



A.F.R.

Neutral Citation No. -

2026:AHC-LKO:6631

Reserved on: 27.11.2025

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**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 3000168 of 1998

Babu Khan

.....Petitioner(s)

Versus

Addl. Commissioner Admn.lucknow and others

.....Respondent(s)

Counsel for Petitioner(s)	:	M.a.siddiqui, Bhanu Bajpai, M.a. Siddiqui
Counsel for Respondent(s)	:	C.S.C., Bhanu Bajpai, Mohd Qaseem

Court No. - 4

HON'BLE IRSHAD ALI, J.

1. Heard Sri Aftab Alam, learned counsel for the petitioner and Sri S.P. Maurya, learned Additional CSC for the respondent - State.
2. The present writ petition has been filed challenging the impugned order dated 18.07.1998 passed by respondent No.1 and order dated 29.05.1997 passed by respondent No.2 and notice viz. From-III part C contained as annexures 1 to 3 to the writ petition.
3. Factual matrix of the case is that a notice under Section 10(2) / CLH Form 3-C was issued to the deceased petitioner on 29.02.1996 mentioning therein 15.65 Acres of irrigated land as ceiling surplus. In the

said notice the holdings of the deceased petitioner of Village Barethi, Tahsil Gola, District Kheri was mentioned.

4. On 18.06.1996 objection was filed by the deceased petitioner asserting therein that even the statement as prepared under CLH Form 3 has been issued with vengeance of the Lekhpal and neither the same nor proper. Deceased is correct petitioner apart from his holdings of Village Barethi also gave details of his holdings in Village Rasoolpur and also specifically asserted that in the notice all the lands with area, which has been shown to be the holding of the deceased petitioner, has also been fraudulently shown and the co-owners of the Khatas have deliberately not been mentioned and if entire land is taken together, the total holding of the deceased petitioner is 21.11 Acres. It was also asserted in the objection that holdings of the deceased petitioner un-irrigated and single crop land having no source of irrigation.

5. It was also taken as a ground in the objection that 10 Acres land of the deceased petitioner lies along the banks of the river Gomti on both sides and remain submerged and as such, 10 Acres land even does not fall within the definition of land and the total holding of the deceased petitioner as such remains 11.11 Acres, which in irrigated means comes to 7.5 Acres only.

6. It was also stated in the objection that by the son of deceased petitioner 3.13 Acres land was transferred to the opposite party no.6 - now represented by 6/1, in the year 1989 and on 25.05.1990 her name was duly mutated and since then she is in actual physical possession at the spot as well as recorded as Bhumidhar and the deceased petitioner has no concern with the said land.

7. As Apart from it, the inclusion of the holding of the major sons of the deceased petitioner in his holdings well as taking into consideration number of major sons and total number of family members, the legal

entitlement of the deceased petitioner to hold 15 Acres excess land was also stated and on the basis of all these objections asserting notice having been issued by the Lekhpal merely to harass the deceased petitioner and being baseless was requested cancelled/withdrawn.

8. Apart from deceased petitioner, his sons viz. opposite parties nos.4 & 5 as well as the transferee of one son viz. the opposite party no.6 also appeared and filed their written objections. (copy of objection is attached in annexure no.4 to the writ petition).

9. By the Prescribed Authority i.e. the opposite party no.2, after registering Ceiling Case No.34/32 under Section 10(2) of Ceiling Act namely State Vs. Babu Khan and others' and taking into consideration the objections so preferred, 6 issues were framed viz. -

(i) Whether in the statement, holdings of the objector has wrongly been shown and he has lesser holding? If so, its effect.

(ii) Whether the holding is unirrigated under Section 4-A?

(iii) Number of children of objectors and area for which he is entitled?

(iv) Whether land transferred to Begum cannot be clubbed? Akbari

(v) Whether area of Gata No.97 of Khata No. 122 has been shown 4 Acres extra?

(vi) Relief to which entitled?

10. Before the opposite party no.2, by the State as well as deceased petitioner evidence was lead and matter was heard. (statement of State witnesses are attached as annexure no.5 to 9 to the writ petition)

11. On 29.05.1997 the judgment and order was passed by the opposite party no.3/Prescribed Authority (copy of judgment and order dated 29.05.1997 is attached in annexure no.2 to the writ petition) and 15.65 Acres land of the deceased petitioner was declared surplus. While deciding the matter, issues no.1 to 3 were decided together and issues nos.4 & 5 were decided separately but all the issues were decided against the deceased petitioner merely saying that no evidence has been lead by the deceased petitioner.

12. Two separate appeals, one by deceased petitioner and other by the opposite parties no.4 & 5 were filed (copy of the memo of appeal are attached in annexure no.9 & 10 to the writ petition). In the memo of appeal, notice being prepared as a result of enmity was again stated, as the Lekhpal who prepared the notice was suspended because of the complaint of the deceased petitioner, the clubbing of the land of major sons, 10 Acres of land remaining submerged in water and hence not "Land" being not considered by the Prescribed Authority were taken as a ground.

It was also stated in the appeal that from the evidence led by the State no holding could be said to be irrigated and was illegally and wrongly held to be irrigated which was also taken as a ground. Apart from it, other grounds regarding number of family members, Non-extension of benefit of 3 major sons in the family, the wrong and illegal mention of the area, discarding of the statements and pleas taken by the appellant and even non-consideration of the arguments and judgments relied by the appellant as well as statement of witnesses produced by the State was also taken. Moreover the land mentioned to be Aabadi and Graveyard in their statement by the witnesses of the State itself having not been considered was also taken as a ground in the memo of appeal.

13. In the memo of appeal as preferred by the opposite party no.4 & 5 they being independent, living separately, having land duly recorded in their name, being wrongly clubbed in the holding of the deceased

petitioner, was stated by them and both the appeals were registered as Appeal No.278 (96-97) and 285 (96-97).

7. 18.07.1998 : Judgment and order by the opposite party no.2 in the appeal connecting both the appeals and deciding them together, was passed wherein giving reference to Rule 8 of U.P. Imposition of Ceiling on Land Holdings Rules. 1961. Issuance of notice to the opposite parties no.3 to 6 and filing of objections by them was also mentioned.

14. The opposite party no.1 reproducing the averments made by the deceased petitioner and other objectors, from para-7 onwards the observations and findings have been given, wherein firstly the land submerged and affected by floods being not a land as well as another ground i.e. land being not irrigated rather unirrigated as per Section 4-A was considered by the opposite party no.1. With regard to “submerged land” it was recorded by the opposite party no.1 that no provision of the Act could be shown by the counsel for the appellant wherein “submerged land is not land” is provided. It was observed by the opposite party no.1 that under Section 3 land is not defined and under sub-section (8) Grove land and under sub-section (4) Usar land, has been provided. In Section 3 and 4 classification of irrigated and unirrigated land is there. Moreover there is no evidence which land is flood affected/ submerged. It was observed by the opposite party no.1 that this objection is very vague and against the provisions of the Act and as such no issue was required to be framed for it and it has rightly not been framed.

15. The opposite party no.1 with regard to unirrigated land reference to Khasra of 1378 Fasli and 1379 Fasli, being available with the record of lower court was given further mentioning Gata No.23, 62, 97, 100, 101, 125 & 250. It was also mentioned in Village Barethi consolidation operation have been held but no evidence for Village Rasoolpur has been given.

16. By the opposite party no.1 referring to Khasra No.1378 to 1380 Fasli pertaining to above referred 7 gatas, it was mentioned that Wheat, Groundnut and Barley (गेहूँ, मूंगफली एवं जौ) is sowed and Gata No.23, 100 & 101 is recorded as Grove and Parti. The opposite party no.1 also mentioned that in CLH-3 no gata of village Rasoolpur is mentioned and only land of village Barethi is mentioned and it has been recorded erroneously but holding of Village Rasoolpur has not been included.

11. It was also observed by the opposite party no.1 that in 1378, 1379 & 1380 Fasli Khasra No.23, 62, 97, 100, 101 & 125 were shown and as per entries gata no.23 & 100 are Grove and gata no.101 is Parti but wrongly all gatas have been shown as irrigated and finding of the Prescribed Authority is wrong, arrived at without perusing the record.

17. The opposite party no.1 further observing that with regard to Gata No.62, 97, 125 & 250, Well is mentioned, which is not a source of irrigation under Section 4-A and thereafter holding Gata No.23 & 100 as Grove and Gata no.101 was held as unirrigated but going against the findings and discussions contained in the earlier portion of its order barring at a self contradictory conclusion Gata No.62, 97, 125 and 250 were held as irrigated by the opposite party no.1.

18. With regard to holdings of Village Barethi shown as irrigated, it has been recorded by the opposite party no.1 that Khasra No.1378-1380 Fasli are not available but Village has gone under consolidation as is apparent by CH 41. But no finding in this regard as per rule 3 of 1961 Rules has been given by the court below i.e. Prescribed Authority whereas all the Gatas have been shown as unirrigated and as such for the of Village Barethi, holding reconsideration by the Prescribed Authority under Section 4-A read with rule 3 to be proper was concluded by the opposite party no.1.

19. With regard to sons being major it was held by the opposite party no.1 that notice under Section 10(2) was issued treating 08.06.1973 as

cut off date and no evidence regarding number of family members on 08.06.1973 being there, issue no.3 was held to be rightly decided.

20. With regard to the land transferred to opposite party no.6, the land transferred was held to be part of holding of deceased petitioner by the opposite party no.1 but was ordered not to be included in the land to be declared surplus. With regard to Village Rasoolpur, the opposite party no.1 required the Prescribed Authority specifically mentioning holdings of Village Rasoolpur dispute would be decided by the Prescribed Authority.

21. With all these observations and findings the appeal preferred by the deceased petitioner was allowed whereas the appeal preferred by the sons, opposite party no.4 & 5 was dismissed but in the operative portion it was mentioned that matter is remanded. To regard to Prescribed Authority with irrigated/unirrigated land of Village Barethi further mentioning that no other issues would be considered, whereas in the body of judgment on different aspects the observations given requiring and findings were reconsideration of the matter as a whole.

22. On 06.11.1998 the instant writ petition was filed and on 07.11.1998 interim order of status quo was ordered to be maintained during pendency of the writ petition which is continuing and no proceeding in furtherance of remand order as passed by the opposite party no.1 have yet taken place before the opposite party no.2.

23. Submission of learned counsel for the petitioner is that under Section 29 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960, the deceased petitioner had lawfully acquired the land during consolidation proceedings by virtue of the order dated 20.03.1987 passed by the Consolidation Officer in Case No. 910 under Section 9-A(2), recognizing the petitioner's rights on the basis of adverse possession. The said order attained finality and was never challenged. Consequently,

the cut-off date applicable in the case of the deceased petitioner could neither be 08.06.1973 nor 29.02.1996, but necessarily the date when consolidation proceedings became final, i.e., 20.03.1987, any determination of surplus land by taking 08.06.1973 as the cut-off date is legally untenable and contrary to settled law.

24. He further submitted that in proceedings under the Ceiling Act, the burden of proof squarely lies upon the State. Unless such burden is discharged by cogent oral and documentary evidence, no adverse inference can be drawn against the tenure holder. The Ceiling Act being a confiscatory legislation mandates strict adherence to statutory provisions, principles of natural justice, and procedural safeguards. The findings recorded by the Prescribed Authority are arbitrary, cursory, and unsupported by legally admissible evidence, rendering the impugned orders unsustainable.

25. He next submitted that although “submerged land” is not expressly defined under the Ceiling Act, consistent judicial pronouncements have held that submerged land is outside the purview of ceiling proceedings and cannot be included in the holding of a tenure holder. The authorities below failed to exclude such submerged land while determining surplus area, despite settled legal position as laid down in the case of **Mahadeo v. Civil Judge, Basti, Smt. Rani Prem Kunwar v. D.J., Bareilly, Tej Pal Singh v. State of U.P. and Vibhuti Kumar Bajpai v. State of U.P.**

26. He next submitted that it is well settled that major sons do not fall within the definition of “family” under Section 2(7) of the Ceiling Act. Despite specific objections raised by the deceased petitioner, the authorities illegally clubbed the land independently held by major sons with that of the petitioner. Such clubbing is patently illegal and directly contrary to binding precedent, including **Shishu Pal Singh v. Prescribed Authority, reported in 2008 (105) RD 548.**

27. He further submitted that the Ceiling Act, being confiscatory in nature, obligates the authorities to consider each and every objection raised by the tenure holder and to pass a reasoned and speaking order. In the present case, vital issues such as actual landholding, nature of land (irrigated or unirrigated), independent holdings of major sons, and submerged land were neither properly examined nor adjudicated. The impugned orders thus suffer from apparent illegality and non-application of mind.

28. He submitted that even the statements of witnesses produced by the State substantiate the case of the deceased petitioner regarding exclusive ownership, co-tenure holdings, family composition, lack of irrigation sources and submerged nature of the land. Despite such material being on record, the Prescribed Authority failed to consider the same, rendering the order dated 29.05.1997 wholly unsustainable.

29. He lastly submitted that while passing the impugned appellate order, opposite party no.1 itself acknowledged the incorrectness and absurdity of the findings recorded by the Prescribed Authority and observed the necessity of reconsideration on several aspects. However, despite such observations, the appeal was dismissed and the matter was remanded in a limited manner, resulting in self-contradictory and mutually destructive findings, thereby vitiating the impugned judgment in its entirety.

30. In support of his submissions, he placed reliance upon following judgments:

- a) State of U.P. Vs. Commissioner Kumaon Division (Uttarakhand); 2006 (100) RD 827.**
- b) State of U.P. vs. Additional Commissioner Meerut Div. Meerut; 2006 (100) RD 491.**
- c) Noorullah Vs. Additional Commissioner, Meerut Division, Meerut; 2007 (102) RD 763.**

- d) Mahadeo Vs. Civil Judge, Basti (Allahabad); 1978 RD 309.**
- e) Rani Prem Kunwar vs. The District Judge, Bareilly (Allahabad); 1978 (4) ALR 508.**
- f) Tej Pal Singh Vs. State of Uttar Pradesh; 1999 (90) RD 424.**
- g) Vibhuti Kumar Bajpai Vs. State of U.P.; 2008 (105) RD 185.**
- h) Shishu Pal Singh Vs. Prescribed Authority; 2008 (105) RD 548.**

31. On the other hand, learned Additional CSC submitted that the petitioner has not disclosed the numbers of gatas allegedly acquired during consolidation proceedings either in the objections dated 18.06.1996 (Annexure-4) or in the memo of appeal (Annexure-9). No issue was framed nor any evidence adduced on this aspect before the Prescribed Authority. It is settled law that a case cannot be decided on grounds beyond pleadings. Any argument raised for the first time before this Hon'ble Court is not sustainable.

32. His next submission is that Form-3 was issued after due scrutiny of revenue records. If exemption was claimed on the basis of major sons or number of family members, the burden squarely lay upon the tenure-holder. The petitioner himself stated in para-4 of objections dated 18.06.1996 that Taiyab Khan, Tauhid Khan and Vaheed were aged 31, 26 and 24 years respectively on 18.06.1996, meaning thereby that all were minors on the cut-off date i.e. 08.06.1973. Consequently, no additional benefit under the Act was admissible. The petitioner also failed to produce any evidence to prove the total number of family members. These findings have been rightly affirmed by the appellate court.

33. He further submitted that though the petitioner vaguely alleged existence of 10 acres of submerged land, he failed to mention specific Gata numbers or to produce any documentary evidence. In absence of specific pleadings and proof, no issue could have been framed. The petitioner never challenged the framing of issues before the competent

forum. The appellate court examined this plea and rejected it by a reasoned order.

34. His next submission is that the appellate court made an elaborate discussion on pages 18–19 of its judgment and, on the basis of Khasra entries of 1378–1380 Fasli, correctly held Gata Nos. 23, 62, 97, 100, 101, 125 and 250 as irrigated land and Gata Nos. 23 & 100 as grove land, while Gata No. 101 was declared unirrigated land of village Rasoolpur. Since Khasra entries of village Barethi were not filed, the limited issue of irrigated/unirrigated land of Barethi was rightly remanded under Section 4-A of the U.P. Imposition of Ceiling on Land Holdings Act.

35. His further submission is that Tauhid Khan and Taiyab Khan did not challenge the appellate order dated 29.05.1997 by filing any writ petition. Hence, the findings recorded therein attained finality against them. The petitioner cannot now seek exclusion of their land indirectly. Further, the sale deeds executed in favour of Akbari Begam in the year 1989, after the cut-off date, were duly protected by the appellate court, and Gata Nos. 125 and 128 were rightly excluded from surplus declaration.

36. His last submission is that both the Prescribed Authority and the Appellate Authority have recorded concurrent findings on all material issues except a limited remand on irrigated/unirrigated land of village Barethi. The petitioner has unnecessarily lingered the matter for over 26 years. The writ petition lacks merit and is liable to be dismissed on the ground of delay, laches, and absence of any perversity or illegality. He also submitted that the present writ petition be dismissed with costs, as the impugned orders are just, legal, and based on proper appreciation of facts and law.

37. In support of his submissions, he placed reliance upon following judgments:

- a) **Kishundeo Rout and others Vs. Govind Rao and Others; Special Leave Petition (Civil) No.22070 of 2025 (Diary No.30361) decided on 08.08.2025.**
- b) **Bechan Pandey and others Vs. Dulhin Janki Devi and others; (1976) 2 SCC 286.**
- c) **T.H. Musthaffa Vs. M.P. Varghese and others; (1999) 8 SCC 692.**
- d) **Kalyan Singh Chouhan vs. C.P. Joshi; (2011) 11 SCC 786.**

37. I have considered the submissions advanced by learned counsel for the parties and perused the material on record.

38. To resolve the controversy involved in the matter, the judgments relied upon by learned counsel for the parties are being quoted below:

Judgments relied upon by learned counsel for the petitioners:

- a) **State of U.P. Vs. Commissioner Kumaon Division (Uttarakhand) (Supra):**

5. *The learned Counsel for the respondent Nos. 2 and 3 vehemently submitted that in the present case, the land was purchased and held by major sons of tenure-holder, hence that cannot be declared surplus under the U.P. Imposition of Ceiling on Land Holdings Act, 1961. In support of his contention, the learned Counsel for the respondents has placed reliance on a Division Bench Judgment of the Allahabad High Court in the case of "Mohammad Abbas v. State of U.P., [1979 (5) ALR 206.] wherein it has been held that "If land is held by the major sons of the tenure-holder, it is neither to be included in the holding of the tenure-holder nor can it be included in the land sought to be declared surplus." In para No. 4 it has been observed that "Since land held by the major sons of the tenure-holder was not land which would have been declared surplus under the Act, the transfer of that land could not be ignored in determining the ceiling area applicable to the tenure-holder although the land was transferred after the 24th day of January 1971. I have gone through the case-law and I am in full agreement with the view taken by the Allahabad High Court. As stated earlier, the fact that the respondent Nos. 2 and 3 were major at the time of purchase of land by them.*

b) State of U.P. vs. Additional Commissioner Meerut Div. Meerut (Supra):

6. I have heard Standing Counsel for the petitioner. No one has put up appear ance on behalf of the Respondent. Sri R.N. Singh has made submissions on his behalf as a friend of the Court. Following points arise for determination:

(i) What is the relevant date for determining the surplus land in proceedings under section 29/30 of the Act? Is it the date of commencement of the amending Act. (i.e. 8.6.1973).

(ii) In case the relevant date for proceeding under section 29/30 of the Act is different then the date of enforcement of the amending Act (8.6.1973), then whether of the family members are to be determined with reference to 8.6.1973 or to the relevant date for the proceeding under section 29/30 of the Act.

POINT No. 1: THE DATE OF ACQUIRING LAND IS THE RELEVANT DATE

7. Sub-section (1) of section 5 of the amended Act [(section 5(1)] provides that from the date of commencement of the amending Act (i.e. 8.6.1973) no tenure holder will be entitled to hold land in ex cess of the ceiling area applicable to him. The other sub-sections of section 5 provide the ceiling area applicable under the Act. Sub-section (7) of section 3 defines the word 'family'. It means the tenure holder his wife or husband as the case may be, minor sons and minor unmarried daughters. Sub section (3) of section 5 provides the ceiling limit of 7.30 hectares in case of a tenure holder who has a family of not more than 5 members. In case the family of a tenure-holder consist of more than 5 members then he is entitled to 2 additional hectares of land for each additional member, subject to maximum of 6 hectares of additional land.

8. Section 29 of the Act provides for the subsequent declaration of further land as surplus land. It provides that ceiling area is liable to be re-determined in case any tenure holder comes to hold any land in anyone of the following contingencies:

(i) under the decree or order of any Court,

(ii) as a result of succession,

(iii) by transfer,

(iv) by prescription in consequence of adverse possession,

(v) any unirrigated land becoming irrigated land as a result of irrigation from the State irrigation Work,

(vi) any grove land loosing its character as grove land, and

(vii) any land exempted under the Act ceasing to fall under any of the categories exempted.

9. Section 30 of the Act provides determination of surplus land regarding future acquisition. It provides that where any land is liable to be treated as surplus land under section 29 of the Act, then the tenure holder is required to submit a statement to the Prescribed Authority in the manner provided under section 9 of the Act. It further provides that in case he fails to submit the same, the Prescribed Authority is to proceed for re-determination of land as provided under section 10 of the Act. The provisions of the Act in respect of declaration, acquisition, disposal and settlement of surplus land are to be applied as far as applicable in determination of surplus land in these proceedings.

10. In the earlier ceiling proceeding the ceiling area in the hands of the Respondent was determined with reference to 8th June, 1973. Smt. Lalli widow of Raghubir Singh died on 5th February, 1981 and her property devolved on the Respondent. The order of the Prescribed Authority records that the Respondent did not dispute these facts. As the Respondent acquired the land through succession, section 29 of the Act became applicable and the surplus land in the hands of the Respondent is liable to be redetermined.

11. Sections 29 and 30 provide for redetermination of ceiling area on happening of certain events in case they are applicable then it is logical that the ceiling area should be determined with reference to the date on which those events happened. The date—on which events contemplated under section 29 occurred—is the relevant date in proceeding under section 29 of the Act. The date of commencement of the amending Act (i.e. 8.6.1973) is not relevant for proceeding under section 29/30 of the Act.

12. I am not alone in taking this view. A Single Judge in *Swamidin v. State of U.P.* [1996 (87) RD 320.] (The *Swamidin* case) has held as follows:

The language of said section (section 29) is very clear which permits redetermination with reference to a date after enforcement of amending Act. This rules out the possibility of ceiling area being determined with reference to the date of enforcement of amending Act. The only date which can be taken into consideration for redetermining the ceiling area under section 29(b) can be the date on which an unirrigated land becomes irrigated as a result of irrigation from State Irrigation Work and it is on fulfilment of this condition alone that the jurisdiction gets conferred on the authority concerned to redetermine the ceiling area. It is a condition precedent for invoking the power for redetermination if petitioner holds land beyond ceiling limit.

13. A Division Bench in *Satish Chandra Mathur v. State of U.P.* [1985 (2) U.P.C. & RCR 1287.] (The *Satish Chandra* case) has held as follows:

'For the purpose of determining the ceiling area of a tenure holder on the enforcement of U.P. Act No. 18 of 1973, 8.6.1973 is relevant date with reference to which it has to be determined. But as regards the land acquired or came to be held by a tenure holder after 8.6.1973, the relevant date with reference to which the ceiling area has to be determined is the date on which he acquired the land or came to hold it.'

21.(b) The date-on which events contemplated under Section 29 occurred is the relevant date in proceedings under Section 29 of the Act.

c) Noorullah Vs. Additional Commissioner, Meerut Division, Meerut (Supra):

7. After the conclusion of previous ceiling proceedings in favour of the petitioner, the petitioner was at complete liberty to transfer the land. If due to subsequent development of unirrigated land becoming irrigated or acquisition of some land by a person fresh ceiling proceedings are initiated under section 29/30 of the Ceiling Act then 24.1.1971 or 8.6.1973 cannot be taken as cut off dates. In that eventuality the cut off date will be the date on which subsequent acquisition takes place or unirrigated land becomes irrigated. Suppose on 8.6.1973 a person has got no surplus land. Thereafter in the year 1980 he purchases some land and the land already held by him and the land purchased by him clubbed together are more than the ceiling limit then ceiling proceedings may be initiated. However in that eventuality the cut off date would be the date on which he acquired fresh land. The number of family members the minority/majority of sons will also have to be seen on the date on which he purchased fresh land. Similarly if before purchasing the fresh land the purchaser had transferred some of his land then the said transfer will also have to be honoured and taken as correct. It cannot be said that as the said transfer is after 8.6.1973 hence it is void.

d) Mahadeo Vs. Civil Judge, Basti (Allahabad) (Supra):

It appears that the petitioner filed an application for the setting aside of that order on the ground that the same was passed ex parte and prayed for a re hearing of the appeal. That application was rejected by an order dated 13-3-1976. The petitioner then filed the instant writ petition challenging the orders of the two authorities below, inter alia, on the ground that the land forming part of the river bed of river Ghagra could not be included in the holding of the petitioner and was exempt from the operation of the Ceiling Act. He further contended that the two authorities below had erroneously held that no part of the petitioner's holding was unirrigated land and no part of it was covered by grove. We have heard the learned counsel for the parties. The finding recorded on the question of irrigated nature of the petitioner's land is a finding of fact and cannot be disturbed in this petition. But we find force in the petitioner's contention that the land forming part of the bed of river Ghagra could not be taken into account for determining the

ceiling area of the petitioner and declaration of the surplus land. The land forming part of river bed in our opinion is not a holding to which the Act applies. Holding is defined in S. 3(9) of the Act as follows:

“Holding means the land or lands held by a person as a Bhumidhar, Sirdar, Asami of a Gaon Sabha or an Asami mentioned in S. 11 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 or as a tenant under the U.P. Tenancy Act 1939 other than a sub-tenant, or as a Government lessee, or as a sub-lessee of a Government lessee, where the period of the sub-lease is co-extensive with the period of the lease.”

Under S. 21(1)(c) of U.P. Zamindari Abolition and Land Reforms Act every person who on the date immediately preceding the date of vesting occupied or held land as a non-occupancy tenant of pasture land or of land covered by water and used for the purpose of growing Singhara or other produce or of land in the bed of a river and used for casual or occasional cultivation shall be deemed to be an Asami thereof. S. 132(a) of that Act provides that no sirdari right shall accrue in pasture lands or lands covered by water and used for the purpose of growing singhara or other produce or in land in the bed of a river and used for casual or occasional cultivation. Thus a tenure holder of land in the bed of a river is an Asami of that land under S. 21(1)(e) read with Sec. 132 of the Z.A. and L.R. Act. S. 3(9) of the Act defines holding to include the holding of an Asami of only two categories. viz. Asami of a Gaon Sabha and Asami mentioned in S. 11 of the U.P. Zamindari; Abolition and Land Reforms Act. An Asami under S. 21(1)(e) read with S. 132 of the U.P. Zamindari Abolition and Land Reforms Act, is not included in the categories of Asamis mentioned in S. 3(9). Accordingly, the land of an Asami other than an Asami of a Gaon Sabha or one mentioned under S. 11 cannot be included in the statement prepared under Section 10(1) of the Act for determining the ceiling area. It has been found by the two authorities below that part of the land of the petitioner formed part of the bed of river Ghagra. The petitioner accordingly became Asami of that land under S. 21 read with S. 132 of U.P. Zamindari Abolition and Land Reforms Act and this part of his holding could not be included in the ceiling operations unless some other kind of tenure was found to exist therein which was covered under the Ceiling Act. It may be possible for the State to show by reference to statutory provisions or other materials on record or by production of further material that the nature of tenure in respect of this land was of a different kind. But since there is nothing on the record of the present preceding to suggest that there was any other kind of tenure except that of an Asami of the kind mentioned above it seems appropriate to remand the case to the appellate authority to predetermine the ceiling area after allowing the parties to adduce such evidence in the case as they consider necessary.

e) Rani Prem Kunwar vs. The District Judge, Bareilly (Allhabad)
(Supra):

4. Obviously plot no. 135 is not used for purposes connected with agriculture, horticulture or animal husbandry and it cannot be regarded as land. This question came up for consideration before the Board of Revenue in the case of Ram Autar v. Lala Laxminath [1975 R.D. 232.] , in which it was held that where all the land was under water and the use of a small portion of it for growing crops like Bajra and paddy cannot be considered use connected with the agriculture or use for any such other purpose as would render the land within the meaning of the definition of that word in section 3(14) of the U.P. Zamindari Abolition and Land Reforms Act (I of 1951). This view is obviously correct because the preamble of the U.P. Imposition of Ceiling on Land Holdings Act, 1960, states as follows:

“Whereas it is necessary in the interest of the community to ensure increased agricultural production and to provide land for landless agricultural labourers and for other public purposes as best to subserve the common good;

And whereas a more equitable distribution of land is essential;

And, therefore, it is expedient to provide for the imposition of ceiling on land holdings in Uttar Pradesh for the aforementioned purposes;”

5. The preamble makes it clear that the Act has been passed to provide land for landless agricultural labourers and for a mere equitable distribution of land as also in the interhst of community to ensure increased agricultural production and for other public purposes as best to subserve the common good. The object of the Act, therefore, is to carve out land from the large holdings so that the remaining holdings may be manageable and capable of more intensive cultivation as also to provide land to those who could not have got it or who have very little of it. Obviously this purpose cannot be achieved unless there is land. A land which remains submerged with water and which cannot be used for any purpose contemplated by Section 3(14) of U.P. Act I of 1951 cannot be regarded as land nor it can serve the purposes contemplated by the preamble of the U.P. Imposition of Ceiling on Land Holdings Act.

f) Tej Pal Singh Vs. State of Uttar Pradesh (Supra):

4. The question as to whether the land of the petitioner is submerged under water or not cannot be decided only from the entries mentioned in the records or upon the statement of Lekhpal. In view of the directions of the Apex Court, it was incumbent upon the Prescribed Authority to have made spot inspection in the presence of the petitioner and to have prepared a detailed report about the plots which are alleged to be submerged under water.

5. Similarly, for deciding the question of irrigated land under Section 4A of the Act, since the allegation of the petitioner was that the plots were sandy and the soil was not capable of growing double crop, the Prescribed Authority ought to have made spot inspection in the presence of the petitioner and prepared a detailed report about each of the plots in dispute separately.

g) Vibhuti Kumar Bajpai Vs. State of U.P. (Supra):

11. The only point which falls for consideration is whether the land covered by water i.e. to the extent of share of the petitioner in plots No. 226 and 227 in respect of Village Sisendi and 412 and 425 in respect of village Bhaundri is within the definition of land as contemplated under section 3(14) of the Z.A. Act. The evidence on record goes to show that the khasra entries indicate that the land on spot is tank. The Pradhan of Village Sisendi, Shri Nanhe Singh has appeared as witness and has stated that the land remains covered under water throughout the year and no cultivation takes place on the same.

12. The identical controversy arose in a case before this Court in the case of *Tej Pal Singh v. State of U.P.* [1999 (90) RD 424.] and the Court, while observing that in spite of directions of the Supreme Court dated 1.12.1987 given in S.L.P. No. 3654 of 1987 that the petitioner's ceiling area be re-determined after arriving at a finding as to whether the plots of the petitioner are irrigated and submerged under water or not, the Courts below have not adverted to the question involved in the light of judgment of the Supreme Court, allowed the writ petition and set aside the orders impugned and also remanded the matter to the Prescribed Authority for making spot inspection. The relevant portion of the said judgment is as follows:

“3. The Prescribed Authority and in appeal, the Additional Commissioner mentioned in their judgments the two directions given by the Supreme Court which were required to be followed by the respondents, but while deciding the case of the petitioner, only gave lip service to the directions of the Supreme Court. The directions of the Apex Court are binding and its non-compliance directly or indirectly amounts to non-application of mind.

4. The question as to whether the land of the petitioner is submerged under water or not cannot be decided only from the entries mentioned in the records or upon the statement of Lekhpal. In view of the directions of the Apex Court, it was incumbent upon the Prescribed Authority to have made spot inspection in the presence of the petitioner and to have prepared a detailed report about the plots which are alleged to be submerged under water.”

13. In another case *Rani Prem Kunwar v. District Judge, Bareilly* [1978 (4) ALR 508 : 1978 AWC 431.] again the question arose as to whether the land submerged with

water can be treated to be the land for the purposes of the Act. This Court after considering the definition of the land laid down as under:

“5. The preamble makes it clear that the Act has been passed to provide land for landless agricultural labourers and for a more equitable distribution of land as also in the interest of community to ensure increased agricultural production and for other public purposes as best to subserve the common good. The object of the Act, therefore, is to carve out land from the large holdings so that the remaining holdings may be manageable and capable of more intensive cultivation as also to provide land to those who could not have got it or who have very little of it. Obviously this purpose cannot be achieved unless there is land. A land which remains submerged with water and which cannot be used for any purpose contemplated by section 3(14) of U.P. Act 1 of 1951 cannot be regarded as land nor it can serve the purposes contemplated by the preamble of the U.P. Imposition of Ceiling on Land Holdings Act.

6. The learned Standing Counsel has referred to sections 3(2), 3(9), 3(16) and 3(17) which define ceiling area, holding, surplus land and tenure-holders respectively. His contention is that if the petitioner is tenure-holder of plot No. 135 and it is not exempted from section 6 of the Act it will be included in determining the ceiling area. I am reluctant to subscribe to this view because in all these proceedings the word used is, ‘land’ which is defined in section 3(14) of U.P. Act 1 of 1951 only. As discussed above, plot No. 135 does not fall within the definition of land and it cannot be taken into consideration in determining the ceiling area. The learned District Judge committed manifest error of law by including it in that area.”

14. In the case in hand also khasra of 1380 fasli of village Sisendi goes to indicate that 28-3-18 in plot No. 226 has been recorded as talab in the name of the petitioner and the rest has been recorded as banjar. The khasra of 1378 fasli of village Bhaundri does not indicate any land covered with water but argument has been raised in respect of plots No. 412 and 425. The khasra of 1378 fasli with respect to village Govindpur also does not indicate any land covered with water except banjar and usar. The khasra of 1380 fasli pertaining to village Sisendi indicates that plot No. 226 to the extent of 28-3-18 and 6-3-19 is tank and plot No. 227 measuring 96-15-2 is also a tank to the extent of 29-15-2. The khasra of plot No. 1379 fasli of village Sisendi indicates only 6-3-19 as tank and khasra of 1378 fasli indicates in plot No. 226 petitioner's share as 28-3-18 and 6-3-19 and in plot No. 227 the joint name of all the three brothers has been shown and the area of tank has been shown as 29-15-2. All these entries go to show that the question as to what extent the land is covered under water and is submerged in water and no cultivation is taking place on the same, has not been taken into

consideration by the Prescribed Authority. The contention of the parties before the Prescribed Authority and the Appellate Authority can only be verified in a correct decisive manner after the Prescribed Authority makes a spot inspection, as held in the case of Tej Pal Singh (supra), if the Prescribed Authority comes to the conclusion that the land in question is submerged under water and no cultivation takes place on the same, then the same would be excluded from the ceiling area as ruled by this Court in Rani Prem Kunwar (supra).

h) Shishu Pal Singh Vs. Prescribed Authority (Supra):

4. The learned Counsel for the petitioners submitted that the petitioners are not included within the term "family" defined under Section 3(7) of the Act and in order to include their holding by placing reliance on Explanation-1 of Section 5 of the Act, heavy onus lies upon the State to prove that the holding was benami, i.e., "ostensibly in the name of any other person, though it is a land held by him in his own rights". In the case in hand, the respondents have proceeded otherwise by observing that the petitioners did not produce any evidence to show that the land was not held by petitioner's father in his own rights and, therefore, the basic approach of the respondents is clearly erroneous, illegal and contrary to law. He has also placed reliance on a single judgment of this Court in Writ Petition No. 2315 of 1977 Banshi Singh v. District Judge, Moradabad decided on 3-1-1979. The learned Standing Counsel opposed the submission and supported the reasons assigned by the respondents.

5. It would be appropriate to consider what the Act has prohibited and in what manner. Section 5 of the Act imposes ceiling on the land providing that no tenure holder shall be entitled to hold in the aggregate throughout U.P., any land in excess of ceiling area applicable to him. The term "tenure-holder" has been defined in Section 3, sub-section(17) of the Act and reads as under:

"3. Definitions.-.....

(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;"

6. The term "holding" has been defined in Section 3(9) and reads as under:

"3. (9) 'holding' means the land or land held by a person as a bhumidhar, sirdar, asami or Gaon Sabha or an asami mentioned in Section 11 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, other

than a sub-tenant, or as a Government lessee, or as a sub-lessee of a Government lessee, where the period of the sub-lease is co-extensive with the period of the lease;"

7. The term 'family' in relation to tenure holder has been defined in Section 3, sub-section (7) and reads as under:

"3. (7) 'family' in relation to a tenure-holder, means himself or herself and his wife or her husband, as the case may be (other than a judicially separated wife or husband), minor sons and minor daughters (other than married daughters);"

8. It is evident from the record that Het Ram had his own holding. Besides, the six petitioners, who are the sons of late Het Ram Singh, also have purchased certain holdings in their names through different sale-deeds which were exclusively in their names. However, the Lekhpal and Tehsildar included all the said holdings in the name of late Het Ram Singh showing that in total, he had 25.81 acres of land and, therefore, 17.40 acres of land was liable to be declared surplus. The case of the petitioners was that their holding were separate, they were residing separately and, therefore, their holdings, which they have purchased through their own separate sale deeds, cannot be included or clubbed with the holding of late Het Ram Singh. The appellate authority has rejected the appeal only on the ground that the petitioners contention that they were residing separately from their father cannot be accepted since one of the petitioners Shishu Pal Singh has obtained loan for purchasing a tractor after getting his father's land mortgaged and the onus to prove that they were residing separately lies upon the petitioners, which they did not discharge.

9. From the order of the appellate authority, it appears that he proceeded on the assumption that once notice under Section 10(2) of the Act has been issued based on the inquiry of the Lekhpal and Tahasildar etc. alleging that the noticee held certain holding in his own rights though ostensibly in the name of other, it is the liability of the noticee to prove otherwise. This approach is absolutely misconceived and contrary to law. Explanation-1 of Section 5 is in the nature of exception inasmuch normally every tenure holder is entitled to hold a land to the extent provided in the Act, but in a case where the land actually belongs to one but has been purchased in the name of some other person, that is a kind of benami transaction, in that case only to prevent such cases so as not to frustrate the very purpose of the Act, the explanation-1 has provided that such land shall be included in the holding area of a tenure holder, but to prove the existence of such fact, the onus lies on the State heavily and not otherwise. Explanation-1 read with Section 5 is very clear that neither it purports to add nor to limit the normal meaning of the expression 'tenure-

holder' as defined in Section-3, sub-section (17) of the Act and, thus, clearly shows that the land must be held by the tenure holder in his own rights. In case, the State claims that any land is held ostensibly by the tenure holder, the onus lies upon the State to establish the same. A somewhat similar issue came up for consideration before a Division Bench of this Court in Mohammad Abbas v. State of U.P., 1979 AWC 23 : (1979 All LJ 326). There two major sons of the tenure holder executed sale deeds on 12-5-1971, 7-9-1971 and 8-3-1972 transferring the entire land recorded in their names. Thereafter, the tenure holder claimed two additional hectares of land on the ground that his two major sons did not hold any land on the appointed date, i.e., 8-6-1973, but the said claim was rejected by the ceiling authorities holding that the transfer of land by major sons after 24-1-1971 was liable to be ignored as they could not establish that the sale deeds were executed in good faith and for adequate consideration. Referring to Section 5, sub-section (3) of the Act, the Court held that the ceiling area to which a tenure holder is entitled is fixed with reference to the number of members in the tenure-holder's family and land held by other members of the tenure-holder's family is to be aggregated with the land held by the tenure holder. The word "family" as defined in the Act in relation to a tenure holder, means himself or herself and his wife or her husband, as the case may be (other than a judicially separated wife or husband) minor sons and minor daughters (other than married daughters).

9. It shows that the said definition does not include the major sons of the tenure holder. By virtue of Section 5(3), if the tenure holder is a male, land recorded in the name of his wife, provided she is not a judicially separated wife, and minor sons and minor daughters can be clubbed in determining the ceiling area which the tenure holder is entitled to retain. This shows that the land held by the major sons is not to be included in the holding of the tenure holder. The only possibility for including the said land, therefore, would have been if Explanation-1 of Section 5(1) would have been applicable, namely, if the land is ostensibly held by the tenure holder in the name of any other person, but for the said purpose, heavy burden lies upon the State to prove this fact. Considering this aspect of the matter with reference to Explanation-1 to Section 5(1) of the Act, another Division Bench of this Court in Banshi Singh (supra) wherein this Court held as under:

"Explanation 1 of Section 5(1) clearly shows that when the State alleges that the land is ostensibly being held by a tenure-holder in the name of any other person which should be treated as the land belonging to the tenure-holder then the burden lies upon the State to prove this fact. Merely because in the notice the State has clubbed the land belonging to others under the pretext that it is being held ostensibly in the name of sons or any other person, the burden cannot be said to have been

discharged. Once a notice under Section 10(2) is served upon the tenure-holder he has to show cause and while showing cause if the tenure-holder establishes by prima facie evidence by filing documents or by giving evidence that the land was being held by other persons in their own capacity, the burden shifts upon the State to establish the fact that the land is being held by the tenure-holder ostensibly in the name of others. In order to discharge this burden the State has to establish by some cogent and satisfactory evidence that the land is being held by the tenure-holder. Merely because the land has been clubbed in the land of petitioner No. 1 in the notice issued under Section 10(2) of U.P. Imposition of Ceiling on Land Holdings Act or merely because the Lekhpal gives a statement that the petitioner is in possession, is not sufficient to discharge that burden and to establish that the land was ostensibly being held by the tenure-holder in the name of others. In the present case petitioner No. 1 led evidence by showing that the names of the sons were entered in revenue records right from 1264-F and after the partition their names were entered separately on the basis of the partition decree. When the State was alleging that the land was being ostensibly held by petitioner No. 1, the State had to discharge that burden by giving cogent and satisfactory evidence. In the present case no such evidence was adduced and the mere statement of the Lekhpal was not sufficient to rebut the evidence and to hold that the land was being held ostensibly by petitioner No. 1 in the names of the sons."

10. Moreover, the only reason for non-suiting the petitioners given by the appellate authority that the land of Het Ram Singh was given as security for obtaining loan by one of the petitioners and thus shows that the entire holding belong to Het Ram Singh, in my view, is thoroughly misconceived. It is very difficult to co-relate the said transaction to the conclusion which has been drawn by the learned appellate authority. A father and son having separate holding, residing separately but if help each other in their period of difficulty or whenever necessity arises, would not mean that they constitute one unit and entire thing belong to the father or the son, as the case may be. In Indian society and in common practice, if the sons or daughters or even brothers or other relatives needs help, the first helping hand would be that of normally the relatives or the friends and, therefore, for purpose of land, if Het Ram's land was mortgaged with respect to the petitioner No. 1, that itself would not justify the conclusion that the entire holding belong to Het Ram in his own right though ostensibly in the name of the petitioners. The petitioners gave their statements that they are all residing separately. Mere non-production of ration-card cannot justify an inference that the statements given on oath by the petitioners were false unless some evidence is produced by the State to show the said averment to be incorrect. From a bare reading of the appellate order, it is evident that it has solely proceeded on the assumption as if the onus lies

upon the petitioners to show that the holding was separate, ostensibly in their names and did not belong to their father Het Ram Singh. The basic approach of the appellate authority in the present matter is clearly illegal and contrary to law.

Judgments relied upon by learned counsel for the respondent:

a) Kishundeo Rout and others Vs. Govind Rao and Others

(Supra):

25. This rule that pleadings and proof must correspond, rests upon the principle that no party should be prejudiced by being taken by surprise by varying the case as originally Set up. In the words of Mahajan, J., in Trojan and Co., Ltd. v. RM. N. N. Nagappa Chettier, (1953) 1 SCC 456 : 1953 SCR 789 (806). "It is well settled that decision of a case cannot be based on grounds outside the pleadings of the parties and it is a case pleaded that has to be found."

26. The correct test as to when a plea of adverse possession, when not taken in the plaint, can be raised later on in appeal, was laid down by Calcutta High Court in Nepen Bala Debi v. Siti Kanta Banerji, 8 I.C. 41 in the following words:

"Where no case of acquisition of title by adverse possession is made in the plaint, nor is the question raised directly or indirectly in any of the issues, the plaintiff ought not to be allowed to succeed upon such a case. On the other hand, as pointed out by this court in the case of Lilabati Misrain v. Bishun Chobey, when the question reduces itself to one of law, upon facts admitted or proved beyond controversy, it is not only competent to the Court, but expedient in the interest of justice to entertain the plea of adverse possession, if such a case arises on the facts stated in the plaint and the defendant is not taken by surprise. The true test, therefore, to be applied to determine whether the plea of title by adverse possession should be allowed to be urged though not explicitly raised in the plaint, is, how far the defendant is likely to be prejudiced if the point is permitted to be taken."

29. In the case at hand if plea of adverse possession had been taken in the plaint, and if that plea had been traversed by the defendants and then proper issues framed, a heavy burden would have laid on the plaintiffs to lead evidence in support of their hostile claim and a corresponding opportunity of rebuttal would have been given by law to the defendants. In this case it is inconceivable that the question of adverse possession can become the subject-matter of adjudication on this record in the absence of proper plea, issue or proof.

30. The above discussion leads us to the only conclusion, and that is, that, unless the plea of adverse possession has been specifically raised in the pleadings, put in issue, and then cogent and convincing evidence led on a multitude of points, and an opportunity to refute the case made out by the plaintiff, availed of by the defendant, the plea of adverse possession cannot be allowed to be flung as a surprise, on an unsuspecting defendant, for the first time in appeal.

**b) Bechan Pandey and others Vs. Dulhin Janki Devi and others
(Supra):**

7. In appeal before us Mr Sarjoo Prasad on behalf of the appellants had made a number of contentions, but in our opinion, it is not necessary to go into all of them for the appeal is liable to be dismissed on the short ground that the plaintiff-appellants have failed to establish that the land in dispute is the same as had been purchased in auction by Maina Kuer as per sale certificate dated February 26, 1935 and was thereafter leased on her behalf in favour of the appellants as per two lease deeds dated September 27 and 30, 1940. It is not disputed that if on the above view of the matter the appellants are found to have not proved their title to the land in dispute, the question of going into other contentions would not arise. Mr Sarjoo Prasad, however, submits that the defendant-respondents did not dispute in the trial court that the land in dispute was the same which had been purchased by Maina Kuer in auction sale and had been leased in favour of the plaintiffs. We find it difficult to accede to this submission. In para 15 of their written statement Defendants 2, 3, 12 and 14 stated as under:

“That Maina Kuer was not at all auction purchaser of the property in dispute nor was she a proprietor nor zamindar nor was she at any time in possession and occupation of the lands in dispute. The allegation of the plaintiff in respect of these facts are altogether wrong.”

In the same language is couched para 15 of the written statement of Defendant 7 who filed a separate written statement. It was incumbent in view of the averments in para 15 of the written statements for the plaintiff-appellants to establish by clear evidence that the land in dispute was the same which had been purchased in auction sale by Maina Kuer and had been subsequently leased by her in favour of the appellants. The learned Judges of the High Court discussed the oral and documentary evidence which had been adduced in the case and came to the conclusion that there was no cogent material to show that the land in dispute was the same which had been purchased by Maina Kuer and had been leased by her in favour of the appellants. After hearing Mr Sarjoo Prasad we find no sufficient ground to take a different view. The land which had been purchased by Maina Kuer in the auction sale as

per sale certificate dated February 26, 1935 was situated in Balia district in the State of Uttar Pradesh on the left bank of the Ganges. The land which is the subject-matter of the present, litigation is situated in Shahbad district in the State of Bihar on the right bank of the Ganges. Although the land is subject to river action, the onus to prove that the land in dispute in Shahbad district represents the land which got submerged as a result of the river action in Balia district was upon the plaintiff-appellants. The appellants have failed, as held by the High Court, to discharge this onus.

8. Mr Sarjoo Prasad took us through the evidence of Ram Pachisa Lall (DW 3) and Nanku Lall Singh (DW 5), but the evidence of these witnesses is far from proving that the land in dispute is the same as was purchased by Maina Kuer. The evidence of Raghunath Prasad (PW 6), to which also passing reference was made, is not sufficient to connect the land in dispute with sale certificate dated February 26, 1935.

c) T.H. Musthaffa Vs. M.P. Varghese and others (Supra):

10. The pleading raised in the case does not refer to either Rule 39 or Rule 56 of the rules much less to the "Pamphlet Showing Illustrative Cases of Valid and Invalid Postal and Ordinary Ballot Papers" issued by the Election Commission of India, nor are any specific allegations found in the case. The allegation made in the course of the petition is that there is wrong acceptance of invalid votes polled for Respondent 1. It is not made clear as to how many votes are liable to be rejected for using wrong instrument by the voters for expressing their preference. There is no further indication as to how many of such votes had been polled in favour of Respondent 1 so as to materially affect the result of the election. In the absence of such plea the learned Judge could not have granted the relief of re-count. Therefore, the view taken by the High Court that the pleadings are insufficient to order re-count is perfectly in order. So far as the evidence that had been adduced in the case is concerned, it need not have been looked at by the learned Judge in the absence of appropriate pleadings in that regard. However Shri E.M.S. Anam, the learned counsel for the appellant submitted that the fact that votes in the two polling stations at Varikoli School and Puttannoor School had been cast by using a wrong instrument was not in dispute and the evidence of the Returning Officer clearly indicated the use of the wrong instrument in the two polling stations which amounted to an admission in the case and, therefore, even in the absence of an appropriate pleading in that regard the evidence could be looked at. We fail to appreciate this argument. Unless the appellant had put forth his case in the pleading and the respondents are put on notice, the respondents cannot make an admission at all and there

is no such admission in the course of the pleadings. If the pleadings did not contain the necessary foundation for raising an appropriate issue, the same cannot go to trial. Any amount of evidence in that regard, however excellent the same may be, will be futile. Therefore, the learned counsel is not justified in making the said submission and the same is rejected. The learned Judge noticed that the appellant, though had raised objection in this regard in the application for re-count, did not reiterate the same in second application much less any averment is made in the petition. The learned Judge held, in our view, rightly that there is no pleading in this regard and the evidence adduced cannot be looked into as no issue thereto arises.

d) Kalyan Singh Chouhan vs. C.P. Joshi (Supra):

17. During the trial of an election petition, it is not permissible for the court to permit a party to seek a roving enquiry. The party must plead the material fact and adduce evidence to substantiate the same so that the court may proceed to adjudicate upon that issue. Before the court permits the recounting, the following conditions must be satisfied:

(i) The court must be satisfied that a prima facie case is established;

(ii) The material facts and full particulars have been pleaded stating the irregularities in counting of votes;

(iii) A roving and fishing inquiry should not be directed by way of an order to re-count the votes;

(iv) An opportunity should be given to file objection; and

(v) Secrecy of the ballot requires to be guarded.

[Vide Jagjit Singh (Dr.) v. Giani Kartar Singh [AIR 1966 SC 773] , Suresh Prasad Yadav v. Jai Prakash Mishra [(1975) 4 SCC 822 : AIR 1975 SC 376] , M. Chinnasamy v. K.C. Palanisamy [(2004) 6 SCC 341 : AIR 2004 SC 541] , Chandrika Prasad Yadav v. State of Bihar [(2004) 6 SCC 331 : AIR 2004 SC 2036] , Tanaji Ramchandra Nimhan v. Swati Vinayak Nimhan [(2006) 2 SCC 300 : AIR 2006 SC 1218] , Gursewak Singh v. Avtar Singh [(2006) 4 SCC 542 : AIR 2006 SC 1791] and Baldev Singh v. Shinder Pal Singh [(2007) 1 SCC 341] .]

39. Upon perusal of record, it is evident that the proceedings initiated under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act involved the holdings of the deceased petitioner in Village Barethi and Village Rasoolpur. On 18.06.1996, the petitioner filed objections

asserting that the CLH Form 3 statement was prepared with "vengeance" by the Lekhpal. The petitioner maintained that his actual holdings totaled only 21.11 Acres, much of which was un-irrigated, single-crop land.

40. A primary contention was that 10 Acres of the holding lay along the banks of the River Gomti and remained submerged/flood-affected. Under the Act, such land does not qualify for inclusion in the ceiling limit, potentially reducing the petitioner's relevant holding to 11.11 Acres (equivalent to roughly 7.5 irrigated acres). The petitioner argued that three sons (Taiyab, Tauhid, and Vaheed) were majors and held land independently. Furthermore, 3.13 acres had been transferred to Akbari Begam in 1989, who was in physical possession and recorded as Bhumidhar.

41. The Prescribed Authority (on 29.05.1997) declared 15.65 Acres as surplus, deciding all issues against the petitioner by claiming "no evidence was led," despite witnesses being produced. Upon appeal, the Appellate Authority (Opposite Party No. 1) acknowledged that findings regarding Gata Nos. 62, 97, 125, and 250 were self-contradictory, initially noting they lacked irrigation sources but ultimately declaring them irrigated. Despite these discrepancies, the appeal was dismissed with only a limited remand for Village Barethi.

42. The authorities failed to consider the testimony of State witnesses who admitted that parts of the land were Aabadi (settled) and Graveyards, which are legally exempt from surplus calculations. The classification of land as "irrigated" was done without perusing the Khasra entries of 1378–1380 Fasli or verifying the actual source of irrigation at the spot. The Appellate Authority issued "mutually destructive findings"—admitting the Prescribed Authority's order was baseless while simultaneously upholding the bulk of its conclusions.

43. The burden of proof, which squarely lies upon the State to prove land is surplus through cogent evidence, was illegally shifted onto the tenure holder. This Court further finds that the burden of proof, which squarely lies upon the State to establish that the land is liable to be declared surplus, was impermissibly shifted upon the petitioner. Mere reliance upon revenue entries, statements of subordinate officials, or assumptions regarding possession cannot substitute for legally admissible and cogent evidence. The approach adopted by the authorities is thus contrary to the principles laid down in the case of **Shishu Pal Singh (Supra)**.

44. In view of the aforesaid facts, circumstances, pleadings on record and the settled principles of law, it is manifest that the proceedings initiated under the U.P. Imposition of Ceiling on Land Holdings Act, 1960, and the consequential orders passed by the authorities below suffer from patent illegality, arbitrariness and non-application of mind.

45. The material placed on record clearly establishes that the Prescribed Authority as well as the Appellate Authority failed to properly appreciate the evidence relating to the actual landholding of the deceased petitioner, the nature of land being irrigated or unirrigated, the existence of submerged land, and the independent holdings of major sons. Vital objections raised by the petitioner were neither adequately examined nor adjudicated in accordance with law.

46. It is further evident that the authorities ignored the finality attained by the consolidation proceedings recognizing the petitioner's rights and erred in applying an incorrect cut-off date, contrary to the statutory provisions and settled judicial precedents. The burden of proof, which squarely lay upon the State, was not duly discharged by cogent and reliable evidence, yet adverse findings were recorded against the petitioner in a cursory and mechanical manner.

47. The inclusion of submerged land and independent holdings of major sons in the petitioner's holding, in disregard of statutory provisions and binding precedents, renders the determination of surplus land wholly unsustainable. The impugned orders also suffer from internal contradictions and lack of proper reasoning, thereby violating the principles of natural justice and fair adjudication.

48. Moreover, the appellate authority itself acknowledged several infirmities in the findings of the Prescribed Authority, yet failed to grant effective and comprehensive relief, resulting in a limited and self-contradictory remand. Such an approach defeats the very object of appellate scrutiny and undermines the sanctity of judicial decision-making.

49. The findings recorded by the authorities below are further vitiated by their failure to conduct spot inspection and proper enquiry, despite specific disputes regarding submergence, irrigation facilities, and cultivability of the land. Such an approach is contrary to the law laid down in the case of **Tej Pal Singh (Supra)**, **Vibhuti Kumar Bajpai (Supra)** and other binding precedents. The classification of land as irrigated and cultivable has been made mechanically, without due verification from revenue records and without physical inspection, resulting in arbitrary and unsustainable conclusions.

50. So far as the judgments relied upon by learned counsel for the respondents regarding the necessity of proper pleadings and proof are concerned, this Court finds that the said authorities relate to civil and election disputes governed by strict rules of pleadings. The present proceedings being statutory and quasi-judicial in nature, cast an affirmative duty upon the authorities to conduct a fair, objective, and comprehensive enquiry. In the present case, there is no deficiency in the pleadings of the petitioner; rather, there is a manifest failure on the part of the authorities to adjudicate the objections in accordance with law.

The impugned orders also suffer from internal inconsistencies and mutually destructive findings. While certain infirmities in the order of the Prescribed Authority were acknowledged by the Appellate Authority, effective and complete relief was not granted, resulting in a limited and self-contradictory remand. Such an approach defeats the very purpose of appellate scrutiny and undermines the principles of fair adjudication.

51. In the considered opinion of this Court, the impugned orders dated 29.05.1997 passed by the Prescribed Authority and the appellate order dated 18.07.1998 are vitiated by errors apparent on the face of record, non-consideration of relevant material, misapplication of law, and procedural irregularities. The said orders, therefore, cannot be sustained in the eyes of law.

52. Accordingly, the writ petition succeeds and is hereby **allowed**. The impugned orders dated 29.05.1997 passed by the Prescribed Authority and the appellate order dated 18.07.1998 are hereby quashed.

53. The declaration of surplus land against the deceased petitioner stands set aside. The respondents are directed to treat the petitioner's holding in accordance with law and in consonance with the findings recorded herein.

54. There shall be no order as to costs.

(Irshad Ali,J.)

January 29, 2026

Adarsh K Singh