



**A.F.R.**  
**Reserved**

**HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW**

**WRIT - C No. - 11450 of 2025**

Saeeda Fatima Ashraf

.....Petitioner(s)

Versus

State of U.P. Thru. Collector Barabanki and 10 others

.....Respondent(s)

---

|                           |                                                                                                       |
|---------------------------|-------------------------------------------------------------------------------------------------------|
| Counsel for Petitioner(s) | : Aftab Ahmad,                                                                                        |
| Counsel for Respondent(s) | : C.S.C., Akhilesh Kumar Tiwari,<br>Amit Singh, Atif Iqbal, Mohd.<br>Shakeel, Saud Rais, Yogesh Singh |

---

**Court No. - 16**

**HON'BLE SYED QAMAR HASAN RIZVI, J.**

1. Shri. Aftab Ahmad, along with Sri. Shavez Ahmad for petitioner; Shri Abhishek Kumar Pandey, learned Additional Chief Standing Counsel assisted by Shri Yogesh Kumar Awasthi, learned Standing Counsel for the State/respondent No.1 and 2; Shri Akhilesh Kumar Tiwari, learned counsel for respondent No. 3, Shri Mohd. Shakeel, learned counsel for respondent No. 4; Shri Saud Rais, learned counsel for respondent nos. 5 to 9; Shri Amit Singh, learned counsel for respondent No. 10 and Shri Yogesh Singh, learned counsel for respondent No. 11 are present.

2. This case has come up before this Court in furtherance of the nomination made by the Hon'ble Chief Justice, wherein pleadings have been exchanged by way of counter affidavit filed by the respondent No. 4 and 5 to 9 and rejoinder to it has been filed by the petitioner.

3. By means of the present petition filed under Article 226 of the Constitution of India, the petitioner has prayed for the following relief:

“(i) issue or pass a writ, direction, and/or order in the nature of *certiorari* quashing the order dated 13.10.2025 passed by the opposite party no.2/ Prescribed Authority/A.D.M., Nawabganj, Barabanki, in Case No.1509/2025 under section 10 (2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960.

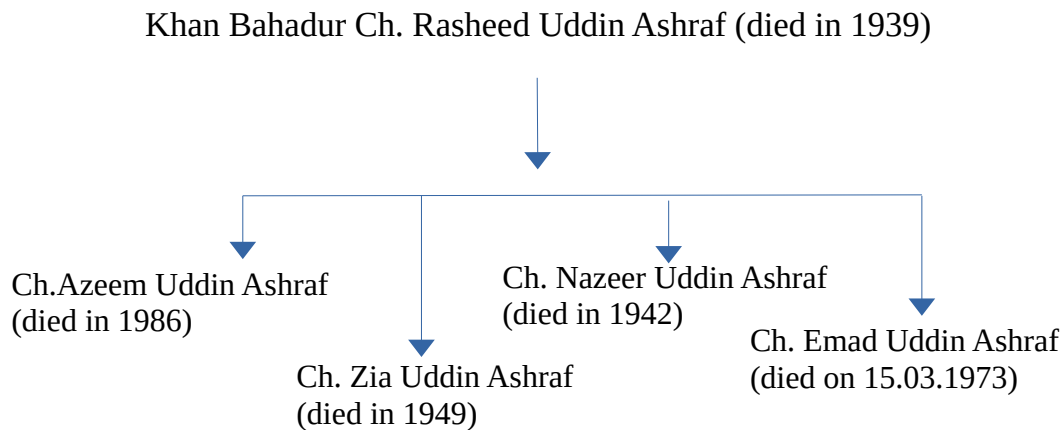
(ii) issue any other writ, direction and/or order in any other nature deemed fit and proper in the circumstances of the case including an order awarding the costs of this petition to the petitioner and against the respondents.”

4. Learned Additional Chief Standing Counsel appearing for the State-respondents No. 1 and 2 and learned counsel for the opposite party No. 4, raised preliminary objection with regard to the maintainability of the instant writ petition on the ground of availability of remedy of appeal under Section 13 of the Ceiling Act. They further contended that in view of the judgment passed by the Hon’ble Supreme Court in the case of **Radhey Shyam versus Chhabi Nath**, reported in **(2015) 5 SCC 423**, the instant writ petition under Article 226 is not maintainable, rather, at the most, a petition under Article 227 ought to have been filed.

5. The factual matrix of the case, as culled out from the pleadings shows long drawn litigation history and the issues involved herein requires mentioning of certain relevant facts in nutshell, for better appreciation of the case.

(a) As is borne out from the pleadings and submissions of the counsels appearing for the respective parties, the properties i.e. subject matter of the instant writ petition were admittedly owned and possessed by Ch. Rasheed Uddin Ashraf who was having four sons namely Ch. Azeem Uddin Ashraf, Ch. Zia Uddin Ashraf, Ch. Nazeer Uddin Ashraf and Ch. Emad Uddin Ashraf. The said Ch. Rasheed Uddin Ashraf is said to have died in the year 1939 and was succeeded by his abovementioned four sons. It has also not been disputed by any of the private parties that this succession by his four sons was in furtherance of a registered will-deed dated 06.02.1939 executed by Ch. Rasheed Uddin Ashraf and acting upon the same, names of the aforesaid four sons of Ch. Rasheed Uddin Ashraf were duly recorded in the revenue records as well as other records.

(a.i) In paragraph No.9 of the Writ petition the petitioner has given the following pedigree and has stated that the parties to the instant writ petition are the heirs/ legal representatives of these four recorded tenure holders. The said pedigree is as under:



(b) The State initiated ceiling proceedings against Ch. Azeem Uddin Ashraf and Ch. Emad Uddin Ashraf and when the fact that Ch. Emad Uddin Ashraf had died prior to the issuing of the notice, was brought to the knowledge of the concerned authority by his heirs, the said proceedings were dropped against him and case continued against Ch. Azeem Uddin Ashraf only, who filed objections, asserting therein that the properties as mentioned in the notice under Section 10(2) of the Urban Land (Ceiling and Regulation) Act, 1976 belong to all four sons of Ch. Rasheed Uddin Ashraf namely Ch. Azeem Uddin Ashraf, Ch. Zia Uddin Ashraf, Ch. Nazeer Uddin Ashraf and Ch. Emad Uddin Ashraf or their heirs and are not his exclusive property. Apart from it, categorical objection was taken to the effect that *Khata* No.210 of village Paisar and certain lands situated in village: Satrikh were falling within municipal limits and were outside the purview of U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred as “**Ceiling Act**”) and it was also stated by him in his objection that he holds only around 20 bighas of land as such proper notices may be issued to all the tenure holders as per extent of their shares. Though it transpires from record, the said proceedings were culminated by the order dated 08.02.1983, but on certain reports by Tahsil authorities and applications by tenure holders as well as State, the

order dated 08.02.1983 was recalled thereby the proceedings stood revived.

(c) Thereafter, notice was amended by the order dated 26.11.1996 against which fresh objections were filed by the heirs of Ch. Rasheed Uddin Ashraf jointly and discarding all the objections raised by the predecessors in-interest of the petitioner. There upon *Vide* order dated 31.03.2003, the Prescribed Authority declared an area of (56-5-19) as surplus from total holdings of (85-3-3), treating entire land as of Ch. Azeem Uddin Ashraf only.

(d) The said order was challenged, by the petitioners and respondents 3 to 11 jointly by filing an appeal viz. appeal no. 35 before the Additional Commissioner Faizabad Division wherein vide order dated 29.11.2003 the order of the Prescribed Authority was quashed and the case was remanded to him for decision afresh as per the directions as given in the order of remand.

(e) Consequent upon remand, the matter stood revived before the Prescribed Authority, the parties appeared, matter was contested and the Prescribed Authority, passed the order dated 18.08.2011. Two separate appeals were filed against the order fated 18.08.2011 one by the owners of the property and the other by the transferees of the portion of the property.

(f) The appeal of the transferees was allowed by the Additional Commissioner, Faizabad Division vide order dated 05.10.2018 which attained finality but the other appeal filed by the petitioner remained pending and ultimately was allowed by the order dated 04.04.2025, passed by the Commissioner Ayodhya thereby the case was again remanded by the Appellate Authority to the Prescribed Authority, to be decided as per directions contained in the order of remand dated 04.04.2025. It is also apparent that the directions as issued by order dated 04.04.2025 were more or less analogous to the directions as were given vide the earlier remand order dated 29.11.2003.

(g) After the aforesaid second remand, the Prescribed Authority vide the impugned order dated 13.10.2025, once again decided the matter

declaring 48-3-16 as surplus land. Aggrieved by the same the petitioner has approached this Court by preferring the instant Writ petition under Article 226 of the Constitution of India.

**CONTENTION OF THE PARTIES:**

6. In the first limb of arguments, learned counsel for the petitioner submitted that a notice under Section 10(2) of the Ceiling Act had been issued in the year 1974 to her father Ch. Emad Uddin Ashraf after his death, who passed away on 15.03.1973 and that, after his death, the petitioner, along with her mother and sister, succeeded to his Estate and jointly filed objections against the said notice. The said objections were allowed by the Prescribed Authority *vide* order dated 08.03.1981 (Annexure No.6) by which the notice was withdrawn on the ground that it had been issued against a dead person. The Prescribed Authority further directed to sent copy of the order to the Tahsildar, Nawabganj to proceed with ceiling proceedings against the legal heirs in accordance with law. It is contended by the learned counsel that, despite the said direction, no fresh notice has ever been issued to the legal heirs of Ch. Emad Uddin Ashraf till date. Operative portion of the order is extracted herein below; for ready reference:

“निर्णय

श्री चौधरी इमादुद्दीन अशरफ पुत्र श्री रसीदुद्दीन अशरफ, निवासी पसार, बाराबंकी के नाम अ.जो.सी. अधिनियम की धारा 10 (2) के अन्तर्गत नोटिस जारी की गयी है जिसके विरुद्ध श्रीमती जुलेखा खातून, अंजुम फातिमा अशरफ, सईदा फातिमा अशरफ ने यह आपत्ति प्रस्तुत किया कि चौधरी इमादुद्दीन अशरफ की मृत्यु 15-3-73 को मेडिकल कालेज लखनऊ में हो गयी है जो 8 जून, 1973 के पहले की तिथि है सीलिंग अधिनियम 8 जून, 1973 से प्रभावी हुआ है। इमादुद्दीन अशरफ की मृत्यु के बाद उनकी समस्त खेती योग्य भूमि तीनों आपत्ति कर्ताओं में बराबर – बराबर 13 दिसंबर 1972 को लिखी गई हिबा के आधार पर कब्जा कर लिया गया है और दाखिल खारिज भी हो गयी है इसलिए इमादुद्दीन पर सीलिंग की कार्यवाही गलत शुरू की गयी है।

अपने उपरोक्त कथन के समर्थन में मेडिकल कालेज लखनऊ से एक मृत्यु प्रमाण पत्र प्राप्त करके दाखिल किया गया है जिसमें यह प्रमाणित किया गया है कि इमादुद्दीन अशरफ की मृत्यु 15-3-1973 को मेडिकल कालेज में ही हुई है चूंकि उनकी मृत्यु संसोधन अधिनियम 1972 के लागू होने के दिनांक (8 जून, 1973) के पहले हो चुकी है इसलिए मरे हुये आदमी के नाम नोटिस गलत जारी हो गई है अस्तु इमादुद्दीन अशरफ के विरुद्ध जारी की गयी धारा 10(2) की नोटिस निरस्त की जाती है।

इसकी एक प्रतिलिपि तहसीलदार नवाबगंज को नियमानुसार  
उत्तराधिकारियों के विरुद्ध सीलिंग कार्यवाही करने हेतु भेजा जावे।”

7. In the second limb of his arguments, learned counsel for the petitioner submitted that a notice under Section 10(2) of the Ceiling Act was issued to Ch. Azeem Uddin Ashraf (eldest son of Late Ch. Rasheed Uddin Ashraf), by clubbing together the properties individually held by all four brothers. His contention is that the Prescribed Authority failed to appreciate this material fact as well as the other objections raised by Ch. Azeem Uddin Ashraf in his objection dated 21.08.1979. Learned counsel further submitted that the property in question being ancestral property jointly held by the objector and other co-sharers, having devolved from their common ancestor, Ch. Rasheed Uddin Ashraf, who died in the year 1939 leaving behind four sons, namely, Ch. Azeem Uddin Ashraf, Ch. Zia Uddin Ashraf, Ch. Nazeer Uddin Ashraf, and Ch. Emad Uddin Ashraf as such the holdings could not have been treated as held by one, as the said property was inherited by the four sons under a registered Will dated 08.02.1939 and that the heirs of all four brothers are contesting parties. He further submitted that the notice dated 23.08.1974 issued to Ch. Azeem Uddin Ashraf was subsequently amended on 26.11.1996 by including the remaining properties of the petitioner and other independent tenure-holders, thereby increasing the area alleged to be surplus in the hands of Ch. Azeem Uddin Ashraf.

8. It has been categorically submitted by the learned counsel for the petitioner that the four sons inherited the property in question through the registered Will executed by their father and that the said Will has never been challenged by any of the beneficiaries or any other person till date, therefore, constitutes the best evidence regarding the division and determination of the separate shares of the four sons of Ch. Rasheed Uddin Ashraf. It is urged by petitioner's counsel that the respective shares of the above named four brothers ought to have been recognized and determined independently for the purposes of ceiling proceedings treating each brother as independent tenure holder.

9. Further, contention of the learned counsel for the petitioner is that after the cancellation/ withdrawal of the notice under Section 10(2) Ceiling Act vide order dated 08.03.1981 no other or fresh notice has ever been issued to the petitioner or her mother or her sister i.e. respondent No.11 herein, either jointly or individually till this date and no independent proceedings against the petitioner, her mother or her sister/ respondent No.11 were taken for determination of the ceiling area and as such whatever proceedings which have been taken giving rise to the instant writ petition were only against Ch. Azeem Uddin Ashraf, wherein the land held by his brothers were illegally and wrongly clubbed and was declared surplus.

10. He also submitted that Ch. Azeem Uddin Ashraf had appeared and filed his objection asserting therein that the holdings as shown in the notice are not his exclusive holdings but he is a co-tenure holder along with his three brothers/their heirs. On such objections of co-tenancy being raised, notice to other sharers were issued calling for their objections in furtherance where of objections were also filed including objections by the transferees. It is contended by the learned counsel for the petitioner that the Prescribed Authority did not pay any heed to the objections taken by Ch. Azeem Uddin Ashraf and other land holders and proceeded with the case only against Ch. Azeem Uddin Ashraf in the most arbitrary manner and passed the order dated 31.03.2003. For better appreciation of the case the operative part of the order dated 31.03.2003 is extracted herein below:

“अतः इनकी आपत्ति स्वीकार करने योग्य नहीं है तथा निरस्त की जाती है। नोटिस में गणना की त्रुटिवश खातेदार की कुल धृत भूमि का सिंचित अर्थों में क्षेत्रफल 56-12-5 अंकित है जबकि वास्तविक क्षेत्रफल सिंचित अर्थों में 85-3-3 आता है इसमें से अधिकतम् प्रयोज्य क्षेत्रफल 28-17-4 घटाने पर सिंचित अर्थों में 56-5-19 भूमि अतिरिक्त घोषित होने योग्य बचती है। खातेदार अथवा उसके वारिसान द्वारा कोई विकल्प (च्वाइस) प्रस्तुत नहीं की गयी है ऐसी दशा में सुविधा की दृष्टि से सूची “ब” में अंकित भूमि उसके अधिकतम् प्रयोज्य क्षेत्रफल में छोड़ी जाती है तथा सूची “स” में अंकित भूमि अतिरिक्त घोषित की जाती है। सूची “अ” “ब” तथा “स” इस आदेश का अंग होगी। अधिनियम की धारा-14 के अन्तर्गत अपेक्षित कार्यवाहियों के उपरान्त पत्रावली सिंचित राजस्व अभिलेखागार की जाए।”

11. The next submission of the learned counsel is that the order dated 31.03.2003 was challenged before the learned Appellate Authority by the

petitioner and other tenure holders by filing 3 separate appeals respectively, which were clubbed together and decided by a common order dated 29.11.2003, whereby, on due appreciation facts and circumstances of the case, the appellate authority, set-aside the order passed by the Prescribed Authority and remanded the matter to the Prescribed Authority with specific directions to decide the case afresh. The relevant portion of the judgment dated 29.11.2003 is quoted herein below:

“उपरोक्त विवेचन के परिप्रेक्ष्य में अपील स्वीकार की जाती है नियत तिथि का आदेश दिनांक 31.03.2003 निरस्त किया जाता है। पत्रावली नियत प्राधिकारी अधिकतम जोत सीमा आरोपण अधिनियम/अपर कलेक्टर बाराबंकी को इस अभ्युक्ति के साथ प्रतिप्रेषित की जाती है कि वह खातेदार द्वारा धृत भूमि का सही जोत विवरण ऊपर दिये गये आब्जर्वेशन को दृष्टिगत रखते हुए तैयार कराकर खातेदार द्वारा उठायी गयी आपत्तियों के आधार पर उपर दिये गये निर्देशों को दृष्टिगत रखते हुए सहखातेदारों का अंश नियमानुसार अलग कर नोटिस में सम्मिलित ग्राम पैसार के खाता सं० 210 व ग्राम सतरिख की शहरी क्षेत्र में स्थित भूमि जिस पर अधिकतम जोत सीमा आरोपण अधिनियम के प्राविधान लागू नहीं है को खातेदार की मूल जोत से अलग कर तैयार कराकर यदि खातेदार के पास निर्धारित सीमा से अधिक भूमि नियत तिथि को पायी जाए तो धारा 10 की उपधारा 2 के अन्तर्गत खातेदार/सहखातेदार को नोटिस देकर उन्हें अपना पक्ष प्रस्तुत करने तथा कथन समर्थन का अवसर देकर अतिरिक्त भूमि अवधारित करने की कार्यवाही पत्रावली प्राप्त होने के एक माह के अन्दर सुनिश्चित करे क्योंकि प्रश्नगत प्रकरण में पहले ही अत्यधिक समय बीत चुका है। सहखातेदार इमादउददीन का अंश अलग करने पर इमादउददीन द्वारा विक्रम पुन्हानी/गणेश के बेंनामे की भूमि स्वयंमेव खातेदार के अंश से अलग हो जाएगी तथा मूल आदेश निरस्त हो जाने के फलस्वरूप अपील सं० 56 तथा 57 में अलग से आदेश पारित करने की आवश्यकता नहीं है। अवर न्यायालय की पत्रावली आदेश की प्रति के साथ वापस प्रेषित की जाए। पक्ष दिनांक 29.12.03 को नियत प्राधिकारी के न्यायालय में उपस्थित हो। बाद आवश्यक कार्यवाही पत्रावली दाखिल दफ्तर होवे।”

12. The learned counsel for the petitioner stated that the contesting parties appeared before the Prescribed Authority on the given date and filed their objections and requested the Prescribed Authority to consider the directions passed by the Appellate Authority in the order dated 29.11.2003 and decide the matter expeditiously but the Prescribed Authority sat over the matter and ultimately decided the case on 18.08.2011 i.e., after a long span of 8 years, however while passing the said order dated 18.08.2011, the Prescribed Authority failed to follow the directions/ observations made by the Appellate Authority and decided the matter in utter violation

the same. It has been vehemently asserted by the counsel for the petitioner that the Prescribed Authority not only failed to comply with the specific directions issued by the Appellate Authority in the remand order, travelled much beyond the scope of the said order as was fixed by the Appellate Authority. To substantiate the said argument, the learned Counsel for the petitioner submitted that although the Prescribed Authority accepted the independent and separate ownership of aforesaid four brothers, but failed to separate their shares and to draw independent proceedings, if any, against any of them subject to the condition that anyone was coming within the purview of the Ceiling limit. But, the Prescribed Authority again decided the matter treating Ch. Azeem Uddin Ashraf as a single tenure holder, reducing total holdings from 85-3-3 to 69-2-8. Despite there being specific direction in order of remand the Prescribed Authority also failed to exclude land falling within municipal limits of Village Paisar and Satrikh and no care was taken to exclude the land already sold by the father of the petitioner before the commencement of the Act. As such, the Prescribed Authority while passing the order dated 18.08.2011 travelled beyond the scope and ambit of remand order dated 29.11.2003. Relevant extract of the order dated 18.08.2011 is reproduced here-in-below:

“पूर्व में खातेदार का 1/3 अंश लिया गया है। परीक्षण के उपरान्त सीलिंग खातेदार की समस्त भूमि में तीन भाईयों के स्थान पर बहमी बटवारा/पारस्परिक बटवारे के आधार पर चारों भाईयो का हिस्सा अलग-अलग 1/3 के स्थान पर 1/4 करने पर एवं नान जेड0ए0 की भूमि नम्बर 51/0-03-10 को छोड़ने के पश्चात सीलिंग खातेदार के हिस्से में कुल भूमि की गणना करने पर सिंचित अर्थों में कुल 69-02-08 भूमि होता है। सीलिंग खातेदार के प्रयोज्य सीमा में 28-17-04 भूमि छोड़ने के पश्चात सिंचित अर्थों में कुल भूमि 40-05-04 सीलिंग भूमि घ गोषित होने योग्य है, जिसका विवरण निम्न है।”

13. The learned counsel for the petitioner further argued that the order dated 18.08.2011 passed by the Prescribed Authority was challenged by the petitioner as well as the transferees of the land before the Appellate Authority, wherein the appeal of the transferees was allowed on 05.10.2018 and the land purchased by them was ordered to be excluded from the purview of Ceiling Act. Operative portion of the order dated 05.10.2018 is reproduced here-in-below:

### “आदेश

अतः अपील स्वीकार की जाती है। प्रश्नगत आदेश दिनांक 18.08.2011 निरस्त किया जाता है। विवादित विक्रीत भूमि गाटा संख्या 206/2-11-0 व गाटा संख्या 298/5-2-0 स्थित ग्राम सराय अकबाराबाद, परगना व तहसील नवाबगंज, जिला बाराबंकी को अतिरिक्त घोषित भूमि अधिकतम जोत सीमा आरोपण/ सीलिंग से मुक्त किया जाता है। अवर न्यायालय की पत्रावली अग्रिम कार्यवाही सुनिश्चित किये जाने हेतु नियत प्राधिकारी सीलिंग को वापस भेजी जाय। आवश्यक कार्यवाही के उपरान्त इस न्यायालय की पत्रावली दाखिल दफ्तर हो।”

14. It is asserted by the learned counsel that the said appeal preferred by the petitioner remained pending and was ultimately decided on 04.04.2025. While adjudicating the appeal, the Appellate Authority took note of the fact that the Prescribed Authority had failed to comply with the specific directions contained in the earlier remand order. The Appellate Authority observed that although the Prescribed Authority had accepted the independent ownership of the four brothers as independent tenure holders and had also acknowledged the observations made in the earlier remand order dated 29.11.2003, it nevertheless failed to separately identify the respective shares of the landholders. He urged that on noticing that the Prescribed Authority had not examined or determined the applicability of the provisions of the Ceiling Act and other relevant laws governing the controversy and considering the complete failure on the part of the Prescribed Authority to give effect to the remand directions and the fact that the order had been passed in gross violation thereof, the Appellate Authority found the impugned order unsustainable. Consequently, the matter was once again remanded to the Prescribed Authority with fresh directions, referring to the earlier remand order dated 29.11.2003. The Prescribed Authority was further directed to decide the matter afresh, strictly in accordance with law and in compliance with the directions contained in the remand orders, within a period of three months. The relevant directions issued by the Appellate Authority are reproduced here-in-below:

“उपरोक्त वर्णित समस्त तथ्यों के आलोक में प्रश्नगत अपील स्वीकार करते हुए नियत प्राधिकारी (सीलिंग)/अपर कलेक्टर, बाराबंकी के दिनांक 18.08.2011 के आदेश को निरस्त किया जाता है। प्रकरण निम्नलिखित निर्देशों के अनुपालन हेतु नियत प्राधिकारी (सीलिंग) को प्रत्यावर्तित किया जाता है:-

1— अपर आयुक्त (प्रशासन) के आदेश दिनांक 29.11.2003 के अनुसार, चौधरी रसीदउद्दीन अशरफ के समस्त विधिक वारिसों को उत्तराधिकार अथवा क्रय के माध्यम से जो भी भूमि प्राप्त हुई हो, उसकी सीलिंग सीमा की गणना प्रत्येक व्यक्ति के लिए पृथक-पृथक रूप से की जाए। यह सुनिश्चित किया जाए कि भूमि की गणना संयुक्त रूप से न की जाए, बल्कि प्रत्येक वारिस के स्वामित्व की स्थिति का पृथक मूल्यांकन किया जाए, जोकि उ0प्र0 अधिकतम जोत सीमा आरोपण अधिनियम की प्रवर्तन तिथि पर लागू होती हो।

2— यदि अधिनियम की प्रवर्तन तिथि से पूर्व किसी खातेदार द्वारा भूमि का विक्रय कर दिया गया हो, तो ऐसी भूमि को उसकी जोत में सम्मिलित न किया जाए।

3— जैसा की आदेश दिनांक 29.11.2003 में उल्लिखित है, नगर पालिका क्षेत्र के अन्तर्गत स्थित भूमि को जोत विवरण की गणना में सम्मिलित न किया जाए। नगर पालिका गठन हेतु निर्गत अधिसूचना/नोटिफिकेशन का परीक्षण कर यह स्पष्ट किया जाए कि कौन-कौन से गाटे नगर पालिका क्षेत्र में सम्मिलित किये गये थे, जिससे निर्णय लेते समय कोई त्रुटि न हो।

4— अपीलकर्ता द्वारा प्रस्तुत विधिक बिन्दुओं का परीक्षण किये जाने के उपरान्त, यदि यह स्पष्ट हो कि किसी वारिस को प्राप्त भूमि सीलिंग अधिनियम के अन्तर्गत आती है, तो ऐसे प्रत्येक व्यक्ति को पृथक रूप से नोटिस निर्गत किया जाए। यह सुनिश्चित किया जाए की सरसरी मूल्यांकन के आधार पर किसी की भूमि को अतिरिक्त घोषित न किया जाय।

चूंकि प्रश्नगत प्रकरण वर्ष 2003 से विचाराधीन है, अतः निर्देशित किया जाता है कि उपरोक्त सभी बिन्दुओं का पालन करते हुए इसका निस्तारण अनिवार्य रूप से तीन माह की अवधि के भीतर किया जाए। निस्तारण तक विवादित भूमि का क्रय-विक्रय प्रतिबंधित रहेगा तथा उसकी नवैयत में कोई परिवर्तन नहीं किया जायेगा। इन्हीं निर्देशों के साथ अपील निस्तारित की जाती है। आदेश की प्रति के साथ अधीनस्थ न्यायालय की पत्रावली वापस भेजी जाय। आवश्यक कार्यवाही उपरान्त इस न्यायालय की पत्रावली संचित अभिलेखागार की जाय।”

15. It has been vehemently argued by the learned counsel appearing on behalf of the petitioner that the order dated 13.10.2025 passed by the Prescribed Authority is in violation of the observation made in the remand orders dated 29.11.2003 as well as 04.04.2025 and the Prescribed Authority has failed to appreciate the purport of specific directions of the two remand orders, that led to incorrectly hold that there are only three brothers instead of four and also failed to give any basis for reducing the total holdings from 69-2-8 to 48-3-16 and declared surplus land 19-6-14 excluding the permissible limit.

16. The main thrust of the learned counsel for the petitioner is that the impugned order has been passed by the Prescribed Authority/ respondent No. 2 in the most premeditated manner, ignoring the fact that the matter was remanded for fresh consideration in the light of the observations made

by the learned Appellate Authority. He further asserted that the order of remand entrusted the Prescribed Authority with genuine adjudication of those objections as well as adherence to the directions contained in remand and the Prescribed Authority/A.D.M., Nawabganj, District Barabanki/ respondent No. 2 was under legal obligation to firstly determine the share of the four brothers individually, then assess the property falling within municipal limits to be excluded from the share of the brothers, then he was under legal obligation to exclude the land sold by the petitioner's father to third party as their Appeal was allowed vide order dated 05.10.2018 and thereafter if the property is found beyond the permissible ceiling limits then notice under section 10(2) of the Ceiling Act ought to have been given to that individual who holds land beyond the ceiling limit.

17. Learned counsel for the petitioner in support of his argument that a remand order passed by an Appellate Authority is binding upon the authority to which the matter is remanded and that such authority is obligated to act strictly in accordance with the observations and directions contained therein, invited the attention of the Court to a decision passed by the Hon'ble Supreme Court in the case of **K.P. Dwivedi versus State of U.P.** reported in (2003) 12 SCC 572.

18. He further placed before this Court a judgment passed by the Coordinate Bench of this Court in the case of **Amar Bahadur versus State of U.P.** reported in (2007) 102 RD 87 and drawn attention of this Court to the following paragraphs of the said judgment, that reads as under:

8. ....After the said finding of the Appellate Court in the remand order dated 8.11.1983, subsequently it could not be held that orders of consolidation authorities are not binding upon the ceiling authorities. An Appellate Court hearing appeal against an order passed by the Lower Court in pursuance of earlier remand order by the same Appellate Court cannot go beyond the earlier remand order.

9. I need not to decide the question as to whether in this writ petition, State authorities as respondents can question the correctness of the appellate order dated 8.11.1983 as said point has not been argued. In view of the above the earlier order of the Appellate Court dated

8.11.1983 was binding upon prescribed authority as well as appellate authority while passing the impugned order dated 24.2.1990.

19. On the other hand, the learned Additional Chief Standing Counsel appearing on behalf of State pressed objection regarding the entertainability of the writ petition for want of statutory appeal. His contention is that there is statutory remedy of appeal provided under Section 13 of the Ceiling Act and bypassing such remedy and directly invoking the jurisdiction of this Court under Article 226 of the Constitution of India is not permissible. He pressed that in presence of efficacious statutory remedy, the present writ petition be dismissed as not maintainable. In addition to the same he also informed the Court that one of the aggrieved party has already filed an appeal challenging the same very order before the Appellate Authority, which is still pending for consideration. Defending the impugned order passed by the Prescribed Authority, the learned Additional Chief Standing Counsel asserted that there is no such illegality or infirmity in the impugned order that warrants interference by this Court.

20. The learned Counsel for the respondent No. 4 also supported the arguments made by the learned Additional Chief Standing Counsel. In addition to it, he submitted that the statutory remedy of appeal as provided under Section 13 of the Ceiling Act has already been availed by the respondent No.3 by way of filing an Appeal which is registered as Appeal No. C202504000003503 titled as “Khalida Fazli Vs. State of U.P.” and is pending before the Appellate Authority. He further argued that as per Section 37 and 38 of the Ceiling Act the order passed by the Prescribed Authority amounts to an order passed by a Civil Court, therefore, the impugned order having been passed by the Prescribed Authority under the Ceiling Act, may be examined by the Court under its supervisory jurisdiction enshrined under Article 227 of the Constitution of India. As such challenge to the order passed by Prescribed Authority under the Ceiling Act, by means of writ petition under Article 226 of the Constitution of India, is not sustainable. In support of his argument the learned counsel appearing for the respondent No.4 categorically relied

upon the paragraph 8 to 11, 13, 15, 18, 19, 23, 24 and 25 of judgment passed by the Hon'ble Supreme Court in the case of **Radhey Shyam versus Chhabi Nath**, reported in **(2015) 5 SCC 423**.

21. Further, reliance has been placed by the learned counsel for the respondent No.4 on the judgment passed by Coordinate Bench of this Court in the case of **Romil Jain versus Ashok Kumar Jain (Writ-A No.1624 of 2025)**, decided on 27.02.2026, wherein while dealing with the provision of Section 22 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 it was held that the source of jurisdiction, the nature of the powers exercised, and the binding and authoritative character of the determinations rendered under Section 22, unmistakably establish that the District Judge acts as a Civil Court and exercises judicial power and an order passed in appeal under Section 22 is a judicial order rendered by a Civil Court exercising statutory jurisdiction and that such orders are not amenable to challenge by way of writ petition under Article 226 of the Constitution of India, any interference, if warranted, lies only within the well-defined contours of the supervisory jurisdiction of this Court under Article 227 of the Constitution, to be exercised in accordance with the established parameters governing the exercise of such jurisdiction.

22. In support of his arguments, he also placed reliance on the judgment passed by this Court in the case of **Sri Nayak Chaube versus Deputy Director of Consolidation, Faizabad** reported in **2010 (110) R.D. 356** wherein it was held that it is established law that in writ jurisdiction, this Court should not sit as an Appellate Court on the orders passed by the Subordinate Courts. Writ jurisdiction should be exercised in the cases where the Subordinate Courts act wholly without jurisdiction or in excess of it or in violation of principles of natural justice in refusing to exercise jurisdiction vested in it or there is apparent error resulting into manifest injustice.

23. To buttress the arguments, he also placed reliance on the judgments passed in **Municipal Corporation of Greater Bombay versus Vivek V. Gawde** reported in **2024 INSC 985 (SC)**; **LIC versus Nandani J. Shah**

reported in **AIR 2018 SC 1197; Kotak Mahindra Bank versus State of U.P.** reported in **2010 RD 165 (DB); Bhagwan Das versus Jiley Kaur** reported in **AIR 1991 SC 266**.

24. Refuting the aforesaid objections on the question of entertainability/maintainability of the petition as raised by the learned Additional Chief Standing Counsel as well as the learned counsel for the respondent No.4; the learned counsel for the petitioner placed reliance upon the judgment passed by the Division Bench of this Court in the case of **Rajeev Sinha versus Union of India and 2 others** reported in **2024 SCC OnLine All 297**, judgment passed by this Court in the case of **Mamta Upadhyay versus State of U.P.** reported in **2025 SCC OnLine All 8490** as well as law laid down by the Hon'ble Apex Court in **Whirlpool Corporation versus Registrar of Trade Marks, Mumbai and Others**, reported in **(1998) 8 SCC 1**, which provides that mere availability of the statutory remedy *ipso facto* doesn't oust the jurisdiction of this Court to entertain the petition, which has later been followed in the case of **M/S. Godrej Sara Lee Ltd. versus The Excise And Taxation Officer**, reported in **2023 SCC OnLine SC 95**.

25. With regard to the objection raised by the learned Additional Chief Standing Counsel that since the respondent No. 3 has already availed the statutory remedy of appeal before the Appellate Authority, which is pending adjudication, as such, the present writ petition filed by the petitioner is not entertainable before this Court; the learned counsel for the petitioner submitted that the said objection is highly misconceived and liable to be rejected. His argument is that even where one of the parties has availed an alternative remedy, the petitioner is not precluded from invoking the extraordinary writ jurisdiction of this Court for seeking the same relief, particularly when the material facts are undisputed and the issues involved can be adjudicated without requiring determination of disputed questions of fact. In support of the aforesaid submission, he placed reliance upon the judgment passed by the Hon'ble Supreme Court in the case of **S.J.S. Business Enterprises (P) Ltd. versus State of Bihar**

reported in **(2004) 7 SCC 166**, wherein the Hon'ble Apex Court has been pleased to hold as under:

“14. Assuming that the explanation given by the appellant that the suit had been filed by one of the Directors of the Company without the knowledge of the Director who almost simultaneously approached the High Court under Article 226 is unbelievable (sic), the question still remains whether the filing of the suit can be said to be a fact material to the disposal of the writ petition on merits. We think not. The existence of an adequate or suitable alternative remedy available to a litigant is merely a factor which a court entertaining an application under Article 226 will consider for exercising the discretion to issue a writ under Article 226 [A.N. Venkateswaran v. Ramchand Sobhraj Wadhwani, AIR 1961 SC 1506] . But the existence of such remedy does not impinge upon the jurisdiction of the High Court to deal with the matter itself if it is in a position to do so on the basis of the affidavits filed. If, however, a party has already availed of the alternative remedy while invoking the jurisdiction under Article 226, it would not be appropriate for the court to entertain the writ petition. The rule is based on public policy but the motivating factor is the existence of a parallel jurisdiction in another court. But this Court has also held in Chandra Bhan Gosain v. State of Orissa [(1963) 14 STC 766, 918 : (1964) 2 SCR 879] that even when an alternative remedy has been availed of by a party but not pursued that the party could prosecute proceedings under Article 226 for the same relief. This Court has also held that when a party has already moved the High Court under Article 226 and failed to obtain relief and then moved an application under Article 32 before this Court for the same relief, normally the Court will not entertain the application under Article 32. But where in the parallel jurisdiction, the order is not a speaking one or the matter has been disposed of on some other ground, this Court has, in a suitable case, entertained the application under Article 32 [Tilokchand Motichand v. H.B. Munshi, (1969) 1 SCC 110 : AIR 1970 SC 898]. Instead of dismissing the writ petition on the ground that the alternative remedy had been availed of, the Court may call upon the party to elect whether it will proceed with the alternative remedy or with the application under Article 226 [K.S. Rashid and Son v. Income Tax Investigation Commission, AIR 1954 SC 207]. Therefore, the fact that a suit had already been filed by the appellant was not such a fact the suppression of which could have affected the final disposal of the writ petition on merits.”

26. On the issue of maintainability of writ petition under Article 226 of the Constitution of India, the learned counsel for the petitioner submits that the impugned order passed by the Prescribed Authority would not amount to an order passed by a Civil Court. In support of his submission he invited the attention of the Court to the scope and ambit of Section 37 and 38 of the Ceiling Act, wherein the powers of Prescribed Authority and Appellate Authority have been provided, which reads as under:

37. Any officer or authority holding an enquiry or hearing an objection under this Act, shall, insofar as it may be applicable, have all the powers and privileges of a Civil Court, and follow the procedure laid down in the Code of Civil Procedure, 1908, for the trial and disposal of suits relating to immovable property.

38. (1) In hearing and deciding an appeal under this Act, the appellate court shall have all the powers and the privileges of a civil court and follow the procedure for the hearing and disposal of appeals laid down in the Code of Civil Procedure, 1908.

(2) Where under the provisions of this Act, an appeal has to be heard by the [Commissioner] he may either hear the appeal himself or transfer it for hearing to [Additional Commissioner] subordinate to him.

27. Disputing the arguments of the learned counsel for the respondent No.4 with regard to the non-maintainability of the instant writ petition, the learned counsel for the petitioner has very categorically asserted that the judgments including **Radhey Shyam** (*supra*) as well as the **Romil Jain** (*supra*) categorically lay down that orders of the Civil Court cannot be challenged under Article 226 of the Constitution but in both the cases the orders under challenged giving rise to those cases that were emanating from the Civil Court itself, as the Appellate Authority under U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 is the Principle Judge, Civil Court. To substantiate his argument, the petitioner's counsel drew the attention of this Court to paragraphs 25 and 27 of the judgment passed in the case of **Radhey Shyam** (*supra*), wherein, it was held that the judicial orders passed by Civil Court are not amenable to the writ jurisdiction under Article 226 of the Constitution of India.

25. It is true that this Court has laid down that technicalities associated with the prerogative writs in England have no role to play under our constitutional scheme. There is no parallel system of King's Court in India and of all the other courts having limited jurisdiction subject to the supervision of the King's Court. Courts are set up under the Constitution or the laws. All the courts in the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under Article 227. Writ jurisdiction is constitutionally conferred on all the High Courts. Broad principles of writ jurisdiction followed in England are applicable to India and a writ of certiorari lies against patently erroneous or without jurisdiction orders of tribunals or authorities or courts other than judicial courts. There are no precedents in India for the High Courts to issue writs to the subordinate courts. Control of working of the subordinate courts in dealing with their judicial orders is exercised by way of appellate or revisional powers or power of superintendence under Article 227. Orders of the civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts. While appellate or revisional jurisdiction is regulated by the statutes, power of superintendence under Article 227 is constitutional. The expression "inferior court" is not referable to the judicial courts, as rightly observed in the referring order [*Radhey Shyam v. Chhabi Nath*, (2009) 5 SCC 616] in paras 26 and 27 quoted above.

-----

27. Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view [*Radhey Shyam v. Chhabi Nath*, (2009) 5 SCC 616] of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226.

28. It is asserted by the learned counsel for the petitioner that on applying the test as laid down in the cases of **Shalini Shyam Shetty versus Rajendra Shankar Patil** reported in (2010) 8 SCC 329; **Salem Advocate Bar Assn. (2) versus Union of India** reported in (2005) 6 SCC 344; **Surya Dev Rai versus Ram Chander Rai** reported in (2003) 6 SCC 675; **Rupa Ashok Hurra versus Ashok Hurra** reported in (2002) 4 SCC 388; **Waryam Singh versus Amarnath** reported in AIR 1954 SC 215; it

can be seen that the courts passing the orders in such cases were Civil Courts but putting the Prescribed Authority to the same test, the result is in negative and applying the test as laid down in these judgments by no stretch of imagination the Prescribed Authority can be held to be a Civil Court and amenable to the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

29. The learned counsel for the petitioner continuing with his submissions asserted that a plain reading of Section 37 read with Section 3(13) of Ceiling Act do not support the objection as raised by the counsel for the respondent No.4. He stated that Section 37 of Ceiling Act starts with “any officer or authority holding an enquiry or hearing an objection under this Act” itself makes the legislative intention clear that the power conferred upon the Prescribed Authority is very limited and does not include the power of adjudication with regard to right, title or interest of the parties in any property and in absence of the same, the Prescribed Authority cannot be termed to be a Civil Court. Further that the power, which is exercised by the Prescribed Authority is provided under Section 11 and Section 12 of the Ceiling Act. As per Section 11, the determination of surplus land is done by the Prescribed Authority when no objection is filed, whereas under Section 12 the determination is done where objection is filed by the noticee/tenure holder and a perusal of Section 12 makes it explicitly clear that to what extent and for what purpose this power has to be exercised. The said Section 12 confers the power merely “to determine the surplus land” and this power as provided therein to be exercised by the Prescribed Authority as per the procedure dealt with under Section 37 of the Ceiling Act, as such the extent of power, which has been conferred upon the Prescribed Authority by Section 12 is limited to the determination of surplus land and on combined reading of these provisions viz., Section 3(13), Section 11(1), Section 12 and Section 37 it is beyond any doubt that a Prescribed Authority is not a Civil Court.

30. Learned counsel for the petitioner further contended that a plain reading of Sections 37 and 38 of the Ceiling Act clearly demonstrates that the powers conferred upon the Prescribed Authority are distinct from

those vested in the Appellate Authority. He pointed out that Section 37 provides that the provisions of the Code of Civil Procedure shall apply to proceedings before the Prescribed Authority only “in so far as may be applicable”, whereas Section 38 confers upon the Appellate Authority all the powers and privileges of a Civil Court. According to learned counsel for the petitioner, this distinction clearly indicates that the legislature itself has not conferred power on Prescribed Authority akin to that of Appellate Authority. The power of the Prescribed Authority is confined to determining the extent of surplus land held by a tenure holder and does not extend to adjudication of questions relating to right, title, or interest in a property. Such powers, according to him, are vested exclusively in the competent Civil Court. In this regard reference can be made upon the judgment of a Coordinate Bench of this Court in ***Chetanya Raj Singh v. Second Addl. Civil Judge, Aligarh***, reported in ***1977 SCC OnLine All 23*** it was held as under:

**11.** It is well settled now that the Prescribed Authority is neither a civil court nor a revenue court and, therefore, section 49 of the U.P. Consolidation of Holdings Act, in terms, would not apply to the present case. Besides Section 38-B of the Ceiling Act contemplates that no finding or decision given before the commencement of this section in any proceeding or on any issue including any order, decree or judgment by any court, tribunal or authority in respect of any matter governed by this Act, shall bar retrial of such proceeding or issue under this Act, in accordance with the provisions of this Act as amended from time to time. The amended section 38-B of the Ceiling Act was brought in by U.P. Act No. XX of 1976 with effect from 10th October, 1975, when the appeal against the order of the Prescribed Authority was pending before the learned Civil Judge. The decision of the consolidation authorities was, admittedly, much before the 10th of October, 1975, and, therefore, the decision of right and title of the tenure-holders by the consolidation authorities would not bar the consideration of the same question by the authorities under the Ceiling Act.”

31. The learned counsel for the petitioner further placed reliance on ***Ram Charan v. State***, reported in ***AIR 1979 All 114*** passed by the Hon’ble Full Bench of this Court, wherein the judgment passed in ***Chetanya Raj Singh (supra)*** and ***Kshetrapal Singh v. State of U.P.***, reported in ***1975 SCC***

**OnLine All 308;** has been considered as correct law while holding as under:

“16. In *Chetanya Raj Singh v. Second Addl. Civil Judge (1977 All WC 289)* a single judge of this Court took the view that the Prescribed Authority constituted under the Ceiling Act is neither a civil court nor a revenue court within meaning of Section 49 of the Consolidation Act. The last part thereof was hence not attracted to proceedings under the Ceiling Act

-----

23. In this view when the legislature by adding the Explanation created a fiction that proceedings under the Ceiling Act shall not be deemed to be proceedings in respect of declaration of adjudication of rights or interest in any land it had obviously intended to exclude the ceiling proceedings from the purview of the Consolidation Act, The Explanation was made applicable for purpose of Sub-Section (2) of Section 5. Since Section 49 is an extension of Sub-Section (2) of Section 5 in relation to future litigation of the same kind, the fiction created by the Explanation would equally apply to the bar created by Section 49, A proceeding under the Ceiling Act shall not be deemed to be a proceeding which is barred under Section 49 as well.

-----

25. The legal fiction is that ceiling proceedings are not proceedings for declaration of rights or interest in land. This imaginary state of affairs must equally apply to all situations in which it would on terms be applicable. Though the Explanation says "for the purposes of Sub-Section (2)" it would apply to S.49 also because S.49 is integrally connected with and referable to Sub-Section.

-----

28. In *Kshetrapal Singh v. State of U.P., 1975 All WC 618*, a Bench of this Court has repelled a similar submission. It was held that S.10, C.P.C. is not applicable to proceedings under the Ceiling Act, because by virtue of S.37 only the procedure prescribed by the Code of Civil Procedure for trial of suits has been made applicable. Section 10 relates to jurisdiction of Courts. The same will not apply. In my opinion this decision lays down the correct law.

-----

32. Proceedings under the Ceiling Act are for an entirely different purpose, Section 5 of the Ceiling Act declares that 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. This Act, therefore covers lands held by a tenure-holder throughout the State.”

32. Learned counsel appearing for respondent No. 3, respondent Nos. 5 to 9, and respondent Nos. 10 and 11 did not oppose the submissions advanced on behalf of the petitioner rather, they fairly stated that they would have no objection in the event this matter is remanded to the Prescribed Authority for fresh consideration in accordance with law. Learned counsel for respondent Nos. 5 to 9, also controverted the objections raised by the State and respondent No. 4 with regard to the maintainability of the present writ petition. In support of his submissions, he placed reliance upon the judgment of a Coordinate Bench of this Court passed in the case of ***Dinesh Chandra v. Deputy Director of Consolidation, (Writ-B No.229 of 2023)*** decided on 03.05.2023, and reported in ***(MANU/UP/4937/2023)*** wherein it was observed by the Court that orders passed by Revenue Authorities or Consolidation Authorities cannot be equated with orders passed by Judicial Authorities or Civil Courts. Relying upon the aforesaid decision, learned counsel submitted that the preliminary objections regarding maintainability of the writ petition as raised by the State and respondent No. 4 are not in consonance with law. Relevant paragraphs of ***Dinesh Chandra (supra)*** are reproduced here-in-under:

23. The judgments so cited by the respective parties, there is no dispute that reliance upon the dictum of the Apex Court in re; *Radhey Shyam (supra)* has been placed. Learned counsel for the parties are in agreement that the Apex Court in re; *Radhey Shyam (supra)* has clearly and explicitly observed as to what would happen in respect of the orders being passed by the Judicial/ Civil Courts and the orders being passed by other than Judicial/Civil Courts. No writ petition shall lie against the orders of Judicial/Civil Courts under Article 226 and there is apparent distinction between Articles 226 & 227 of the Constitution of India. Since the Apex Court has not held that even if any order is passed by a judicial or quasi judicial authority while exercising its statutory powers and even if that authority is other than judicial/ Civil Court, no writ shall lie under Article 226 of the Constitution of India, therefore, no other inference may be drawn from the ratio of the judgment of the Apex Court in re; *Radhey Shyam (supra)*, which has not specifically been held. If the specific and clear direction has been issued by the Apex Court in re; *Radhey Shyam (supra)*, any other inference should not be drawn. If the Apex Court was of the view that the orders of all judicial authorities, be it

Judicial/Civil Court or Revenue/Consolidation Court/Authority, are not amenable under Article 226 of the Constitution of India, specific direction to that effect would have been given but no specific direction to that effect has been given by the Apex Court in para-29 of the judgment in re; *Radhey Shyam (supra)*. The Full Bench of the Apex Court in re; *Kiran Devi (supra)* has observed that the Apex Court has considered all relevant judgments in re; *Radhey Shyam (supra)* including the judgment in re; *Shalini Shyam Shetty (supra)* and held that the petition styled as 'Under Article 226' would not bar the High Court to exercise jurisdiction under Article 227 of the Constitution of India. Basically, the jurisdiction of the High Court is to examine the correctness, legality and propriety of the orders being passed by the subordinate authority/court, the nomenclature of the proceedings as a petition under Article 226 or a petition under Article 227 is wholly inconsequential and immaterial. The Full Bench of the Apex Court in re; *Kiran Devi (supra)* has not restricted entertaining such type of petitions under Article 226 of the Constitution of India, rather has observed that in the given facts and circumstances, the nomenclature of the proceedings would be wholly immaterial.

-----

**26.** There is apparent difference between the court of law and the Tribunals. The court of law is vested with general jurisdiction over all the matters, whereas the Tribunals deal with the matters vested with limited jurisdiction to decide a particular issue/issues as per specific statutory prescription to that effect. Courts exercise only the judicial functions whereas the Tribunals undertake various other administrative functions. Officers of the court, more particularly judicial courts, are trained and expert persons in the law, however, it is not mandatory in every case that the members of the Tribunal need to be trained and expert in law. In view of the above, the revenue authorities/consolidation authorities when discharge their judicial/ quasi judicial functions used to follow the specific mandate and mechanism so prescribed under the Statute and quite often, those officers are not trained judicial officers but being prescribed authorities under the particular Statute, they discharge their functions as revenue/consolidation officer. In that way, they may not be treated at par with the judicial officers of the Civil Court and therefore, they are not judicial/Civil Court. At the best, it may be said that they discharge their duties and functions as Tribunal.

**27.** Accordingly, considering the arguments of learned counsel for the parties and the judgments so placed, which have been considered herein above, I am of the considered opinion that the orders being passed by the revenue authority or consolidation authority preliminary objections so raised by the learned counsel for the opposite parties are not the

orders being passed by judicial authority/Civil Courts, therefore, the regarding maintainability of the writ petitions under Article 226 of the Constitution of India is hereby rejected. These writ petitions under Article 226 of the Constitution of India challenging the orders of the consolidation/revenue authorities are held to be maintainable.

**CONSIDERATION:**

33. Heard, learned counsel for the parties at length and perused the material available on record and considered the judgments relied by the parties. Before proceeding to deal with the rival submissions advanced by the parties, the law with regard to the alternative remedy been which has already reiterated and reaffirmed by the Division Bench of this Court in ***Rajeev Sinha (supra)***, requires to be looked into which is reproduced here-in-below:

“18. As regards the discretion of the High Courts to entertain writ petition under Article 226 of the Constitution of India, despite a remedy provided under any statute, law in this regard needs reiteration.

19. The Constitution Bench of Supreme Court, in the case of State of U.P. v. Mohammad Nooh, AIR 1958 Supreme Court 86, has held that there is no rule with regard to Certiorari as there is with Mandamus, that it will lie only where there is no other equally effective remedy. A Writ of Certiorari will lie, provided the requisite grounds exist, although a right of appeal has been conferred by Statute. It was observed that the fact that the aggrieved party had another adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a Writ of Certiorari to quash the proceedings and decisions of inferior courts subordinate to it and, ordinarily, the superior court will decline to interfere until the aggrieved party has exhausted other statutory remedies, if any. This rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law.

20. Another Constitution Bench of the Supreme Court, in the case of K.S. Rashid & Son v. Income Tax Investigation Commission & Ors., AIR 1954 SC 207, observes that there are only two limitations placed upon the exercise of the powers by a High Court under Article 226 of the Constitution; one is that the power is to be exercised "throughout the territories in relation to which it exercises jurisdiction", that is to say, the writs issued by the Court

cannot run beyond the territories subject to its jurisdiction. The other limitation is that the person or authority to whom the High Court is empowered to issue writs "must be within those territories" and this implies that they must be amenable to its jurisdiction either by residence or location within those territories. It is with reference to these two conditions thus mentioned that the jurisdiction of the High Courts to issue writs under Article 226 of the Constitution is to be determined.

**21.** The Supreme Court, in the case of *Ram and Shyam Company v. State of Haryana and Others*, (1985) 3 S.C.C. 267, laid down that ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate, it does not oust the jurisdiction of the Court.

**22.** The three judges Bench of the Supreme Court, in the case of *Sangram Singh v. Election Tribunal Kotah And Another*, A.I.R. 1955 S.C. 425, observed that the jurisdiction which Articles 226 and 136 confer, entitles the High Courts and the Supreme Court to examine the decisions of all Tribunals to see whether they have acted illegally. That jurisdiction cannot be taken away by a legislative device that purports to confer power on a tribunal to act illegally by enacting a statute that its illegal acts shall become legal the moment the tribunal chooses to say they are legal. The legality of an act or conclusion is something that exists outside and apart from the decision of an inferior tribunal. It is a part of the law of the land which cannot be finally determined or altered by any tribunal of limited jurisdiction. The High Courts and the Supreme Court alone can determine what the law of the land is vis-a-vis all other courts and tribunals and they alone can pronounce with authority and finality on what is legal and what is not. All that an inferior tribunal can do is to reach a tentative conclusion which is subject to review under Articles 226 and 136.

**23.** The Supreme Court, in the case of *Commissioner of Income Tax and Others v. Chhabil Dass Agarwal*, (2014) 1 S.C.C. 603, spelt out at least five illustrative and non-exhaustive exceptions to the rule of exhaustion of remedies as follows:-

- (i) Where remedy available under statute is not effective but only mere formality with no substantial relief; or
- (ii) Where statutory authority not acted in accordance with provisions of enactment in question, or ;
- (iii) Where statutory authority acted in defiance of fundamental principles of judicial procedure, or;

(iv) Where statutory authority resorted to invoke provisions which are repealed, or;

(v) Where statutory authority passed an order in total violation of principles of natural justice.

**24.** A Constitution Bench of the Supreme Court, in *State of Madhya Pradesh and Anr. Bhailal Bhai*, AIR 1964 SC 1006, held that the power to give relief under Article 226 of the Constitution is a discretionary power. Similar view has been reiterated in *N.T. Veluswami Thevar v. G. Raja Nainar and Others*, AIR 1959 SC 422; *Municipal Council, Khurai and Anr. v. Kamal Kumar and Another*, AIR 1965 SC 1321; *Siliguri Municipality and Others v. Amalendu Das and Others*, AIR 1984 SC 653; *S.T. Muthusami v. K. Natarajan*, AIR 1988 SC 616; *Rajasthan SRTC v. Krishna Kant*, AIR 1995 SC 1715; *Kerala State Electricity Board and Anr. v. Kurien E. Kalathil and Others*, AIR 2000 SC 2573; *A. Venkatasubbiah Naidu v. S. Chellappan*, (2000) 7 SCC 695; and *L.L. Sudhakar Reddy and Others v. State of Andhra Pradesh and Others*, (2001) 6 SCC 634; *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Anr. v. State of Maharashtra and others*, (2001) 8 SCC 509; *Pratap Singh and Anr. v. State of Haryana*, (2002) 7 SCC 484 and *G.K.N. Driveshafts (India) Ltd. v. Income Tax Officer and Others*, (2003) 1 SCC 72.

**25.** In *Harbans Lal Sahnia v. Indian Oil Corporation Ltd.*, (2003) 2 SCC 107, the Supreme Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.... But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. Reference to another judgement of Supreme Court in the case of *Harbanslal Sahnia & Anr. v. Indian Oil Corpn. Ltd. & Ors.*, JT 2002 (10) SC 561 can be made, in which also the view taken by the Supreme Court is that the rule of exclusion of Writ Jurisdiction by availability of alternative remedy is the rule of discretion and not one which is compulsory.”

34. In light of the observations made by the Hon’ble Apex Court as well as Hon’ble Division Bench of this Court as discussed here-in-above, it is

evident that the petitioner approaching the High Court cannot be relegated to an alternative remedy as a matter of routine, where, in the facts and circumstances of a particular case, it is established that the principles of natural justice have been violated, or that the impugned order has been passed without jurisdiction, or where it is demonstrated before the Court that grave injustice has been caused to the petitioner and that relegation to the alternative remedy would perpetuate such injustice and result in prejudice, it is always open to this Court to exercise its extraordinary jurisdiction and issue an appropriate Writ to strike down the offending action.

35. The learned counsel for the respondent No.4 when confronted as to on what basis he asserts the Prescribed Authority as a Civil Court he only relied upon Section 37 of Ceiling Act. In this regard reference to these Sections is necessary:

**“3. In this Act, unless the context otherwise requires—**

.....

(13) ‘prescribed authority’ means such officer not below the rank of an Assistant Collector of the first class as may be empowered by the State Government, by notification in the Gazette, to perform the functions of prescribed authority under this Act for such area or areas as may be specified in that behalf ;

-----

**Determination of surplus land where no objection is filed—**

**11.** (1) Where the statement submitted by a tenure-holder in pursuance of the notice published under Section 9, is accepted by the Prescribed Authority or where the statement prepared by the Prescribed Authority under Section 10, is not disputed within the specified period, the Prescribed Authority shall accordingly, determine the surplus land of the tenure-holder.

-----

**Determination of the surplus land by the Prescribed Authority where an objection is filed—**

**12.** (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.

-----

**Powers of officers and authorities in hearing and disposal of objections and the procedure to be followed–**

37. Any officer or authority holding an enquiry or hearing an objection under this Act, shall in so far as it may be applicable, have all the powers and privileges of a civil court, and follow the procedure laid down in the Code of Civil Procedure, 1908, for the trial and disposal of suits relating to immovable property.”

36. A perusal of the above referred provisions as well as the object of the Act, it is apparent that this Act nowhere confers any power of adjudication with regard to the right, title and interest of the parties rather on the basis of the revenue records as well as limit of holdings to be retained by a tenure holder, the Prescribed Authority is empowered to declare the land beyond the said limit as surplus and for this declaration certain norms and standards with regard to the determination of area of land etc. viz. agricultural, grove are to be seen and for the entire proceedings from the issuance of notice till the final determination, no adjudication with regard to right and title or interest of a tenure holder is involved and in absence of any power regarding adjudication of right, title and interest as per the test laid down in the judgments relied by the parties; this much can be safely observed that the Prescribed Authority under the Ceiling Act is not a Civil Court, despite being conferred power and privileges of Civil Court under Section 37 of Ceiling Act as exercise of such power is limited to determination of surplus land. This observation also finds support by a recent judgment of a Coordinate Bench of this Court in **Dinesh Chandra (supra)**, specially its paragraph 23 to 27, as quoted above.

37. Further, the judgment passed by the Hon’ble Apex Court in the case of **Radhey Shyam (supra)** and the judgment passed by Coordinate Bench of this Court in **Chetanya Raj Singh (supra)**, further made clear the picture that orders passed by Civil Court ought to be challenged under Article 227 whereas orders passed by the statutory and quasi-judicial authorities which are not Civil Courts are challengeable under Article 226

of the Constitution of India. In view of the above, this Court is of the considered opinion that the impugned order passed by the Prescribed Authority would not be considered to be an order passed by the Civil Court as the law laid down in the case of **Chetanya Raj Singh** (*supra*), which is upheld by Full Bench of this Court in the case of **Ram Charan** (*supra*) and recently followed by the Coordinate Bench of this Court in the case of **Dinesh Chandra** (*supra*). Therefore, the objection in this regard, raised by the respondent No.4 though attractive but have no force being not tenable in the eyes of law.

38. In view of the discussion made herein above, the objection raised by the learned Additional Chief Standing Counsel in respect of the entertainability of the present writ petition on the ground of availability of remedy of appeal under Section 13 of the Ceiling Act is not acceptable. Thus, this Court finds the instant Writ petition maintainable under Article 226 of the Constitution of India and proceed to consider the submissions of the learned counsel for the parties with regard to legality of the impugned order to the extent of directions as issued by the Appellate Authority while remanding the matter and failure of the Prescribed Authority in adhering to the same while passing the impugned order.

39. Taking into consideration submissions made by the learned counsels and the material available on record this Court prima facie finds that there is violation of remand directions which is not permissible under law as held by the Hon'ble Apex Court in **K.P. Dwivedi** (*supra*), which read as under:

“11. In our considered opinion, there is a glaring mistake in the impugned order dated 29-3-1996 of the Prescribed Authority passed after remand in treating the earlier order dated 5-8-1977 passed in appeal by the District Judge to have been totally set aside by the earlier order of the High Court dated 19-1-1979 passed in writ petition against the order of the District Judge dated 5-8-1977. From the order of the High Court extracted, it is clear that the whole order of the District Judge was not set aside. It was set aside only with respect to categorisation of lands in the two villages and the remand was restricted to fresh determination of the same. The observations that “no other controversy shall be allowed to be raised hereafter before the Prescribed Authority or

before the Appellate Authority” only meant that the remand would be restricted to redetermination of the nature of the land and all other issues decided which have not been disturbed by the order of the District Judge in appeal shall not be allowed to be re-agitated.

**12.** From the contents of the order of the High Court, we have no manner of doubt that the writ petition of the holder of the land against the judgment of the District Judge had only succeeded with an order of the remand limited to re-examination of the nature of the lands. In all other respects, the order of the District Judge was confirmed prohibiting reopening of the same. We have already mentioned above that the order of the District Judge passed in appeal dated 5-8-1977 was not challenged by the State of U.P. and therefore, that order to the extent it was in favour of the appellant, had attained finality and could not have been disturbed. The Prescribed Authority and the appellate court in their orders passed on 29-3-1996 and 18-3-1997 respectively, overlooked this aspect of the case of the finality of the order of the District Judge dated 5-8-1977. They misdirected themselves by assuming that the whole case was open before them for reconsideration and re-determination of the ceiling area. In the second writ petition filed by the appellant to the High Court against the orders passed by the authorities under the Act after remand, the learned Single Judge took no care to re-examine the contents of the orders previously passed and which had attained finality to the extent indicated in those orders. The High Court by the impugned order dated 9-5-1997 cursorily examined the case and wrongly dismissed it as being without merit.

**13.** As a consequence of discussion aforesaid, the impugned orders dated 29-3-1996 of the Prescribed Authority, dated 18-3-1997 of the Additional Commissioner (Judicial), Gorakhpur Division and dated 9-5-1997 of the High Court to the extent of adversely affecting the finality of the judgment dated 5-8-1977 of the District Judge in appeal are, hereby, set aside. The course now available to us is to allow this appeal and send back the case to the Prescribed Authority. It is accordingly so ordered and the case is remanded. The Prescribed Authority shall redetermine the ceiling limit and declare the surplus land, if any, of the appellant on the basis of the judgment of the District Judge dated 5-8-1977, to the extent it has attained finality by its affirmance by order dated 19-1-1979 of the High Court. In so redetermining the ceiling area of the appellant, the nature of land and its categorisation, as irrigated or unirrigated, shall be made in accordance with the order dated 29-3-1996 of the Prescribed Authority which we do not intend to disturb to that extent as categorisation of land under Section 4-A of the Act, is essentially a question of fact, to be determined on

the basis of evidence led by the parties. After re-determination of the ceiling limit and extent of surplus land, if any, of the appellant, a fresh opportunity shall be given to the appellant to exercise his option for surrender of surplus land of his choice in accordance with the provisions of the Act.”

40. As none of the respondents could have effectively disputed the factual matrix of the case as narrated in the writ petition and the objection raised by learned counsel for the respondents No.1, 2 and 4 is limited only to the extent of maintainability/entertainability of the writ petition, which is already dealt and discarded in the preceeding paragraphs. It is noteworthy that the learned counsel for the respondents 3, 5 to 11 also do not dispute the alleged illegality in the impugned order dated 13.10.2025, rather, all the counsels are in agreement to some extent though have asserted that the appellate court be directed to decide the appeal afresh but they could not demonstrate any prejudice to be caused, if the matter is remanded to the Prescribed Authority by this Court itself.

41. In the instant case, the directions of Appellate Court while remanding the matter on 29.11.2003 as well as 04.04.2025 are very specific and categorical and goes to the root of the matter. A tenure holder can be subjected to the proceedings of the Ceiling Act only if on the basis of the statement, prepared as provided under Section 9 of the Act, he is found in excess of the holdings beyond the limit prescribed under the Act, as such the germane of the proceedings is the statement prepared under Section 9 of the Act. A tenure holder as provided under Sub Section 17 of Section 3, is the holder of the holding but not including a woman whose husband is a tenure holder or a minor child whose father or mother is a tenure holder. For better appreciation, a reference to Sub Section 17 of Section 3 of the Ceiling Act is necessary:

**“3. In this Act, unless the context otherwise requires—**

(17) ‘tenure-holder’ means a person who is the holder of a holding but [except in Chapter III] does not include —

- (a) a woman whose husband is a tenure-holder ;
- (b) a minor child whose father or mother is a tenure-holder ;”

42. In the instant case, the tenure holders admittedly despite being real brothers being major, independent and recorded tenure holders having succeeded their father, decades earlier to the promulgation of the Ceiling Act cannot be shun of their independent rights and all the four brothers (now deceased) have to be proceeded separately for determination of their holdings and ignoring this very basis requirement of separation of holdings of each tenure holder resulting into an apparent illegality and exercise of a jurisdiction not vested as well as in a manner not provided was rightly interfered with by the Appellate Court. The Appellate Court realizing the separation as a *sine qua non* to proceed, very rightly vide order dated 04.04.2025 directed to separate/ segregate the holdings of all the above-named four brothers and then if required to proceed for the purposes of preparation of statement as provided under the Act, and the direction for the exclusion of such land which falls within the urban/ municipal area is also in-consonance with the principles of the Act and failure to abide by the same while passing the order impugned has resulted into abuse of process of law as well as gross violation of the order of remand and also amount to judicial indiscipline.

43. The direction with regard to exclusion of the land transferred prior to the cut-off date, from the holdings of the tenure holders in the appeal preferred by the transferees vide order dated 05.10.2018 is also required to be followed before preparing the statement, but in the case in hand, it appears that while passing the impugned order, none of the directions have been followed, renders the same unsustainable in law.

44. A bare perusal of the impugned order reveals that the Prescribed Authority reproduced the directions of the remand order, dealt with the same to some extent but instead of remaining within the ambit of the same, just repeated the earlier orders without any consideration to the directions under the remand order, the provisions of the Ceiling Act and the applicable laws, more so, when there was categorical direction by the Appellate Court, in that regard. More particularly, no proper determination and segregation of the land situated within the urban area and the land falling under the ceiling area had been properly carried out.

45. It is well settled that where a matter is remanded with specific observations and directions, the subordinate authority is bound to confine itself within the limits prescribed by the remand order and cannot disregard the same.

46. It is trite in law that adherence to the principles of natural justice is a *sine qua non* for the legality of judicial and quasi-judicial proceedings, however, at the same time, it would not be out of place to note that the principles of natural justice are not confined merely to affording opportunity of hearing to the parties concerned, but also require that the proceedings be conducted strictly in the manner as prescribed under law. In the present case, the procedure contemplated under the Ceiling Act and the Rules framed thereunder was required to be scrupulously followed and the Prescribed Authority was under legal obligation to comply with and give effect to the directions issued by the Appellate Authority and to proceed in the manner specified therein. Failure to adhere with the statutory procedure as well as the directions contained in the remand order, vitiated the proceedings and rendered the impugned order unsustainable in law and amenable to the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India.

47. The provisions of the Ceiling Act being confiscatory in nature adherence to the procedure prescribed by the Act itself is mandatory. In the instant case, when the Appellate Authority remanded the matter to the Prescribed Authority with certain observations and categorical direction, the responsibility of the Prescribed Authority becomes two fold as it has to abide by the provisions as well the directions. The failure of the Prescribed Authority in adhering to the directions and provisions of the Act has given rise to the unnecessary litigation. Looking to the facts and circumstances of the case, this Court of the opinion that even if the petitioner is relegated to the statutory remedy of appeal, the outcome of the same would be a further remand, that too, will also consume time. Subjecting the tenure holders to unnecessary litigation will in no way be in the interest of justice. No doubt, if statute puts a limit on a tenure holder to hold the excess land, it should be declared surplus and taken over by

the State as provided under the Act, but such proceedings ought to be carried only after preparation of the Statement strictly in accordance with the provisions as contained in the Act, which was directed by the Appellate Authority to be adhered by the Prescribed Authority while deciding the matter after remand, which appears to have not been followed and for this reason to avoid multiplicity as well as to shorten the span of the litigation, the impugned order dated 13.10.2025 passed by the Prescribed Authority cannot be allowed to stand. Accordingly, the matter is remanded to the Prescribed Authority for re-determination afresh in accordance with law, reposing trust in the Prescribed Authority that while deciding the matter, it shall strictly adhere with the directions and observations made by the Appellate Authority vide the remand order dated 05.10.2018.

48. Considering the long history of litigation this Court directs the Prescribed Authority/respondent no. 2, to conclude the aforesaid proceedings as expeditiously as possible, preferably within a period of six months from the date a certified copy of this order is produced before it.

49. In view of what has been discussed herein-above, the impugned order dated 13.10.2025 being not sustainable in the eyes of law, is hereby **quashed** and resultantly, the writ petition stands **allowed** in terms of observation and directions made here-in-above.

50. Before parting, this Court places on record its sincere appreciation for the valuable assistance and diligent research rendered by Mr. Rajat Srivastava, Research Associate, and Ms. Mizana Kabeer, Law Intern, in finding the relevant case law applicable to the present case.

**(Syed Qamar Hasan Rizvi,J.)**

**October 14, 2026**

Virendra