and Ms. Richa Singh, learned counsel for respondent No.4 and Sri G.C. Verma, learned Senior Advocate assisted by Sri Rakesh Pal, learned counsel for respondent No.5.

2. At the very outset, learned counsel appearing on behalf of the respondents raised the following preliminary objections:-

(i) The petitioners are not "persons aggrieved" by the impugned orders dated **28.11.2018** and **13.12.2018**. The said orders have been passed upon the application moved by Opposite Party Nos. 5 and 6 regarding the exercise of their statutory right of choice under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act in respect of the land purchased by the answering Opposite Party No. 4. The impugned orders neither determine nor adversely affect any legal right of the petitioners. In the absence of any infringement of a legally protected right, the petitioners cannot maintain the present writ petition merely because they disagree with the decision of the Prescribed Authority. The present writ petition is, therefore, liable to be dismissed for want of locus standi as well as for absence of any legal injury.

(ii) The order dated 28.11.2018 passed by Prescribed Authority is an appealable order under Section 13 of the UP Imposition of Ceiling on Land Holdings Act. The petitioners have invoked an extraordinary writ jurisdiction of this Hon'ble Court without exhausting the statutory remedy available to them under the Act. In the absence of any exceptional circumstances warranting interference under Article 226 of the Constitution of India, the present writ petition is liable to be dismissed on the ground of availability of an efficacious alternative statutory remedy.

(iii) The present writ petition is also liable to be dismissed on the ground that the principal relief sought by the petitioners is, in substance, directed against the respondent No. 4, who is admittedly private individual. The petitioners seek to question the rights flowing from the registered sale deed executed in favour of the respondent No. 4 and the consequential recognition accorded thereto by the prescribed authority. The controversy, therefore, essentially pertains to private rights relating to title, succession and transfer of immovable property and does not involve the enforcement of any public duty or statutory obligation owed by the respondent No. 4. It is a settled principle of law that although the jurisdiction of this Hon'ble Court under Article 226 of the Constitution is wide, the same is essentially intended to enforce public law remedies and cannot ordinarily be invoked for adjudication of disputes of a purely private character. The petitioners have failed to demonstrate the existence of any public law element or any statutory duty allegedly breached by the respondent No. 4.

3. In reply to the first preliminary objection, counsel for the petitioners submits that prior to the commencement of ceiling proceedings, Smt. Noorjahan, the original tenure holder sold 4.584 hectare land to the petitioners and the name of petitioners was duly recorded. However, no notice was served to the petitioners and without providing a proper opportunity of hearing the land has been declared as surplus land. Reliance has been placed on the Full Bench judgment of this Court in the case of **Shantanu Kumar vs State of UP & Ors. (1979 SCC Online All 557)** wherein it was held that it is mandatory to serve the notice to the recorded tenure holders at the time of initiation of ceiling proceedings.

Therefore, the petitioners are aggrieved by the said impugned orders as the orders have been passed in violation of principle pf natural justice, without providing an adequate opportunity of hearing to the petitioners in respect of land the part of which has also been held by the petitioners as recorded tenure holders.

4. Replying to the preliminary objection (2), it is submitted that the Prescribed Authority (Ceiling) i.e., respondent No. 1 has **no jurisdiction** to validate the transaction hit by Section 5(8) of the Ceiling Act. The Prescribed Authority (Ceiling) has failed to consider that alleged sale made during continuance of proceedings for determination of surplus land in relation to respondent Nos.5 and 6, the transfer made in contravention of sub-section 8 of section 5 of Ceiling Act is void ab-initio and it cannot be made good. The starting of sub section 8 of section 5 of the Act is that "Notwithstanding anything contained in sub section (6) and (7), no tenure holder shall transfer any land held by him....." and the Prescribed Authority (Ceiling) has held that a transfer has been proved to the satisfaction of prescribed authority to be in good faith and for adequate consideration and under irrevocable instrument not being a benami transaction or for immediate or deferred benefit of the tenure holder or other members of his family as contemplated under sub-section 6 proviso (b) of section 5, whereas sub section 8 provides that this provision would not apply to alleged sale which is void ab-initio. Therefore, there arise no question of availing the alternative remedy against an ultra vires order. Reliance has been placed upon the judgment of Hon'ble Supreme Court in the case of **Whirlpool Corporation Vs. Registrar of Trade Marks, (1998) 8 SCC 1** and **Kuntesh Gupta Vs. Hindu Kanya Mahavidyalaya, (1987) 4 SCC 525**. Relevant paragraphs are being quoted as under :-

> ***Kuntesh Gupta (Supra)"12.*** *The next question that falls for our consideration is whether the High Court was justified in dismissing the writ petition of the appellant on the ground of availability of an alternative remedy. It is true that there was an alternative remedy for challenging the impugned order by referring the question to the Chancellor under Section 68 of the U.P. State Universities Act. It is well established that an alternative remedy is not an absolute bar to the maintainability of a writ petition. When an authority has acted wholly without jurisdiction, the High Court should not*

> *refuse to exercise its jurisdiction under Article 226 of the Constitution on the ground of existence of an alternative remedy. In the instant case, the Vice-Chancellor had no power of review and the exercise of such a power by her was absolutely without jurisdiction. Indeed, the order passed by the Vice-Chancellor on review was a nullity; such an order could surely be challenged before the High Court by a petition under Article 226 of the Constitution and, in our opinion, the High Court was not justified in dismissing the writ petition on the ground that an alternative remedy was available to the appellant under Section 68 of the U.P. State Universities Act"*

5. Replying to the preliminary objection (3), counsel for the petitioners submits that the present writ petition is challenging order dated **28.11.2018/13.12.2018** passed by Prescribed Authority (Ceiling) and the impugned order dated **19.09.2016** passed by Tehsildar Mohanlalganj as well as the order dated **02.3.2010/06.3.2010**, which are the orders passed by public authorities. In the present case, the dispute mainly pertains to the rights arising out of a void sale deed and its subsequent recognition by the prescribed authority. Respondent No.4 has been impleaded not because any independent relief is sought against him, but because he is the beneficiary of the impugned orders and any adjudication regarding the legality of orders is likely to affect his interest.

6. So far as the first question raised by respondent regarding maintainability of writ petition on the ground that Petitioners are not the "Persons Aggrieved". It is a settled law that the writ petition under Article 226 is maintainable only at the instance of person whose legal right has been infringed or who demonstrate that an order has civil consequences affecting him. Mere dissatisfaction with an administrative order does not confer locus standi.

7. In the present case, the petitioner contend that they are the recorded tenure holder who purchased the land before the

commencement of ceiling proceedings and that no notice whatsoever was issued to them despite their names being reflected in the revenue records. Their grievance is not merely against recognition of Respondent No. 4's rights but against the continuation of ceiling proceedings without complying with the mandatory requirement of notice. The Full Bench decision in the case of **Shantanu Kumar (supra)** holds that where land standing in the name of another recorded tenure holder is included in CLH Form 3, service of notice upon such recorded tenure holder is mandatory and non compliance goes to the root of jurisdiction. The Full Bench further held that absence of such notice renders the proceedings void and incapable of being validated by subsequent participation or availability of alternative remedies. Relevant paragraph of the judgment in the case of **Shantanu Kumar (supra)** is as follows ;

> *"7. Rule 8 provides for service of notice on every tenure-holder to show cause within fifteen days why the aforesaid statement prepared by the Prescribed Authority be not taken as correct. Proviso to this rule then provides:*
>
> *'Provided that where the statement in C.L.H. Form 3 also includes land ostensibly held in the name of any other person, the prescribed authority shall cause to be served upon such other person a notice in C.L.H. Form 4 together with a copy of the statement in C.L.H. Form 3 calling upon him to show cause within a period of 15 days from the date of service of the notice why the aforesaid statement be not taken as correct.'*
>
> *8. It is thus evident that the notice requiring the tenure-holder to show cause why the statement prepared by the Prescribed Authority be not taken as correct is to be issued to the tenure-holder in respect of whose holding the statement has been prepared. Under the proviso, the Prescribed Authority shall cause to be served a notice to the person in whose name the land included in C.L.H. Form 3 is ostensibly held. The Prescribed Authority prepares the statement on the basis of revenue records. If from the revenue records or other information, the Prescribed Authority comes to know that the land included in the statement in C.L.H. Form 3 includes land ostensibly held in the name of any other person, the Prescribed Authority is bound to serve notice on such person. The phrase used is 'shall cause to be served."*
>
> *9. The petitioner claimed under a sale deed. It is not disputed that the petitioner's I name was recorded in the revenue papers lover the land which was*

transferred to him. It is admitted that the statement in C.L.H. Form 3 included the land held by the petitioner. He was hence a person in whose name some part of the land mentioned in the statement was believed by the Prescribed Authority to be ostensibly held. In this situation, it was incumbent upon the Prescribed Authority to serve upon the petitioner the requisite notice together with a copy of the statement In this cause why that statement be not taken as correct. copy of the statement and call upon him to show held cause why that statement be not taken as correct.

10. It is obvious that service of such a notice is preliminary to the acquisition of jurisdiction to proceed in the matter and decide whether the land ostensibly held in the name of the petitioner could be declared as surplus land in the hands of Bhupendra Singh. In the premises, the proceedings were without jurisdiction and void. Learned Standing Counsel submitted that the petitioner had knowledge and he should have filed an objection under Section 11(2) of the Act as has been held by a Division Bench of this Court in Dilbagh Singh v. State of U.P. (1978 All LJ 717). The existence of another remedy under the Act cannot validate the proceedings which are void for lack of jurisdiction and which have resulted in the declaration as surplus land of an area which a person other than the tenure-holder who has been heard, claims. The fact that the petitioner could have filed an objection under Section 11(2) will not breathe life into or validate these dead proceedings.

11. It was urged that since the petitioner knew of these proceedings he kept silent all this while, this Court need not interfere in exercise of its discretionary jurisdiction under Article 226 of the Constitution. It is well settled that an objection to lack of jurisdiction can be taken at any stage of the proceedings and even in collateral proceedings (See Kiran Singh v. Chaman Paswan (AIR 1954 SC 340)). Consent or waiver cannot be be a ground for refusing to entertain such an objection. We hence cannot deny relief to the petitioner on the ground of alternative remedy. It is equally settled that existence of jurisdiction cannot be conferred by consent or waiver. This plea is only relevant to the exercise of jurisdiction. Here there was lack of jurisdiction by reason of non-compliance of the first proviso to Rule 8.

12. It was also urged that the petitioner's father took all possible pleas and the petitioner has no bona fide case. The petitioner has alleged that the sale deed in his favour was bona fide and for adequate consideration. It was not a Benami transaction and was not for the immediate or deferred benefit of the tenure-holder or other members of his family. No such plea was taken by the petitioner's father. If the

> *petitioner is successful in establishing this plea his land may be liable to be exempted. The proviso to sub-section (6) of Section 5 exempts land covered by-*
>
> *'a transfer proved to the satisfaction of the prescribed authority to be in good faith and for adequate consideration and under an irrevocable instrument not being a benami transaction or for the immediate or deferred benefit of the tenure-holders or other members of his family.' "*

Therefore, the court is of the view that since the recorded holdings of the petitioners were included without the issuance of notice, they cannot be denied standing merely on the ground that the respondent No. 4 claims under the different sale deed. The preliminary objection regarding locus standi, therefore, cannot be accepted as an absolute bar at the threshold and deserves to be rejected.

8. The respondent further argued that an appeal under Section 13 of the Ceiling Act was available and therefore this Court ought not to exercise the writ jurisdiction. Undoubtedly, the Courts consistently decline to exercise extraordinary jurisdiction when an equally efficacious statutory remedy exists. However, an exception exists when the impugned order is passed without jurisdiction; or there is violation of natural justice; or there is infringement of fundamental rights.

9. In the present case, the petitioners have specifically pleaded that the prescribed authority acted wholly without jurisdiction by validating a transfer prohibited under Section 5(8) and that mandatory notice under Section 10(2) was never served upon them. Such allegations squarely attract the recognised exceptions to the rule of alternative remedy.

10. Also in view of the decision relied upon by the petitioners in **Whirlpool Corporation (supra)** and **Kuntesh Gupta (supra)** which reiterates that where the authority acts wholly without jurisdiction, existence of an alternative remedy cannot operate as a bar to exercise of writ jurisdiction. Consequently, the objection regarding alternative remedy is also liable to be rejected.

11. Learned counsel for the respondent has further submitted that the present writ petition is not maintainable as the principal relief is directed

against respondent no.4, who is admittedly a private individual. It is urged that the dispute essentially concerns competing rights arising out of a registered sale deed and the consequential recognition thereof by the Prescribed Authority. According to the respondents, the controversy pertains to title, succession and transfer of immovable property and is, therefore, a dispute of a purely private nature, for which the extraordinary jurisdiction under Article 226 of the Constitution cannot be invoked.

12. The aforesaid submission cannot be accepted in the facts of the present case. A careful reading of the relief clause shows that the petitioners have not sought cancellation of the sale deed dated 23.05.2007 executed in favour of respondent no.4, nor have they prayed for declaration of title or adjudication of any civil right inter se between private parties. The Petitioners are primarily challenging the orders dated **28.11.2018** and **13.12.2018** as well as the orders dated **02.3.2010** as modified on **06.3.2010** passed by the Prescribed Authority (Ceiling) in exercise of statutory powers under the U.P. Imposition of Ceiling on Land Holdings Act, 1960, whereby the authority recognised the transfer in favour of respondent no.4 and excluded the transferred land from the surplus pool. The petitioners further challenge the order dated **19.09.2016** passed by the Tehsildar in exercise of statutory jurisdiction. Thus, the grievance is essentially against the exercise of statutory power by public authorities and not against any private act of respondent no.4.

13. In the present case, the petitioners have specifically pleaded that the Prescribed Authority acted wholly without jurisdiction in recognising a transfer allegedly hit by Section 5(8) of the Act and that the proceedings themselves stood vitiated for non-compliance with the mandatory requirement of notice under Rule 8 of the Rules. These allegations directly question the legality of the exercise of statutory power by authorities constituted under the Ceiling Act. Such issues undoubtedly fall within the realm of public law. Consequently, this Court is of the considered opinion that the present writ petition is directed primarily against the legality of orders passed by statutory authorities

under the U.P. Imposition of Ceiling on Land Holdings Act and not against the private rights of respondent No.4.

14. Accordingly, it is held that the writ petition is maintainable and the preliminary objections raised by the respondents are hereby rejected.

15. Now the facts necessary for adjudication of the present matter are required to be looked upon. The present matter roots back to the initiation of ceiling proceeding under Section 10(2) of the Act. The prescribed authority initiated proceedings under Section 10(2) of the Act on 30.01.2006 on the basis of the report of Sub Divisional Officer Mohanlalganj dated 27.01.2006. The notice was issued to Ms. Noorjahan, the original tenure-holder. Later on, Noorjahan died therefore her sons namely, respondent Nos.5 and 6 were substituted.

16. The Prescribed Authority (Ceiling) Additional Collector (Administration), Lucknow vide order dated 02.03.2010 held 24.791 hectare of land as surplus land in terms of irrigated land which was later on modified by order dated 06.03.2010 and was changed to 24.781 hectare land in terms of irrigated land.

17. Being aggrieved by orders dated 02.03.2010 and 06.03.2010, the petitioners preferred Writ Petition No.16 of 2010 (Ceiling) in which this Court vide order dated 12.03.2010 stayed the operation of the said orders.

18. After initiation of ceiling proceedings, respondent Nos.5 & 6 sold 1.436 hectares land of village Salempur vide registered sale deed dated 23.05.2007 to respondent No.4 namely, Surendra Kumar Shukla.

19. It is also to be noted that three tenure-holders being aggrieved by the order dated 02.03.2006 and 06.03.2006 preferred an appeal under Section 13 of the Act before the Commissioner, Lucknow Division, which are as follows :

- Appeal No. 05/09-10 Raja Sayed Mohammad Sajjad and others Versus State of U.P. and others.
- Appeal No. 06/09-10 Sayed Mohammad Ali Khan and others Versus State of U.P. and others.

- Appeal No. 07/09-10 Smt. Sabiha Hussain and others Versus State of U.P. and others.

20. All three appeals were heard and decided together vide order dated 11.04.2016. It was held that sale deeds dated 29.04.1997, 30.04.2003 and 19.05.2003 are excluded from the holdings of original tenure holder Smt. Noorjaha as these sale deeds were executed by her and it was provided that Prescribed Authority (Ceiling) may take choice from the substituted heirs of Smt. Noorjaha i.e. opposite party no. 5 and 6 and may afford adequate opportunity and may take equivalent land from their ceiling area for declaration as surplus land. It was further provided that benefit of this order be available on these three appellants only.

21. In the meantime opposite party no. 4 applied for mutation of his name under Section 34 of the U.P. Land Revenue Act in the court of Tehsildar Mohanlalganj, District Lucknow. It has been registered as case No.45/07-08 under Section 34 L.R. Act, village Salempur titled as Surendra Kumar Shukla Versus Sayed Mohammad Sajjad and others.

22. The Tehsildar Mohanlalganj held that as the land in question has been sold during pendency of ceiling proceedings therefore the sale deed is void ab-initio and a report was sent to Sub Divisional Officer Mohanlalganj for declaring the transfers to be void and land in question may vest with the State Government vide order dated 15.12.2007.

23. After the aforesaid report dated 15.12.2007, the matter came up before the Assistant Collector who considered the report and that the sale is hit by section 5(8) of the Act therefore it is void ab-initio therefore the proceedings U/s 34 L.R. Act should be disposed of in accordance of law and the provisions of Sections 166 and 163 of the U.P. Zamindari Abolition and Land Reforms Act shall not apply in the matter. The matter was remanded back to the Tehsildar for deciding the same vide order dated 21.01.2008.

24. The Tehsildar again considered the matter and vide order dated 14.03.2008 held that the impugned sale deed on which basis the mutation sought for is contrary to law and the proceedings for mutation are not maintainable accordingly the mutation proceedings are cancelled

and the parties may appear in the Court of prescribed authority (Ceiling) and do necessary pairvi.

25. Against the said order respondent No.4 preferred an appeal u/s 210 of the U.P.Z.A. and L.R. Act which has been registered as Appeal No. 110/07-08 village Salempur. The Sub Divisional Officer upheld the order dated 14.03.2008 and therefore the appeal was dismissed.

26. The respondent No.4 then again moved an application dated 01.08.2016 for restoration of mutation case and for the benefit of Section 5 of Limitation Act, 1963. Tehsildar, Mohanlalganj this time allowed the application vide order dated 19.09.2016 and held that since the order dated 11.04.2016 exclude the land purchased by respondent No. 4 from the holdings of original tenure holder (i.e., Noorjahan), therefore mutation is decided is his favour.

27. Thereafter, respondent No. 4 moved an application dated 18.07.2017 under Section 24 of UP Revenue Code 2006 for demarcation of land in respect of Khasra plot no. 1464 Ka, area 1.322 hectare before SDO, Mohanlalganj, Lucknow. The Sub Divisional Officer vide order dated 07.04.2018 allowed the application and ordered to do the measurement within 5 days.

28. Now, the Prescribed Authority (Ceiling) passed an order dated 28.11.2018 and 13.12.2018 under Section 10(2) of the Ceiling Act and held that the land sold by respondent Nos. 5 and 6 to respondent No. 4 has been excluded and direct the Tehsildar, Mohanlalganj to declare the area of equivalent land from the ceiling area of the respondent Nos.5 and 6 as surplus land.

29. The present bunch of writ petitions have been filed with the following prayers :-

- **WRIT : C - 2780 of 2019** is preferred with the following prayer :

a) Issue a writ order or direction in the nature of Certiorari to quash the impugned order dated **28.11.2018/13.12.2018** passed by Prescribed Authority (Ceiling) as contained in Annexure no. 23 in case no. 7701/2016 titled as Sarkar Versus Raja Sayed Mohammad Sajjad and others.

b) Issue a writ order or direction in the nature of Certiorari to quash the impugned order dated **19.09.2016** passed by Tehsildar Mohanlalganj as contained in Annexure No. 16 in case no. 7701/2016 titled as Sarkar Versus Raja Sayed Mohammad Sajjad and others.

c) Issue a writ, order or direction in the nature of Mandamus commanding opposite parties to not interfere in the peaceful possession of petitioners over the land recorded in Annexure No. 6 during pendency of the writ petition.

d) Issue any writ, order or direction which the Hon'ble Court may deem fit and proper in the circumstances of the case as also in the interest of justice.

e) Allow the writ petition with costs.

- **WRIT PETITION NO. 20 of 2010, 16 of 2010 and 61 of 2010** is preferred with the following prayer :

a) issue a writ, order or direction in the nature of certiorari quashing the order dated **02.3.2010** as modified on **06.3.2010** passed by the opposite party No. 1, contained in Annexure No. 4 to the writ petition to the extent it relates to the land of petitioner as mentioned in Annexure No. 3 to the writ petition;

b) issue a writ, order or direction in the nature of mandamus directing the opposite party No. 1 not to give effect and implement the order dated 02.3.2010 contained in Annexure No. 4 to the writ petition;

c) issue any other suitable writ, order or direction which the Hon'ble Court may deem fit and proper in the circumstances of the case as also in the interest of justice;

d) allow this writ petition with costs.

30. Learned counsel for the petitioners submits that the petitioners are in possession over the land since 1997 and interim order of the Court dated 12.03.2010 is in their favour and still operative then any interference on the strength of impugned order by the ceiling authorities may cause substantial injury to the petitioners, specially when the State of U.P. is also challenging the impugned order of mutation.

31. It is further submitted that the proceedings for demarcation are also premature and cannot be sustained in the eyes of law as the impugned sale deed has been recognised by the ceiling authority subsequently by the impugned order. It is relevant to point out at this stage that petitioners' land purchased in the year 1997 is surrounded by a pakka brick wall and barbed wire and the respondent No.4 wants to encroach in petitioners' land, thus, he has initiated the proceedings for demarcation, in the revenue map no demarcation is indicated on khasra plot no. 1464 Ka area 1.332 hectare, 1464 Kha area 1.549 hectare and 1464 Ga area 1.955 hectare. The revenue map of 1464 has an area of 4.428 hectare and recorded area is 4.836 hectare. Therefore area shown in the revenue map is lesser 0.588 hectare than the recorded area, unless the revenue map is not corrected according to recorded area measurement is not possible.

32. Learned counsel for the petitioners submits that the impugned order of mutation is based on fraud. The mutation case of respondent No.4 under Section 34 of the L.R. Act was considered vide judgment dated 15.12.2007, 21.01.2008, 14.03.2008, 27.08.2008 but the respondent No.4 played fraud upon the Court and moved an application for restoration dated 01.08.2016 without disclosing the particulars of these cases, hence, get the application fraudulently decided in his favour.

33. It is further argued that the Appellate Authority (Ceiling) has granted recognition to the sale deed dated 29.04.1997, 30.04.2003 and 19.05.2003 which were executed by original tenure holder Smt. Noorjahan and no concession has been granted by him to the sale deed executed on 23.05.2007 in favour of opposite party No.4 by the opposite parties no. 5 and 6 i.e. the heirs of original tenure holder. The interim

order dated 12.03.2010 passed in writ petition No.16 of 2010 (Ceiling) is still operative, therefore ceiling authorities or revenue authorities cannot interfere with it.

34. In support of the submissions advanced, learned counsel appearing on behalf of the petitioners placed reliance upon the following judgments :-

(i) **Shantanu Kumar vs State of UP & Ors. (1979 SCC Online All 557)**. Relevant paragraphs are being quoted below :-

> *"7. Rule 8 provides for service of notice on every tenure-holder to show cause within fifteen days why the aforesaid statement prepared by the Prescribed Authority be not taken as correct. Proviso to this rule then provides:*
>
> *'Provided that where the statement in C.L.H. Form 3 also includes land ostensibly held in the name of any other person, the prescribed authority shall cause to be served upon such other person a notice in C.L.H. Form 4 together with a copy of the statement in C.L.H. Form 3 calling upon him to show cause within a period of 15 days from the date of service of the notice why the aforesaid statement be not taken as correct.'*
>
> *8. It is thus evident that the notice requiring the tenure-holder to show cause why the statement prepared by the Prescribed Authority be not taken as correct is to be issued to the tenure-holder in respect of whose holding the statement has been prepared. Under the proviso, the Prescribed Authority shall cause to be served a notice to the person in whose name the land included in C.L.H. Form 3 is ostensibly held. The Prescribed Authority prepares the statement on the basis of revenue records. If from the revenue records or other information, the Prescribed Authority comes to know that the land included in the statement in C.L.H. Form 3 includes land ostensibly held in the name of any other person, the Prescribed Authority is bound to serve notice on such person. The phrase used is 'shall cause to be served."*
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> *9. The petitioner claimed under a sale deed. It is not disputed that the petitioner's I name was recorded in the revenue papers lover the land which was transferred to him. It is admitted that the statement in C.L.H. Form 3 included the land held by the petitioner. He was hence a person in whose name some part of the land mentioned in the statement was believed by the Prescribed Authority to be ostensibly held. In this situation, it was*

incumbent upon the Prescribed Authority to serve upon the petitioner the requisite notice together with a copy of the statement In this cause why that statement be not taken as correct. copy of the statement and call upon him to show held cause why that statement be not taken as correct.

10. It is obvious that service of such a notice is preliminary to the acquisition of jurisdiction to proceed in the matter and decide whether the land ostensibly held in the name of the petitioner could be declared as surplus land in the hands of Bhupendra Singh. In the premises, the proceedings were without jurisdiction and void. Learned Standing Counsel submitted that the petitioner had knowledge and he should have filed an objection under Section 11(2) of the Act as has been held by a Division Bench of this Court in Dilbagh Singh v. State of U.P. (1978 All LJ 717). The existence of another remedy under the Act cannot validate the proceedings which are void for lack of jurisdiction and which have resulted in the declaration as surplus land of an area which a person other than the tenure-holder who has been heard, claims. The fact that the petitioner could have filed an objection under Section 11(2) will not breathe life into or validate these dead proceedings.

11. It was urged that since the petitioner knew of these proceedings he kept silent all this while, this Court need not interfere in exercise of its discretionary jurisdiction under Article 226 of the Constitution. It is well settled that an objection to lack of jurisdiction can be taken at any stage of the proceedings and even in collateral proceedings (See Kiran Singh v. Chaman Paswan (AIR 1954 SC 340)). Consent or waiver cannot be be a ground for refusing to entertain such an objection. We hence cannot deny relief to the petitioner on the ground of alternative remedy. It is equally settled that existence of jurisdiction cannot be conferred by consent or waiver. This plea is only relevant to the exercise of jurisdiction. Here there was lack of jurisdiction by reason of non-compliance of the first proviso to Rule 8.

12. It was also urged that the petitioner's father took all possible pleas and the petitioner has no bona fide case. The petitioner has alleged that the sale deed in his favour was bona fide and for adequate consideration. It was not a Benami transaction and was not for the immediate or deferred benefit of the tenure-holder or other members of his family. No such plea was taken by the petitioner's father. If the petitioner is successful in establishing this plea his land may be liable to be exempted. The proviso to sub-section (6) of Section 5 exempts land covered by-

'a transfer proved to the satisfaction of the prescribed authority to be in good faith and for adequate consideration and under an irrevocable instrument not being a benami transaction or for the immediate or deferred benefit of the tenure-holders or other members of his family.' "

(ii) **Kamlesh Kumari v. State of U.P., (1982) 3 SCC 315**. Relevant paragraphs are being quoted as under :-

"The short point taken by Mr Ashoke Sen in support of the petition is that even assuming that the finding of the prescribed authority that the transfer was not bona fide is correct, the prescribed authority was in error in not excluding the land said to have been transferred from the surplus area. The land which was the subject-matter of transfer was covered by Plot 460. The contention is well-founded and must prevail. In these circumstances, we set aside the judgment of the High Court and that of the prescribed authority and remit the case to the prescribed authority to decide the surplus land in accordance with Section 12-A(d) of the Act by excluding the area which was the subject of transfer as far as possible."

(iii) **Kuntesh Gupta v. Hindu Kanya Mahavidyalaya, (1987) 4 SCC 525**. Relevant paragraphs are being quoted as under :-

*"**12.** The next question that falls for our consideration is whether the High Court was justified in dismissing the writ petition of the appellant on the ground of availability of an alternative remedy. It is true that there was an alternative remedy for challenging the impugned order by referring the question to the Chancellor under Section 68 of the U.P. State Universities Act. It is well established that an alternative remedy is not an absolute bar to the maintainability of a writ petition. When an authority has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Article 226 of the Constitution on the ground of existence of an alternative remedy. In the instant case, the Vice-Chancellor had no power of review and the exercise of such a power by her was absolutely without jurisdiction. Indeed, the order passed by the Vice-Chancellor on review was a nullity; such an order could surely be challenged before the High Court by a petition under Article 226 of the Constitution and, in our opinion, the High Court was not justified in dismissing the writ petition on the ground that an alternative remedy was available to the appellant under Section 68 of the U.P. State Universities Act"*

(iv) **Ravindra Singh v. Phool Singh, (1995) 1 SCC 251**. Relevant paragraphs are being quoted as under :-

> ***5.*** *In this appeal the learned counsel for the appellant relies upon the provisions contained in clause (d) of the proviso to Section 12-A of the Act. Section 12-A reads as follows:*
>
> *"12-A. In determining the surplus land under Section 11 or Section 12, the Prescribed Authority shall, as far as possible, accept the choice indicated by the tenure-holder to the plot or plots which he and other members of his family, if any, would like to retain as part of the ceiling area applicable to him or them under the provisions of this Act, whether indicated by him in his statement under Section 9 or in any subsequent proceedings:*
>
> *Provided that—*
>
> *(a) the Prescribed Authority shall have regard to the compactness of the land to be included in the ceiling area applicable to the tenure-holder;*
>
> *(b) where the tenure-holder's wife holds any land which is aggregated with the land held by the tenure-holder for purposes of determination of the ceiling area, and his wife has not consented to the choice indicated by the tenure-holder as to the plot or plots to be retained as part of the ceiling area applicable to them, then the Prescribed Authority shall, as far as possible, declare the surplus land in such manner that the area taken out of the land held by the tenure-holder's wife bears to the total surplus area the same proportion as the area originally held by her bore to the total land held by the family;*
>
> *(c) where any person holds land in excess of the ceiling area including any land mortgaged to the State Government or to a bank as defined in clause (c) of Section 2 of the Uttar Pradesh Agricultural Credit Act, 1973 or to a cooperative land development bank or other cooperative society or to the Corporation or to a Government Company, the surplus land to be determined shall, as far as possible, be land other than that so mortgaged;*
>
> *(d) where any person holds land in excess of the ceiling area including land which is the subject of any transfer or partition referred to in sub-section (6) or sub-section (7) of Section 5, the surplus land determined shall, as far as possible, be land other than land which is the subject of such transfer or partition, and if the surplus land includes any land which is the subject of such transfer or partition, the transfer or partition shall, insofar as it relates to the land included in the surplus land, be deemed to be and always to have been void, and—*
>
> *(i) it shall be open to the transferee to claim refund of the proportionate amount of consideration, if any,*

advanced by him to the transferor, and such amount shall be charged on the amount payable to the transferor under Section 17 and also on any land retained by the transferor within the ceiling area, which shall be liable to be sold in satisfaction of the charge, notwithstanding anything contained in Section 153 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950;

(ii) any party to the partition (other than the tenure-holder in respect of whom the surplus land has been determined) whose land is included in surplus land of the said tenure-holder, shall be entitled to have the partition reopened."

***6.** A combined reading of sub-section (6) of Section 5 and clause (d) of the proviso to Section 12-A yields the following position (insofar as it is relevant for the purpose of this appeal):*

(a) In determining the ceiling area applicable to a tenure-holder, any transfer of land made after 24-1-1971 shall be ignored and such transferred land shall be included in the holding of the transferor except where such transfer is saved by the proviso to sub-section (6) of Section 5;

(b) In the matter of surrender, however, the Prescribed Authority is entitled to insist that the tenure-holder surrender land which is not the subject-matter of transfer referred to in Section 5(6);

(c) If, however, surrender of surplus land by the tenure-holder is not possible or feasible without including the transferred land, then the Prescribed Authority will accept such surrender, in which event transfer of such land shall be deemed to be null and void;

(d) Where the Prescribed Authority accepts the surrender of transferred land, the transferee is entitled to compensation and other rights as are provided in sub-clause (1) of clause (d) of the proviso to Section 12-A.

The object of the above provisions is quite clear and consistent. Any transfer effected after 24-1-1971 shall be ignored for the purpose of determining the ceiling area of the tenure-holder, but in the matter of surrender, the Government does not want, as far as possible, to accept surrender of transferred land. This may be for the reason that acceptance of surrender of transferred land is likely to lead to complications and disputes; the Government wants to accept the surrender of lands which are free of any such controversy. But if that does not prove possible, the Government will accept the surrender of transferred land even, in which event the transfer of such land shall be treated as null and void so as to vest clear title in the Government. The transferee of a land so surrendered is entitled to claim the *compensation money and other rights mentioned in sub-clause (i) of clause (d).*

7. *In the light of the above provisions, the Authorities ought to have examined the offer of surrender made by the respondent, Phool Singh in accordance therewith. He must be asked to surrender lands which are not the subject-matter of transfer. Only where the Prescribed Authority is satisfied that surrender of surplus land is not possible without including the transferred land, will he accept the surrender of transferred land, to the extent necessary—with the necessary consequences flowing therefrom. The High Court and Authorities under the Act, however, have not followed this course because they felt that the order of this Court dated 7-5-1981 entitles the respondent Phool Singh to surrender such land as he chooses. We are of the opinion that they were not right in construing this Court's order in the above manner. Firstly, the appellant herein was not heard (he says that he was not even a party to the said SLP) before passing such order. Secondly, the said order cannot be understood as laying down a proposition contrary to law. All that it says is that the petitioner therein, i.e., respondent Phool Singh "will be entitled to choice in respect of plots forming the subject-matter of the sale deed". The said words are not capable of being construed as authorising Phool Singh to surrender the transferred land even if he is in a position to comply with the requirement of surrender of surplus land without touching the transferred land. To repeat, the order of this Court cannot and should not be construed in a manner inconsistent with the provisions of the Act. This Court could not have contemplated passing an order contrary to the provisions of the Act or to authorise the respondent Phool Singh to surrender surplus land contrary to the provisions of the Act. We are, therefore, of the opinion that the said order of this Court is not capable of nor can it be construed as overriding or superseding the provisions of the Act. The choice referred to in the order of this Court is the choice referred to in Section 12-A(d) and not independent of it.*

8. *The view taken by us is supported by an order of this Court in Kamlesh Kumari v. State of U.P. [(1982) 3 SCC 315 : 1981 All LJ 1139] It is a short order and it reads thus:*

"The short point taken by Mr Ashok Sen in support of the petition is that even assuming that the finding of the Prescribed Authority that the transfer was not bona fide is correct, the Prescribed Authority was in error in not excluding the land said to have been transferred from the surplus area. The land which was the subject-matter of transfer was covered by Plot No. 460. The contention is well founded and must prevail. In these circumstances, we set aside

the judgment of the High Court and that of the Prescribed Authority and remit the case to the Prescribed Authority to decide the surplus land in accordance with Section 12-A(d) of the Act by excluding the area which was the subject of transfer as far as possible.

2. The appeal is disposed of accordingly.

Order accordingly."

(v) **Rajendra Singh v. State of U.P., (1998) 7 SCC 654**. Relevant paragraphs are being quoted as under :-

9. *This provision has to be read in the light of the provisions contained in sub-sections (6), (7) and (8) of Section 5 which provide as under:*

"5. (6) In determining the ceiling area applicable to a tenure-holder, any transfer of land made after the twenty-fourth day of January, 1971, which but for the transfer would have been declared surplus land under this Act, shall be ignored and not taken into account:

Provided that nothing in this sub-section shall apply to—

(a) a transfer in favour of any person (including Government) referred to in sub-section (2);

(b) a transfer proved to the satisfaction of the prescribed authority to be in good faith and for adequate consideration and under an irrevocable instrument not being a 'benami' transaction or for immediate or deferred benefit of the tenure-holder or other members of his family.

Explanation I.—For the purposes of this sub-section, the expression transfer of land made after the twenty-fourth day of January, 1971, includes—

(a) a declaration of a person as a co-tenure-holder made after the twenty-fourth day of January, 1971 in a suit or proceeding irrespective of whether such suit or proceeding was pending on or was instituted after the twenty-fourth day of January, 1971;

(b) any admission, acknowledgement, relinquishment or declaration in favour of a person to the like effect, made in any other deed or instrument or in any other manner.

Explanation II.—The burden of proving that a case falls within clause (b) of the proviso shall rest with the party claiming its benefit.

(7) In determining the ceiling area applicable to a tenure-holder, any partition of land made after the twenty-fourth day of January, 1971, which but for the partition would have been declared surplus land under this Act, shall be ignored and not taken into account:

Provided that nothing in this sub-section shall apply to—

*(a) ****

(b) a partition of a holding made in a suit or a proceeding pending on the said date:

Provided further that notwithstanding anything contained in the preceding proviso the prescribed authority, if it is of opinion that by collusion between the tenure-holder and any other party to the partition, such other party has been given a share which he was not entitled to, or a large share than he was entitled to, may ignore such partition.

Explanation I.—If a suit is instituted after the said date for declaration that a partition of land has taken place on or before the said date, then such declaration shall be ignored and not be taken into account, and it shall be deemed that no partition has taken place on or before the said date.

Explanation II.—The burden of proving that a case falls within the first proviso shall rest with the party claiming its benefit.

(8) Notwithstanding anything contained in sub-sections (6) and (7), no tenure-holder shall transfer any land held by him during the continuance of proceedings for determination of surplus land in relation to such tenure-holder and every transfer made in contravention of this sub-section shall be void.

Explanation.—For the purposes of this sub-section, proceedings for determination of surplus land shall be deemed to have commenced on the date of publication of notice under sub-section (2) of Section 9 and shall be deemed to have concluded on the date when an order in relation to such tenure-holder is passed under sub-section (1) of Section 11 or under sub-section (1) of Section 12, or as the case may be, under Section 13."

10.*The relevant date under the Act which constitutes the basis for determining the ceiling or surplus area of a tenure-holder is 24-1-1971. Whatever land was held by a tenure-holder on that date will have to be indicated by him in the statement required to be submitted under Section 9 of the Act.*

***13.** Thus, the sale deeds executed by the tenure-holder after 24-1-1971 have been classified into two distinct categories:*

(i) sale deeds executed by the tenure-holder after 24-1-1971, without the proceedings under the Act for determination of the ceiling and surplus area having been commenced or being pending. Proviso (b) to sub-section (6) of Section 5 would be applicable to such a sale deed and it would be open to the prescribed authority to look into the

> *genuineness of such a sale deed in the light of the factors indicated therein; and*
>
> *(ii) sale deeds executed by the tenure-holder after 24-1-1971, but during the pendency of the proceedings for determination of the ceiling and surplus area. Such a sale deed would be void in view of sub-section (8) of Section 5. It will not be open to the prescribed authority to hold any enquiry in respect of such a sale deed which has to be treated as void from its inception.*
>
> ***14.** The prohibition on transfer of land during the pendency of the proceedings was introduced in the principal Act by U.P. Act 20 of 1976 with retrospective effect from 10-10-1975, that is, with effect from the date on which U.P. Ordinance 31 of 1975 was issued. This prohibition was introduced with the object of facilitating an early disposal of the proceedings for determination of surplus land as also for preventing the tenure-holder from disturbing the status quo of his holding as existing on the date of the notification under Section 9 of the Act by making transfers of land in favour of other persons which obviously would have the effect of complicating the process of determination of surplus land.”*

(vi) **Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1**.

Relevant paragraphs are being quoted as under :-

> *“**14.** The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for **“any other purpose”**.*
>
> ***15.** Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would*

> *rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."*

35. Submission of learned counsel appearing on behalf of respondent No.4 is that the land purchased by the petitioners and the land purchased by the answering respondent No. 4 are distinct and comprise different Gata numbers. The petitioners neither claim any title over the land purchased by the answering respondent No. 4 nor do the impugned orders affect their ownership or possession over their own land. Consequently, the petitioners suffer no civil consequences or prejudice on account of the impugned orders. In the absence of any direct legal prejudice, the present writ petition is devoid of any cause of action against respondent No. 4 and deserve to be rejected.

36. It is submitted by counsel for respondent No.4 that the impugned orders have been passed on the application filed by opposite party Nos.5 and 6 in the proceedings under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, in exercise of their statutory right of choice in respect of the land validly transferred by them in favour of the opposite party No. 4 by means of a registered sale deed. Opposite party Nos.5 and 6, being the recorded tenure-holders and vendors of the opposite party No. 4, duly pursued the proceedings before the prescribed authority for giving effect to their statutory right of choice and for excluding the land sold to the opposite party No.4 from the surplus land. The said application/objections were duly considered and accepted by the prescribed authority while passing the impugned orders dated 28.11.2018 and 13.12.2018. The opposite party No.4 is merely the bona fide purchaser of the land whose rights stood protected as a consequence of the lawful exercise of the statutory right of choice by Opposite Party Nos. 5 and 6.

37. It is further submitted that the petitioners had already filed Ceiling Writ Petition No. 16 of 2010 (Kamlesh Prasad and Others vs. Prescribed Authority (Ceiling)/Additional Collector and Others), wherein they challenged the ceiling proceedings, including the orders dated

02.03.2010 and 06.03.2010. The said writ is pending before this Hon'ble High Court and is continuing under the protection of an interim order.

38. Learned counsel for the respondents also submitted that the orders dated 28.11.2018 and 13.12.2018, impugned in the present writ petition, have been passed in continuation of the very same ceiling proceedings which are already the subject matter of Ceiling Writ Petition No. 16 of 2010, pending before this Court. Instead of seeking amendment of the pleadings in the said writ petition or bringing the subsequent developments on record by filing a supplementary affidavit, the petitioners have deliberately filed the present independent writ petition arising out of the very same proceedings. The petitioners have adopted this course only with a view to split a single cause of action into multiple proceedings, create unnecessary complications in the adjudication of the dispute and mislead this Court by presenting an incomplete and selective factual record.

39. It is further submitted by respondents’ counsel that the petitioners have deliberately withheld their own title deeds and the relevant revenue records from the present writ petition, despite placing reliance upon the same, on the pretext that such documents had been filed in the earlier writ petition of the year 2010. Had the petitioners been bona fide, they would have either amended the pending writ petition by incorporating the subsequent developments or filed the present documents along with this writ petition. Their conscious omission to do so clearly demonstrates an attempt to mislead this Court regarding the identity of the disputed land, the respective rights of the parties and the true factual matrix, so as to create an impression that the land of the opposite party No.4 forms part of the petitioners' holding, whereas the revenue records unequivocally establish otherwise. The petitioners cannot be permitted to circumvent the settled principles of law by challenging different stages of the same ceiling proceedings through successive writ petitions with a view to achieving indirectly what they could not have achieved directly. On this ground alone, the present writ petition deserves to be dismissed with exemplary costs.

40. Learned counsel for the respondents further submit that a bare perusal of the order dated 02.03.2010 and 06.03.2010, passed by the prescribed authority in the ceiling proceedings, clearly demonstrates that, after considering the entire material on record and affording due opportunity of hearing to the concerned parties, the prescribed authority determined the surplus land and issued directions for taking consequential action in accordance with law.

41. It is submitted that aggrieved by the said mutation order, the petitioners preferred a statutory revision under the provisions of the U.P. Revenue laws, which is admittedly still pending before the competent revisional authority. Despite having already invoked the statutory revisional jurisdiction against the mutation order dated 19.09.2016, the petitioners have once again sought quashing of the very same order in the present writ petition (as is evident from the prayer clause). Such simultaneous pursuit of a statutory revision and a writ petition against the very same order is wholly impermissible in law. The petitioners cannot be permitted to pursue dual remedies in respect of the same cause of action or indulge in forum shopping by simultaneously prosecuting parallel proceedings before different forums with the object of securing the same relief. Accordingly, on this ground alone, the relief sought by the petitioners in respect of the mutation order dated 19.09.2016 deserves to be rejected.

42. Counsel for the Respondents placed reliance upon the following judgments :

(i) **Jagdish Prasad Patel v. Shivnath, (2019) 6 SCC 82**

> ***“22.*** *The revenue records produced by the appellants for several years amply strengthen the case of the appellants that patta (Ext. D-20) was granted to them and that they are in possession of the suit properties for several years. The oral and documentary evidence clearly establish that the father of the respondent-plaintiffs had abandoned the suit properties, pursuant to which, auction was held by the Pawaidar and lease was issued by Ilaqedar in favour of Gaya Din and that he was in continuous possession of the suit properties.*

> ***44.*** *In the suit for declaration of title and possession, the respondent-plaintiffs could succeed only on the strength of their own title and not on the weakness of the case of the appellant-defendants. The burden is on the respondent-plaintiffs to establish their title to the suit properties to show that they are entitled for a decree for declaration. The respondent-plaintiffs have neither produced the title document i.e. patta-lease which the respondent-plaintiffs are relying upon nor proved their right by adducing any other evidence. As noted above, the revenue entries relied on by them are also held to be not genuine. In any event, revenue entries for few khataunis are not proof of title; but are mere statements for revenue purpose. They cannot confer any right or title on the party relying on them for proving their title.*
>
> ***45.*** *Observing that in a suit for declaration of title, the respondent-plaintiffs are to succeed only on the strength of their own title irrespective of whether the appellant-defendants have proved their case or not, in Union of India v. Vasavi Coop. Housing Society Ltd. [Union of India v. Vasavi Coop. Housing Society Ltd., (2014) 2 SCC 269 : (2014) 2 SCC (Civ) 66] , it was held as under: (SCC p. 275, para 15)*
>
> *"15. It is trite law that, in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff."*

(ii) **Rikhab Chand Jain vs Union of India & Ors. (Civil Appeal No. : 6719 of 2012)**

> *9. While deciding whether to entertain a petition under Article 226 bearing in mind the precedents in the field, a writ court ought to additionally notice the forum designated by the statute for the litigant to approach. This is necessary because the alternative forum that is provided by the statute has to be one which can dispense speedy and efficacious relief. However, as in the present case, if the statutorily designated alternative forum happens to be the high court itself whose jurisdiction under Article 226 is invoked and not any ordinary statutory functionary/tribunal, refusal to entertain the petition should be the rule and entertaining it an exception.*
>
> *10. We may profitably refer, in this context, to the Constitution Bench decision in Thansingh Nathmal v. A. Mazid, Superintendent of Taxes, In Thansingh Nathmal (supra), this Court had the occasion to lay down a principle of law which is salutary and not to be found in any other previous decision rendered by*

it. The principle, plainly, is that, if a remedy is available to a party before the high court in another jurisdiction, the writ jurisdiction should not normally be exercised on a petition under Article 226, for, that would allow the machinery set up by the concerned statute to be bye-passed. The relevant passage from the decision reads as follows:

"The jurisdiction of the High Court under article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the article. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the court will not entertain a petition for a writ under article 226, where the petitioner has an alternative remedy, which, without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under article 226 of the Constitution, the machinery created under the statute to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up."

12. That apart, the majority view in a previous Constitution Bench in A. V Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani[1] reads thus:

"14...., we must express our dissent from the reasoning by which the learned Judges of the High Court held that the writ petitioner was absolved from the normal obligation to exhaust his statutory remedies before invoking the jurisdiction of the High Court C under Article 226 of the Constitution. If a petitioner has disabled himself from availing himself of the statutory remedy by his own fault in not doing so within the prescribed time, he cannot certainly be permitted to urge that as a ground for the Court dealing with his petition under Article 226

to exercise its discretion in his favour, Indeed, the second passage extracted from the Judgment of the learned C.J. in Mohammed Nooh case with its reference to the right to appeal being lost 'through no fault of his own' emphasizes this aspect of the Rule."

In essence, this Court was of the opinion that once a petitioner has due to his own fault disabled himself from availing a statutory remedy, the discretionary remedy under Article 226 may not be available.

15. In our considered opinion, the appellant having had a remedy before the High Court in a separate jurisdiction which was equally efficacious, he indulged in the (mis)adventure of invoking its writ jurisdiction which was rightly not entertained.

(iii) **Leelawati (Dead) thr, LRS. vs State of UP & Ors.**

"*9. It is necessary to observe that the proceedings in the Court of law are initiated for adjudication of disputes and to provide justice to the parties, by which trust and confidence of the litigants reposed on this great institution can be maintained. In case one of the parties misuse the said process or attempt to obtain an order by trick and strategem, the Courts would be justified in imposing the costs for igniting such vexatious litigation. In our view, the cost imposed by the High Court in a sum of Rs.20,000/- is meagre, which be increased to Rs.50,000/-, as the petitioner has proceeded to pursue his vexatious claim even before this Court. Said costs shall be deposited before the Uttar Pradesh State Legal Services Authority, Allahabad."*

(iv) **Dharam Raj vs State of UP & Ors. [2009 (27) LCD 1373]**

12. According to our opinion a "person aggrieved", means a person who is wrongly deprived of his entitlement which he is legally entitled to receive and it does not include any kind of disappointment or personal in-convenience. "Person aggrieved" means a person who is injured or he is adversely affected in a legal sense.

(v) State of UP & Anr. vs Zila Parishad Ghaziabad & Anr. [Civil Appeal No. 8137 of 2003]

> *3. Before taking up the appeal on merit, it may be necessary for this Court to deal with the procedural requirement in filing the writ petition and appeal. In fact, in view of the instrumental delegation by the Central Government, the State Government had conferred the power to grant and cancel the licence of fair price shops to the Gaon Sabha, and it had never been conferred upon the Kshetriya Panchayat or Zila Panchayat. Power to deal with PDS by Gram Panchayat was withdrawn by the State of U.P. yide order dated 13.1.2000. Respondent, Zila Parishad filed writ petition for quashing of the order dated 13.1.2000, though by no stretch of the imagination the said respondent No.1 could claim itself to be an aggrieved party. In fact, it had no locus to challenge the said order of withdrawal dated 13.1.2000. The State of U.P and a few District Officials were impleaded as respondent No.1 before the High Court. None of the Gram Panchayats was party to the said petition. The High Court reached its decision on the legal issues, with-out considering the locus standi of Zila Parishad, respondent No.1.*
>
> *The High Court came to the conclusion that the power of dealing with PDS could be conferred only on Kshetriya Panchayat. Neither Zila Panchayat nor the Gaon Sabha nor the District Collector could be assigned the said job. However, Respondent No.1, Zila e Panchayat has not preferred any appeal against the impugned judgment and order. None of the Gram Panchayats which were aggrieved by the order of withdrawal dated 13.1.2000 had ever approached any court for any relief whatsoever.*
>
> *18. As explained hereinabove, the writ petition had been filed by the respondent no. 1 without having any locus standi nor it could claim to be a person aggrieved of the order of the Government dated*

13.1.2000, withdrawing the order dated 10.8.1999 conferring the power to allot and cancel the fair price shops in rural areas on the Gram Panchayats. The writ petition was filed in 2003 after a delay of 3 years. The writ petition was liable to be dismissed on the ground of delay and laches.

(v) **Smt. Chanda Devi and others Vs. State of U.P. and others [2019 (10) ADJ 199]**

"3. We find that while the writ petition was Entertained by this Court under the order dated 10.4.2009 this Court had questioned the main tainability of the present writ petition and issued notices to the respondent No. 6, but declined to grant any interim stay order. The situation has not changed today either. The petitioner is at the most enjoys status a complainant who had a grievance regarding running of the fair price shop licence. The privity of the contract be tween licencing authority and the respondent No. 6 shall govern the field if the licence has come to be restored by the State-respondent in favour of respondent No. 6, the complain-ant, in our considered opinion does not enjoy the right to litigate the matter further invoking our extraordinary jurisdiction under Article 226 of the Constitution. The Apex Court in case of Laxminarayan R. Bhattad and others v. State of Maharashtra and another, (2003) 5 SCC 413, has held that in order to maintain writ petition one can have locus if he has legally enforceable right and that we do not find in the present case. Further invoking the prin-ciple laid down in the case of Utkal Univer-sity v. Dr. Nrusingha Charan Sarangi, AIR 1999 SC 943, petitioner herein since would not be ben-efited by cancellation of fair price shop licence, he cannot be aggrieved person to maintain the writ petition.

The learned counsel for the petitioner has relied upon the another judgment of the Apex Court in

Gadde Venkateswara Rao v. Govern-ment of Andhra Pradesh, AIR (SC)-1966-0-828. In support of his argument that he being a com-plainant has a right to file a writ petition chal-lenging the order.

4. We have carefully studied the judgment and find that in that case the appellant's right to file petition was upheld on the ground that he was President of the Panchayat Samiti that formed a Committee headed by the same president to collect money/fund to establish a primary health centre and so the committee were trust-ees of the amount collected and further appellant in that capacity was dealing with officials re-garding location of health centre. It is in the backdrop of the above facts peculiar to the said case that applying the principle laid down by the Apex Court in an earlier judgment [The Calcutta Gas Company v. The State of West Bengal and others, (1962) Suppl. 3 SCR 1] the Court held that a personal right need not be in respect of a proprietary interest, it can also relate to an interest of trustee and even in exceptional case as the expression 'ordinarily' indicates, a person who has been prejudicially affected by an act or opinion of the authority can file a writ even though he has no proprietary or even fiduciary interest in the subject matter thereof.

5. In the said above case the site of primary health centre was sought to be changed inspite of deposit of money by Committee that collected the fund and the land was also donated. The Court then applying the above principle held that appel-lant has certainly been prejudiced by the said order and petition, therefore, under Article 226 was maintainable. Thus, on facts of the above case cited by the petitioner is distinguishable and the judgment, in our considered opinion, is of no help to the petitioner.

6. We further notice that in the present case there were a general complaint, including com-plaint of the petitioner and the authorities have duly applied their mind and in their well considered opinion they have found that there was no seriousillegality in discharge of onerous duty of the distribution of essential commodities by the petitioner. We, therefore, do not find it to be an appropriate case where findings of fact so recorded by the authority should be judicially reviewed.

Writ petition accordingly fails and is dis-missed."

(vi) **The National Textile Corporation Ltd. Vs. Naresh Kumar Badri Kumar Jagad and others [2011 (29) LCD 1793]**

"7. Pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial. Therefore, the pleadings are more of help to the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that "as a rule relief not founded on the pleadings should not be granted". A decision of a case cannot be based on grounds outside the olesdings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. (Vide: M/s. Trojan & Co. v. RM N.N. Nagappa Chettiar, AIR 1953 SC 235; State of Maharashtra v. M/s. Hindustan Construction Company Ltd., AIR 2010 SC 1299; and Kalyan Singh Chouhan VCP Joshi, AIR 2011 SC 1127).

8. In Ram Sarup Gupta (dead) by L. Rs. v. Bishun Narain Inter College & Ors.. AIR 1987 SC 1242, this Court held as under:

"...... in the absence of pleadings, evidence if any, produced by the parties cannot be considered......

no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it."

Similar view has been reiterated in Bachhaj Nahar v. Nilima Mandal & Ors., AIR 2009 SC 1103.

9. In Kashi Nath (Dead) through L.Rs. v. Jaganath, (2003) 8 SCC 740, this Court held that "where the evidence is not in line of the pleadings and is at variance with it, the said evidence cannot be looked into or relied upon." Same remain the object for framing the issues under Order XIV CPC and the court should not decide a suit on a matter/point on which no issue has been framed. (Vide: Biswanath Agarwalla v. Sabitri Bera & Ors.. (2009) 15 SCC 693; and Kalyan Singh Chouhan (supra).

10. In Syed and Company & Ors. v. State of Jammu & Kashmir & Ors. 1995 Supp (4) SCC 422, this Court held as under:

"Without specific pleadings in that regard, evidence could not be led in since it is settled principle of law that no amount of evidence can be looked unless there is a pleading. Therefore, without amendment of the pleadings merely trying to lead evidence is not permissible."

11. In Chinta Lingam & Ors. v. The Govt. of India & Ors., AIR 1971 SC 474, this Court held that unless factual foundation has been laid in the pleadings no argument is permissible to be raised on that particular point.

12. In J. Jermons v. Aliammal & Ors., (1999) 7 SCC 382, while dealing with a similar issue, this Court held as under:

there is a fundamental difference between a case of raising additional grounds based on the pleadings and the material available on record and a case of

> *taking a new plea not borne out of the pleadings. In the former case no amendment of pleading is required, whereas in the latter it is necessary to amend the pleadings... The respondents cannot be permitted to make out a new case by seeking permission to raise additional grounds in revision."*
>
> *13. In view of the above, the law on the issue stands crystallised to the effect that a party has to take proper pleadings and prove the same by adducing sufficient evidence. No evidence can be permitted to be adduced on a issue unless factual foundation has been laid down in respect of the same."*

43. Having heard the rival submissions advanced by learned counsel for the parties, I perused the material on record as well as the law report cited by counsel for both the parties.

44. The principal controversy in the present writ petition centers around the legality of the registered sale deed dated 23.05.2007 executed by respondent nos.5 and 6 in favour of respondent no.4 during the pendency of the ceiling proceedings.

45. Learned counsel for the petitioners submits that once proceedings for determination of surplus land had commenced, every transfer made thereafter became void by virtue of Section 5(8) of the Act. According to the petitioners, the prescribed authority could not subsequently validate such transfer by accepting the choice exercised by the tenure-holders under Section 12-A. The respondents, on the other hand, contend that the prescribed authority merely gave effect to the statutory right of choice available to the tenure-holders and excluded the transferred land while directing equivalent land to be declared surplus.

46. **Section 5(6)** provides that transfers effected after 24 January 1971 are ordinarily to be ignored while determining the ceiling area unless they satisfy the conditions contained in clause (b) of the proviso, namely that the transfer was bona fide, for adequate consideration, under an

irrevocable instrument and not intended for the benefit of the transferor or members of his family.

47. **Section 12-A(d)**, in turn, provides that while determining the surplus land, the Prescribed Authority shall, as far as possible, avoid taking land which is the subject matter of such transfer. However, if such land is necessarily included in the surplus area, the transfer shall stand void to that extent and the transferee shall be entitled to the statutory consequences.

48. **Section 5(8)**, however, provides that notwithstanding anything contained in sub-sections (6) and (7), no tenure-holder shall transfer any land during the continuance of proceedings for determination of surplus land and every transfer made in contravention of this provision shall be void. The Explanation appended thereto further clarifies that such proceedings commence with the publication of notice under Section 9(2) and conclude only upon the passing of the final order under Sections 11, 12 or 13 of the Act.

49. The Supreme Court in **Rajendra Singh v. State of U.P. (supra)** has authoritatively interpreted this provision. The Court categorically held that transfers made after 24.01.1971 but before commencement of ceiling proceedings fall within Section 5(6), whereas transfers effected during the pendency of ceiling proceedings are governed exclusively by Section 5(8). In the latter category, no enquiry regarding bona fides or adequacy of consideration is permissible because the statute itself declares such transfers void from their inception.

50. The distinction drawn by the Supreme Court is significant. Whereas Section 5(6) leaves room for judicial scrutiny regarding the genuineness of the transfer, Section 5(8) leaves no such discretion. The legislative command is absolute.

51. Equally instructive is the decision in **Ravindra Singh v. Phool Singh (supra)**, wherein the Supreme Court explained the scope of Section 12-A(d). The Court held that the right of choice conferred upon the tenure-holder is restricted and has to operate strictly within the

framework of the Act. The Prescribed Authority must, as far as possible, exclude transferred land while determining the surplus area only in cases where the transfer falls within the ambit of Section 5(6). The Court expressly observed that no judicial order can be construed so as to override the statutory mandate contained in the Ceiling Act.

52. Likewise, in **Kamlesh Kumari v. State of U.P. (supra),** the Supreme Court remitted the matter directing exclusion of transferred land while applying Section 12-A(d). That decision also arose in the context of transfers governed by Section 5(6) and cannot be read as permitting validation of transfers expressly prohibited by Section 5(8).

53. Applying the aforesaid principles to the present case, it is evident from the pleadings that the sale deed in favour of respondent no.4 was executed on 23.05.2007, after initiation of the ceiling proceedings against the tenure-holder. The respondents themselves do not dispute that the transfer was made during the continuance of the proceedings.

54. Therefore, once this fact stands established, the consequence contemplated by Section 5(8) follows. The transfer becomes void by operation of law and no adjudicatory discretion can be exercised by the prescribed authority to validate the same on considerations of equity, bona fides or statutory choice.

55. The impugned order dated 28.11.2018 proceeds on the ground that because respondent nos.5 and 6 exercised their choice, the land sold to respondent no.4 deserved to be excluded from the surplus area. Such reasoning, in the considered opinion of this Court, combines the operation of Sections 5(6) and 12-A with the mandatory prohibition contained in Section 5(8). It is to be noted that the expression contained in Section 5(8), ***"notwithstanding anything contained in sub-sections (6) and (7)"***, has consciously excluded transfers made during pending ceiling proceedings from the protective umbrella otherwise available under Section 5(6).

56. Therefore, acceptance of the statutory choice by itself could not have the effect of validating a transfer which by virtue of the statue is

void. Consequently, this Court is of the opinion that the prescribed authority committed a manifest error of law in proceeding to recognise and protect the transfer dated 23.05.2007 notwithstanding the statutory prohibition contained in Section 5(8). The findings recorded by the prescribed authority on this aspect are therefore unsustainable in law and cannot be allowed to stand.

57. The next question before this Court is that whether the impugned proceedings are vitiated for violation of principles of natural justice. The submission advanced by the petitioners is that no notice was ever served upon them although they were recorded tenure-holders in respect of the land purchased by them prior to the commencement of the ceiling proceedings. According to them, once their names stood recorded in the revenue records, the prescribed authority was under a statutory obligation to issue notice before initiating proceeding to determine surplus land.

58. It has been argued that omission to serve notice is not a mere procedural irregularity but a jurisdictional defect which strikes at the very root of the proceedings. The question is no longer res integra.

59. The Full Bench of this Court in **Shantanu Kumar v. State of U.P. (supra)** held that where land included in C.L.H. Form-3 is ostensibly held in the name of another person, Rule 8 of the U.P. Imposition of Ceiling on Land Holdings Rules mandates issuance of notice to such recorded tenure-holder together with a copy of the statement. The Full Bench further observed that such notice constitutes the very foundation upon which jurisdiction of the Prescribed Authority rests and that proceedings undertaken in its absence are without jurisdiction.

60. The Full Bench further held that the existence of a remedy under Section 11(2) of the Act or the fact that the affected person may have acquired knowledge of the proceedings at a later stage cannot cure the inherent defect arising from failure to comply with Rule 8. Jurisdiction cannot be conferred by acquiescence, waiver or consent.

61. The petitioners have specifically pleaded that the land transferred in their favour in the year 1997 had already been mutated in the revenue records and that despite such entries they were never served with notice before the ceiling proceedings culminated in declaration of surplus land.

62. The respondents, while disputing the maintainability of the writ petition, have not pointed out any material from the record demonstrating service of notice upon the petitioners in terms of Rule 8. Their principal defence is that the petitioners' land is distinct from that purchased by respondent no.4 and, therefore, no prejudice has been caused.

63. In the opinion of this Court, these are two distinct issues. The question whether respondent No.4 purchased different Gata numbers has no bearing upon the statutory obligation of the prescribed authority to serve notice upon every recorded tenure-holder whose land forms part of the proceedings. Therefore, failure to adhere to the said requirement would amount to denial of reasonable opportunity and violation of principles of natural justice.

64. The petitioners had earlier instituted Ceiling Writ Petition No.16 of 2010 challenging the original ceiling order dated 02.02.2006 and 06.03.2010 and obtained interim protection. The respondents have specifically pointed out that the present orders dated 28.11.2018 and 13.12.2018 merely constitute subsequent stages of the very same proceedings already pending before this Court. Ordinarily, subsequent developments arising out of pending proceedings ought to be brought before the Court by way of amendment or supplementary affidavit in the pending writ petition rather than by instituting successive writ petitions.

65. However, the Court is of the opinion that this principle is more a principle of judicial discipline and cannot operate to sustain an order which is passed without jurisdiction or passed in contravention of mandatory statutory provisions. Consequently, it cannot, by itself, prevent this Court from examining the legality of the impugned orders

where allegations of jurisdictional error and violation of mandatory statutory provisions have been raised.

66. The petitioners have also sought quashing of the mutation order dated 19.09.2016 passed by the Tehsildar. The respondents have specifically pleaded that against the said mutation order, the petitioners have already availed the statutory remedy of revision, which remains pending before the competent authority.

67. It is a settled principle that mutation proceedings are fiscal in nature. Entries made in revenue records neither create nor extinguish title. They are intended only for maintenance of revenue records and collection of land revenue. The Supreme Court has consistently held that mutation orders do not finally determine proprietary rights and that disputes regarding title must be adjudicated before the competent civil or statutory forum.

68. In the present case, the legality of the mutation order is itself dependent upon the legality of the transfer dated 23.05.2007 and the validity of the orders passed by the prescribed authority under the Ceiling Act.

69. Since the petitioners have already invoked the revisional jurisdiction provided under the revenue laws, and the revisional proceedings are pending, this Court is of the view that no separate order on the correctness of the mutation order is called for in exercise of extraordinary jurisdiction under Article 226. Accordingly, this Court refrains from expressing any concluded opinion on the merits of the mutation proceedings.

70. In view of the foregoing discussion, the present bunch of writ petitions succeeds and is, accordingly, **allowed**.

71. The orders dated 02.3.2010 as modified on 06.3.2010 passed by the Prescribed Authority (Ceiling) are hereby set aside, and the order dated 28.11.2018 and 13.12.2018 to the extent they recognise and exclude the land transferred vide sale deed dated 23.05.2007 executed in

favour of respondent no.4 by treating the same as protected under the statutory right of choice, are hereby quashed.

72. The matter is remitted to the Prescribed Authority for a fresh decision strictly in accordance with the provisions of the U.P. Imposition of Ceiling on Land Holdings Act, 1960.

73. Insofar as the challenge to the mutation order dated 19.09.2016 is concerned, no interference is called for in the present writ petition in view of the pending statutory revision.

(Irshad Ali,J.)

September 2, 2026
Gautam