(SUPREME COURT OF INDIA)

Escorts Farms Limited, Previously Known As Messrs Escorts Farms (Ramgarh)

Limited
Vs

Commissioner, Kumaon Division, Nainital, U. P. and Others

HON'BLE JUSTICE D. M. DHARMADHIKARI AND HON'BLE JUSTICE SHIVARAJ V. PATIL

20/02/2004

Civil Appeals No. 1584 of 1998 (From the Judgment and Order Dt. 15-5-1995 of the Allahabad High Court In Cmwp No. 12024 of 1992) With Nos. 1581-83, 1585 to 1654 and 1726 of 1998

JUDGMENT

The Judgment was delivered by : D M DHARMADHIKARI, J.

These appeals are directed against a common judgment dated 15-5-1995 of the High Court of Allahabad passed in a batch of writ petitions arising out of proceedings under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (shortly hereinafter referred to as "the Ceiling Act").

The lands, which were subjected to imposition of ceiling of Villages Dohrivakil, Kharmasa, Pachwala, Ramnagar of Tehsil Kashipur, District Nainital in Uttar Pradesh, now form part of the new State of Uttaranchal.

The lands in the aforesaid villages were owned by the Ruler of the erstwhile estate of Kashipur. Sometime before the year 1950, the lands were acquired by the Government of Uttar Pradesh from the Ruler of Kashipur. On a representation subsequently made by the Ruler of Kashipur, the Government of U.P. decided to release the land to the Ruler on lease under the Government Grants Act, 1895 as amended in its application to the State of U.P. by the Government Grants (U.P. Amendment) Act, 1960 (shortly referred to as "the Govt. Grants Act").

The lands were released to the Ruler for their development and for making them cultivable within the prescribed period. The terras of the government grant are contained in letter dated 26-1-1950 of the Deputy Secretary to the Government of U.P. addressed to the Director of Colonization, U.P.,

Lucknow. Consequent to the release of the lands in favour of the Ruler, no formal lease containing the terms and conditions of the government grant Came to be executed between the erstwhile Ruler and the Government of U.P. but it is not in dispute that the possession of the lands under the grant was taken on the basis of the proposal of the Government, contained in the letter dated 29-8-1950. The rights and liabilities of the parties are governed by the terms of the said government grant.

As the contesting parties before us are at issue on the legal effect of the grants for application of the provisions of the Ceiling Act, the contents of the letter containing the terms and conditions of the grants are required to be reproduced in full :

"No. C-4599/XII-A-26-1-1950

From

Shri H. W. Ward Jones, IAS,

Dy. Secretary to Government of Uttar Pradesh.

To

The Director of Colonisation,

Uttar Pradesh, Lucknow.

Lucknow

Dated 29-8-1950

Sir,

I am directed to say that on representation being made to Government by Shri Hari Chand Raja Singh, Raja of Kashipur, Nainital about the release of his land acquired for the colonisation schemes, Government has been pleased to decide that an area of land aggregating 2688 acres viz. 597 acres in Village Bhagwantpur, 264.36 acres in Ramnagar, 1022.64 acres in Kundeshri and 804 acres in Dohrivakil should be released in their favour and a lease granted under the Crown Grants Act. Out of the released land the Raja will take a hereditary lease of 597 acres of land lying in Village Bhagwantpur and the remaining area of 2091 acres is to be leased to M/s. Ramgarh Farms and Industries Ltd., in which the Raja is also a shareholder, other conditions of the lease will be as follows :

(1) The lease will be granted under the Crown Grants Act under which the lessees will enjoy hereditary rights with certain restrictions and limitations.

(2) The lessees will have to reclaim the lands within one year of the commencement of the next agricultural operations. The agricultural operations will start sometime in November.

(3) The lessees shall use the land granted to them for the purposes of cultivation, horticulture, pasture, poultry and dairy farming and ancillary objects and for no other purpose.

(4) The lessees shall not parcel out land granted to them and their rights shall be heritable but the succession will be regulated according to the law governing impartible estates.

(5) The lessees may sub-let land permissible under the U.P. Tenancy Act but may not transfer or otherwise alienate the land except with the written permission of the State Government.

(6) The rent payable will be the same as obtaining in the Tarai and Bhabar Government Estates.

(7) The lessees will be permitted to exchange plots wherever necessary for consolidation of holdings.

I am, therefore, to ask you kindly to execute a lease deed with Shri Hari Chand Raj Singh on the lines indicated in para 1 above.

Yours faithfully,

sd/-

H. W. Ward Jones,

Dy. Secretary.

No. C. 4599(i)XIIA

*Copy forwarded to Shri Hari Chand Raj Singh, Raja of Kashipur, Kashipur House, Nainital for information with reference to his representation dated 24-6-1950 and 26-6-1950." **

As is stipulated in the terms of the government grants, the Ruler and the Company in which he was a shareholder, namely, M/s. Ramgarh Farms and Industries Ltd. (formerly the Co.) had to develop and make the lands cultivable within a period of one year of the commencement of the next agricultural operations from the date of release of the land. As the aforementioned Company described in the grant was unable to develop the land within the permissible period, they entered into an agreement with M/s. Escorts (Agricultural Machines) Ltd. The two aforementioned Companies agreed to form a third company in the name of M/s. Escort Farms (Ramgarh) Ltd. (which is the main appellant in the leading appeals before us and shall hereinafter be referred to as "the Farm").

The Farm was incorporated on 30-11-1951 and took possession of the lands. In revenue papers of Fasli 1361 (corresponding to 1-7-1953 to 30-6-1954) the Farm was recorded as hereditary tenant, in respect of 1386.08 acres of land. The Ceiling Act was enforced in the State on 3-1-1961 with ceiling limit of 40 acres in respect of a holder of a holding defined in the Ceiling Act. By order passed on 28-12-1961, the prescribed authority declared 1163.42 acres of land as surplus with the holder of the lands.

On appeal the District Judge by order dated 15-11-1965 remanded the case to the prescribed

authority. On remand the prescribed authority passed a fresh order on 11-8-1967 determining 98.83 acres of land as surplus and the holder of lands was allowed to retain 1208.64 acres of land which included 250 acres of land claimed to have been used for running Farm Mechanization School and treated as belonging to the said school as a separate entity. The said 250 acres of land was held as not liable to be included in the extent of holding of the Company.

It is not in dispute that on 11-8-1967 when the prescribed authority granted exemption to 250 acres of land allegedly in use by the holder Company for running a school of mechanized farming, such exemption was available. Record of proceedings, however, does not show that the said land was ever claimed by the Company to have been held by the school as a separate legal entity. Treating the land to have been held by the school as a separate legal entity, therefore, seems to be an inadvertent mistake committed by the prescribed officer in his order dated 11-8-1967.

The order of the prescribed authority was varied in appeal by order dated 18-3-1968 of the Appellate Authority and instead of 93.98 acres 153.03 acres was declared surplus.

According to the case of the holder Company, in October 1969 it granted 18.75 acres of land to fifty persons on oral leases for period ending 30-6-1970. Since the leases, as alleged, were oral, there is no proof of the same on record.

The U.P. Zamindari Abolition and Land Reforms Act, 1950 (shortly referred to as "the Land Reforms Act") was brought into force in the villages concerned of Kashipur on 26-1-1970. The case of the holders of land on the alleged oral leases is that under Section 131 of the Land Reforms Act they acquired status of "sirdar" of the land. On 28-3-1970 registered sale/lease agreements were executed in favour of fifty persons for period up to 30-6-1974 comprising 80.75 acres, on consideration of Rs. 3000 per acre. The fifty transferees among themselves constituted four partnership firms and claimed to have obtained possession of the land.

Before the reduction of ceiling limit by the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act 18 of 1973, sale deeds covering 12.50 acres of land were executed in favour of seventy persons between 25-9-1971 and 27-9-1971. These transactions, admittedly, were after the cut-off date 24-1-1971 as fixed in sub-section (6) of Section 5 of the Ceiling Act by U.P. Amendment Act 18 of 1973. Under sub-section (6) of Section 5, transfers of land effected after 24-1-1971 are liable to be ignored in determining the ceiling area of the holder of land, unless, in accordance with proviso (b) of the said sub-section, the holder of the land discharges the burden of satisfying the prescribed authority that the transfers, after the appointed date, were effected in good faith and for adequate consideration and were not benami. On the basis of the aforementioned sale deeds executed in favour of seventy-four persons, the earlier three partnership firms formed by the lessees were dissolved and four new partnership firms were formed by the purchasers of the land. Shri P. N. Mehra was the managing partner of one of the firms.

On 8-6-1973, by U.P. Amendment Act 18 of 1973 introduced in the Ceiling Act, the ceiling limit was reduced from 40 acres to 18.75 acres. Under the amended Ceiling Act 18 of 1973 fresh ceiling proceedings were initiated proposing to declare 1123.40 acres of land in different villages under the government grants as surplus. The seventy-four transferees of the land mentioned above filed their objections before the prescribed authority. The prescribed authority by its order dated 29-6-1991 declared 867.67 acres of land as surplus with the holder Company. The land to the extent of 250 acres exempted under the earlier order of the Ceiling Authority dated 11-8-1967 was left

undisturbed. In the order of the prescribed authority passed on 29-6-1991 under the amended Ceiling Act 18 of 1973, challenge to the validity of exemption, even though erroneously granted in respect of 250 acres of land for the school, was held to be barred by the principle of res judicata.

Against the order of the prescribed authority dated 29-6-1991, the State did not prefer any appeal but the aggrieved transferees and the Farm which represented the holder Company, preferred appeals to the Commissioner, Kumaon Division being the Appellate Authority. By order dated 14-1-1992 the Appellate Authority held that exemption in favour of the school of 250 acres of land was wrongly granted and plea of res judicata cannot be raised under the provisions of the Ceiling Act. The Appellate Authority also held that the grantee under the Govt. Grants Act was not competent to transfer the land and all transfers were, therefore, invalid. Taking into consideration the background and circumstances in which transfers were made, they were all held to be sham and lacking in good faith. The Appellate Authority, therefore, directed that the surplus land inclusive of 250 acres of land wrongly exempted in favour of the school vested in the State under the Ceiling Act. The Commissioner dismissed the appeal filed by the holder Company. Appeals of the transferees and their subsequent transferees were also dismissed. The Commissioner, in reversing the judgment of the prescribed authority regarding 250 acres of land exempted in favour of the School of Farm Mechanization held that principle of res judicata cannot be applied on the basis of the original order of the prescribed authority passed in proceedings prior to the amendment of the Ceiling Act in view of bar on plea of res judicata imposed by Section 32-B of the Ceiling Act and the other provisions of Amendment 18 of 1973. The Commissioner also held that the transfers made by the Farm out of 250 acres of land of the school were not bona fide being made to favoured parties and with clear intention to evade the ceiling law.

Aggrieved by the order of the Commissioner passed in appeals, the Farm, all its transferees and subsequent transferees filed writ petitions in the High Court. The High Court considered their cases by grouping them in three categories. The writ petitioner holder Company and the Farm were described as Group 1. Seventy-four transferees from the Farm were described as Group 2 and eighteen transferees from the Company in respect of 250 acres of land of the school were described as Group 3.

Applications for intervention made by some parties who are subsequent transferees of parcels of land involved in this case, have been rejected by this Court by order made on 16-1-2004. We, however, granted hearing to the counsel appearing for subsequent transferees and allottees of land who claim to be in actual cultivating possession of some portions of lands involved.

The High Court by the impugned judgment passed in common in batch of writ petitions, filed by parties representing the three groups mentioned above, dismissed all the writ petitions by a very elaborate order containing all facts and discussion of legal contentions advanced by the contesting parties. The order of the Commissioner passed in appeal was maintained by the High Court. The High Court also imposed cost of rupees ten lakhs on the Farm as estimated damages for illegal use and occupation of the land made by them for long more than 30 years by resorting to various unfair tactics to evade ceiling law.

We would not like to burden the record by reproducing the various findings recorded on issues of fact and law in the impugned judgment of the High Court as the same contentions have been reiterated somewhat differently before us by the learned counsel appearing on either side. We, therefore, propose to deal with the legal and factual contentions under the following heads :

1. Applicability of the Ceiling Act to the lands in question and validity of the proceedings against the Farm

The learned counsel for the Farm contended that the land subjected to ceiling was held by the Company as a government grantee pursuant to the letter of the Deputy Secretary to the Government of U.P. dated 26-1-1950 referred above. The tenure-holder of the land, therefore, within the meaning of the Ceiling Act was the Company i.e. the government grantee and all proceedings initiated by notice to the Farm, submission of statement and declaration by the Farm culminating in the orders passed by the prescribed authority and the Appellate Authority were void and infructuous because the government grantee, as holder of the land, was not at all a party before the Ceiling Authority.

The aforesaid contention is misleading and misconceived. We have already stated all the relevant facts above. The government grantee i.e. the Ruler was allowed to keep certain portion of the land as "hereditary tenant" and the other portion in the name of the Company in which he had shareholding. The Ruler through the Company was unable to develop and make the land cultivable within the stipulated period in the terms of the grant and, therefore, they handed over possession of the land for development to the Farm. The Farm came in possession of the land through the Company and the Ruler. The possession of the Farm was, therefore, for and on behalf of the holder Company and the Ruler. The Farm was, therefore, only an ostensible holder of the land and the Company of which the Ruler was a shareholder continued to be the real holder. The notices issued by the Ceiling Authority were responded by submitting statements and returns before the Ceiling Authority by the Farm. The Company and the Ruler submitted to those proceedings through the Farm. The Company and the Ruler never objected to the proceedings before the prescribed authority nor did they prefer any appeals to challenge those orders either in the appellate forum or in writ proceedings. The proceedings therefore initiated, conducted and culminated against the Farm have to be treated in reality to be proceedings against the Company and the Ruler as the holders of the land.

The Farm being the ostensible owner and agent of the real owners was competent to take part in ceiling proceedings on behalf of the holder of the lands and the proceedings cannot be held to be invalid or infructuous. The learned counsel for the State is right in relying on Explanation I and Explanation II below Section 5 of the Ceiling Act in support of his submission that where the land is held by an ostensible holder it would be presumed to have been held by the real owner. The status of the Farm on the land was merely as a licensee or an agent. The possession of the Farm was clearly as an ostensible owner. The proceedings initiated, conducted and concluded against the ostensible owner are binding both on the ostensible and the real owner in accordance with Section 5 with Explanations I and II thereunder which read as under :

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

Explanation I. - In determining the ceiling area applicable to a tenure-holder, all land held by him in his own right, whether in his own name, or ostensibly in the name of any other person, shall be taken into account.

Explanation II. - If on or before 24-1-1971, any land was held by a person who continues to be in its

*actual cultivatory possession and the name of any other person is entered in the annual register after the said date either in addition to or to the exclusion of the former and whether on the basis of a deed of transfer or licence or on the basis of a decree, it shall be presumed, unless the contrary is proved to the satisfaction of the prescribed authority, that the first-mentioned person continues to hold the land and that it is so held by him ostensibly in the name of the second-mentioned person." **

The Farm, therefore even if recorded in revenue papers as hereditary tenant could not have claimed independent status of being the holder of the land as the land was admittedly taken possession of by the Company under the Govt. Grants Act. The holder of the land for the purpose of the Ceiling Act was the Company which was the government lessee. Even though a formal lease deed was not executed pursuant to the letter of the Government of the year 1950 the Company has never disputed that the possession of land was taken pursuant to the proposal of the Government contained in its letter dated 26-1-1950 and on the terms and conditions mentioned therein. The aforementioned letter can be looked into to ascertain the nature of possession of the Company which was placed in possession of the land by the Government. The possession of the Company therefore as a government grantee is beyond any doubt and, in fact, it has never been the stand of any of the parties before the Ceiling Authority or before the High Court or before us that the Company was not a government grantee or a government lessee. Clause (9) of Section 3 defines the word "holding" to include a government lessee. The definition clause (9) in Section 3 for holding reads thus :

*"3. (9) 'holding' means the land or lands 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, 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 coextensive with the period of the lease;" **

The public limited company holding land would be covered by the definition of "tenure-holder" as contained in clause (17) of Section 3. "Tenure-holder" is defined to mean "a person who is the holder of a holding". The word "person" has not been defined in the Ceiling Act but Section 4(33) of the U.P. General Clauses Act defines "person" to include a "company".

Learned counsel appearing for a group of transferees placed reliance on sub-section (4) of Section 5 of the Ceiling Act to contend that as in determining the ceiling limit of firms, cooperative societies and associations of persons, whether incorporated or not, a "public company" is excluded, the company cannot be held to be a holder of land to impose ceiling. The above argument advanced on behalf of the appellant transferees does not stand to reason on proper interpretation of the provisions of sub-section (4) of Section 5 read with the definition clauses (9) and (17) of Section 13. Section 5(4) reads thus :

"5. (4) Where any holding is held by a firm or cooperative society or other society or association of persons (whether incorporated or not, but not including a public company), its members (whether called partners, shareholders or by any other name) shall, for purposes of this Act, be deemed to hold that holding in proportion to their respective shares in that firm, cooperative society or other society or association of persons :

*Provided that where a person immediately before his admission to the firm, cooperative society, or other society or association of persons, held no land or an area of land less than the area proportionate to his aforesaid share then he shall be deemed to hold no share, or as the case may be, only the lesser area in that holding, and the entire or the remaining area of the holding, as the case may be, shall be deemed to be held by the remaining members in proportion to their respective shares in the firm, cooperative society, or other society or association of persons." **

The limited purpose of sub-section (4) of Section 5, as is clear from the language employed, is to treat the land as being held in proportion to the respective shares of the shareholders in the case of a firm, cooperative society or other society and association of persons. Exclusion of public company from sub-section (4) of Section 5 is with the intention to keep out public companies from the application of the said sub-section in the matter of distribution of landholdings amongst shareholders. The exclusion of public company from sub-section (4) in the matter of distribution of shareholding of the land is not an indication that public company is not deemed to be a "holder" of land or a legal "person" as defined in clauses (9) and (17) of Section 3 of the Ceiling Act read with clause (33) of Section 4 of the U.P. General Clauses Act. The contention, therefore, advanced that the ceiling proceedings could not have been initiated and concluded against the Company through the Farm and they were all invalid and non est, has to be rejected.

2. Legal effect of the provisions of the Government Grants Act, 1895 as amended by the Government Grants (U.P. Amendment) Act, 1960

One of the most important issues, which arose in writ petition before the High Court was regarding findings of the Appellate Authority on the validity of the transfers of land made by the Company in favour of the Farm and through the Farm in favour of the different partnership firms and individuals. We have already reproduced above the terms and conditions of the government grant contained in the letter dated 26-1-1950 of the Government of Uttar Pradesh whereunder the erstwhile Ruler of Kashipur was allowed to lease the lands to the Company for development. The terms of the grant show that 597 acres of land was allowed to be held by the ex-Ruler with hereditary rights and 2091 acres were allowed to be leased to the Company of which the Ruler was the main shareholder. In condition (4) it is clearly stipulated that the land held under the lease shall be heritable but the succession will be regulated according to law governing impartible estates.

Condition (5) of the grant imposes complete prohibition on transfer of the land granted. The grantee was only allowed to sub-let the land in accordance with the U.P. Tenancy Act but was given no right to transfer or alienate the land except with the permission of the State Government.

Learned counsel on behalf of the Farm and the lessees and transferees from the Farm while separately addressing this Court claimed an indefeasible right to continue to hold and possess the land on the ground that the government grantee came to be recorded as hereditary tenant since 1953-54 and under the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950 read with the U.P. Tenancy Act, 1939, the lessees have acquired the status of "sirdars" and thereafter on paying ten times the land revenue of the land, they have become "bhumidhars" of the lands in their possession. It is contended that acceptance of ten times the land revenue for the land for conferral of "bhumidhari" right on the tenants of the land are actions of the State which are binding on them and the Ceiling Authorities were estopped from depriving the tenants of their status and possession of

the land.

The above claim of the lessees and transferees of having acquired status of sirdars and bhumidhars cannot be accepted. The possession of the land was given to the Company, admittedly, under the terms and conditions of the government grant which did not permit transfer of land without permission of the Government. The position of a government grantee is of a lessee as contained in the definition clause (9) of Section 3 of the Ceiling Act. The conditions of the grant allow sub-leases of the land but contrary to the terms of the grant, the sub-lessees can claim no independent tenancy right so as to frustrate the terms and tenure of the grant. Irrespective of the provisions creating rights in favour of tenants under the U.P. Tenancy Act, 1939, the terms and conditions of the grant have been given an overriding effect by provisions contained in Section 2, as inserted by the U.P. Amendment Act of 1960 to the Government Grants Act with retrospective effect. Section 2 as introduced to the Government Grants Act in its application to the State of U.P. clearly provides that the rights and obligations inter se between the Government as grantor of the land and its grantee would in no way be affected by the sub-leases granted by the government grantee in accordance with the provisions of the U.P. Tenancy Act :

"2. (1) Transfer of Property Act, 1882

(2) U.P. Tenancy Act, 1939 and Agra Tenancy Act, 1926 not to affect certain leases made by or on behalf of the Government. - Nothing contained in the U.P. Tenancy Act, 1939, or the Agra Tenancy Act, 1926, shall affect, or be deemed to have ever affected any rights, created, conferred or granted, whether before or after the date of the passing of the Government Grants (U.P. Amendment) Act, 1960, by leases of land by, or on behalf of, the Government in favour of any person; and every such creation, conferment or grant shall be construed and take effect notwithstanding anything to the contrary contained in the U.P. Tenancy Act, 1939, or the Agra Tenancy Act, 1926.

(3) Certain leases made by or on behalf of the Government to take effect according to their tenor. - All provisions, restrictions, conditions and limitations contained in any such creation, conferment or grant referred to in Section 2, shall be valid and take effect according to their tenor; any decree or direction of a court of law or any rule of law, statute or enactment of the legislature, to the contrary notwithstanding :

*Provided that nothing in this section shall prevent, or be deemed ever to have prevented, the effect of any enactment relating to the acquisition of property, land reforms or the imposition of ceiling on agricultural land." **

The recording of the names of the Company or the Farm in the revenue papers on 5-3-1954 as hereditary tenant and deposit of ten times the land revenue by the sub-lessee for acquiring bhumidhari rights were ineffectual in view of the provisions of Section 2 of the Government Grants (U.P. Amendment) Act, 1960 which give an overriding effect to terms of the grant. The High Court, therefore, rightly negatived the claim set up by the lessee/sub-lessees of the land from the Company through the Farm, to the status of "sirdars" or "bhumidhars".

No action of the Revenue Authorities can, therefore, estop the Ceiling Authorities from ignoring the claims of tenancy rights on the land set up by the lessees/sub-lessees. The rights between the Government and the grantee are strictly to be regulated by the terms of the grant and in accordance

with the Government Grants (U.P. Amendment) Act, 1960. The entries in revenue records and recognition of any tenancy rights of the lessee and/or sub-lessee as hereditary tenant, sirdars or bhumidhars under the U.P. Tenancy Act can have no adverse legal effect on the government grant which has an overriding effect under the Govt. Grants Act. No estoppel can operate against the overriding statute so as to bind the Ceiling Authorities to accept the tenancy rights of the lessees/sub-lessees as indefeasible in application of the Ceiling Act to the lands in question.

The Statement of Objects and Reasons for amending Section 2 of the Government Grants Act, 1895 by the U.P. Amendment Act of 1960 makes it clear that the State Legislature intended to apply only the provisions of the Land Reforms Act and the Ceiling Act to the lands held by persons under the Govt. Grants Act. The Statement of Objects and Reasons reads thus :

*"Provisions of Section 2 of the Government Grants (U.P. Amendment) Act, 1959, have the effect of saving a grant of an agricultural lease by or on behalf of the Government from the operation not only of the Acts mentioned therein, but also of any other law, including the law for imposition of ceiling on land holdings, that might be made in future. There is also an apprehension that the result of the wordings of Section 2 may be to undo the vesting of estates of government grantees under Section 4 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. With a view, therefore, to remove any such apprehension and to put the U.P. Imposition of Ceiling on Land Holdings Bill, 1959, when enacted, beyond the purview of the Government Grants Act, this Bill is being introduced. Vide U.P. Gazette, Extraordinary, dated 3-2-1960." **

The Land Reforms Act, 1950 being saved by sub-section (3) of Section 2 of the Govt. Grants Act is applicable to the government grants. Under Section 18(1)(c) of the Land Reforms Act, a government grantee holding land rent-free was allowed to retain possession of the land as "bhumidhar". Section 18 of the Land Reforms Act with clause (c) in sub-section (1) reads thus :

"18. Settlement of certain lands with intermediaries or cultivators as bhumidhar. - (1) Subject to the provisions of Sections 10, 15, 16 and 17, all lands -

(a) in possession of or held or deemed to be held by an intermediary as sir, khudkasht or an intermediary's grove,

(b) held as a grove by, or in the personal cultivation of a permanent lessee in Avadh,

(c) held by a fixed-rate tenant or a rent-free grantee as such, or

(d) held by a groveholder,

*on the date immediately preceding the date of vesting shall be deemed to be settled by the State Government with such intermediary, lessee, tenant, grantee or groveholder, as the case may be, who shall, subject to the provisions of this Act, be entitled to take or retain possession as a bhumidhar thereof." **

As seen above, proviso below sub-section (3) of Section 2 of the Government Grants (U.P.

Amendment) Act makes applicable the Ceiling Act to the land held by a grantee under the government grant. It has already been noted that a "government grantee" or a "lessee" is covered within the definition of "tenure-holder" given in clause (17) read with clause (9) of the Ceiling Act and the definition of "person" in Section 4(33) of the U.P. General Clauses Act. Thus conjointly reading the provisions of the Ceiling Act and the Land Reforms Act, the grantee of land from the Government is a holder of land in the status of a bhumidhar and the land can be subjected to ceiling limit. To the lands held by the Company, which is a grantee of the Government, the provisions of the Ceiling Act would be attracted. Such grantee being a lessee from the Government has no right to transfer the land without permission of the Government. It can grant leases or sub-leases under the U.P. Tenancy Act but the lessees/sub-lessees can claim no rights contrary to the terms of the grant. All the transfers made by the Company or Farm by sale or lease contrary to the terms of the government grant create no independent rights in favour of the said transferees or lessees. The claims of transferees and lessees based on the provisions of the U.P. Tenancy Act were, therefore, rightly negatived by the Ceiling Authority and the High Court.

We rely on the ratio of the decision of this Court in the case of Raghubar Dayal v. State of U.P.) and particularly the following observations therein :

"6. Thus it could be seen that though it is a grant made under the Government Grants Act, it is in substance a lease of agricultural land granted by the Government to the appellant for cultivation subject to the covenants contained thereunder, some of which have been mentioned hereinbefore. Section 105 of the Transfer of Property Act defines lease as transfer of right to enjoy immovable property made for a certain time, express or implied or in perpetuity, in consideration of a price paid or promised, or of money, etc. to the transferor by the transferee who accepts the transfer on such terms. The grant in substance, therefore, is a lease of the agricultural land for personal cultivation on improved methods of cultivation during the period of the subsistence of the lease for consideration, terminable on notice by either side. Accordingly, the appellant is a holder of agricultural lands within the meaning of Section 3(d) of the Act.

7. Even otherwise, we find that the Government Grants Act itself prescribed the applicability of the Act to the lands covered by the grant. The proviso to sub-section (3) of Section 3 reads thus :

'Provided that nothing in this section shall prevent, or deemed ever to have prevented the effect of any enactment relating to the acquisition of property, land reforms or the imposition of ceiling on agricultural lands i.e. U.P. Act 13 of 1960.'

8. That was inserted with retrospective effect. Thus, it could be seen even if the present is construed as a grant of the agricultural lands under the Government Grants Act, by operation of the proviso to sub-section (3) of Section 3 of the Act, the Act is clearly applied for the purpose of computation of the ceiling area of the agricultural lands. It would appear that the Government Grants Act intended that even the grantee under that Act shall not be in excess of the ceiling area prescribed under the Act. Thereby, the lessee of the government land, though had a grant under the Government Grants Act, cannot claim to have been outside the purview of the Act." *

3. Bona fides of the transferees in favour of transferees comprised in Groups 1 and 2

Section 5(3) prescribes the ceiling limit for holders. In case of a company which is a tenure-holder

not having a family, clause (e) of the said sub-section (3) of Section 5, prescribes ceiling limit of 7.30 hectares of irrigated land. Sub-section (6) of Section 5 is relevant for the purpose of deciding the question of bona fides of the transactions of sale of the lands. It reads as under :

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

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

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

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

Explanation I. -

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

In determining ceiling area applicable to a holder any transfer of land made after 24-1-1971 is to be ignored. In accordance with proviso (b) of the said sub-section (6) of Section 5, transfers made after 24-1-1971 can be excluded for determining the ceiling area of the holder only if it is proved to the satisfaction of the prescribed authority that the transfers were made in good faith and for adequate consideration. In accordance with Explanation II, the burden of proving that the transfers were bona fide and for adequate consideration, is on the party claiming benefit of the transfer.

The High Court has in great detail considered the claims based on the transfers made after the cut-off date. There is no evidence of oral leases alleged to have been granted to the extent of total 18.75 acres of land in favour of fifty persons, although in the recitals of the sale deeds, there is mention of such oral leases. All sale deeds, admittedly, have been executed after the cut-off date fixed in sub-section (6) of Section 5. Prior to the sales, on the basis of alleged oral leases three partnership firms were said to have been formed and later on increased to four, which it is alleged, have taken possession of the lands transferred to them.

The managing partner of one of the partnership firms was Mr. P. N. Mehta who was invited in the meeting of the Board of Directors of the Company. The resolution of the Board of Directors quoted and heavily relied on by the Appellate Authority and the High Court in their orders clearly shows that the sale deeds were executed in anticipation of the Amendment Act of 1973 and at a time when proposed reduction of ceiling limit had already been made public. The High Court has also found that the alleged oral leases followed by sale deeds were mostly in favour of persons closely connected with Shri P. N. Mehta and Shri H. P. Handa. Shri H. P. Handa was also nominated as an arbitrator in the event of disputes in the firms. The High Court also found that the consideration received was not duly accounted for in the balance sheet of the Company. It is on these facts that the High Court confirmed the conclusion of the Appellate Authority that all transfers were made to related parties and only to evade the effect of impending amendment to ceiling law. The concurrent

findings in the judgment of the Appellate Authority and of the High Court of lack of good faith on the part of the Company and the Farm in executing the sale deeds after the cut-off date 24-1-1971 are not vitiated by consideration of any irrelevant circumstances and being essentially a finding of fact is not liable to be interfered with, in these appeals under Article 136 of the Constitution.

4. Land to the extent of 250 acres held for running a mechanised farming school

Various contentions advanced by private parties with regard to 250 acres of school land are being considered under the following sub-head :

Res judicata

The transferees of parcels of land described as held by the School for Farm Mechanisation constitute Group 3 and their case has been separately considered in the impugned judgment of the Commissioner in appeal and of the High Court in the writ petition. On behalf of such transferees of portions of school land, the contention advanced by the learned counsel on their behalf is that in the original Ceiling Act which came into force on 3-1-1961 under clause (ix) of Section 6, land held for the purposes of an educational institution either by a society registered under the Societies Registration Act, 1860 or by any corporate body was exempt from the operation of the Ceiling Act. It is pointed out that in the earliest order of the Prescribed Authority, Kashipur passed on 2-7-1964 and the second order passed on 11-8-1967 after remand of the case by the Appellate Authority, 250 acres of land, used in Farm Mechanization School was held to be exempt from being included in the ceiling area of the Company or the Farm. The order of the prescribed authority dated 11-8-1967 excluding 250 acres of land as not includible in the ceiling area of the Company or the Farm was not challenged by the State in appeal. The learned counsel contends that the said order of the prescribed authority had become final which could not have been interfered with or upset by the Appellate Authority in its order dated 14-1-1992 in ceiling proceedings initiated afresh after the ceiling limit was further curtailed by the Amendment Act of 1973 with effect from 5-6-1973. In this respect, the argument advanced is that the bar of res judicata in respect of 250 acres of land held to be exempt as belonging to the school, would operate in subsequent proceedings taken under the Amendment Act of 1973. The contention is that it was not open to the Appellate Authority to take a different view and hold that the 250 acres of school land should be included within the ceiling limit of the Company or the Farm.

The argument on the face of it seems plausible but on closer scrutiny of the finding on the aforesaid 250 acres of school land, in the light of the provisions of the original Act and the Amendment Act of 1973, is unacceptable. Section 6(ix) of the original Act before its deletion and substitution of new Section 6 in the Amendment Act of 1973 reads thus :

"6. Notwithstanding anything contained in this Act, land falling in any of the categories mentioned below shall not be taken into consideration for the purposes of determining the ceiling area applicable to, and the surplus land of, a tenure-holder -

(i)-(vii)

(ix) land held for the purposes of an educational institution by a society registered under the Societies Registration Act, 1860, or by any body corporate" *

We have looked into the order of the prescribed authority dated 11-8-1967 passed under the original unamended Act. In excluding 250 acres of land of the school, the finding reads thus :

*"It is to be noted that the resolutions, Exts. Ka-13 to Ext. Ka-20, passed by the two corporate bodies i.e. Escorts Limited, and Escorts Farms (Ramgarh) Ltd., as far back as 1953-54 relate to the transfer of the land permanently to the Escorts School of Farm Mechanization. The heavy expenditure shown in Ext. Ka-31 supported with the entries in the balance sheet Ext. Ka-29 to Ext. Ka-53 of the years 1962 to 1966 duly audited by Chartered Accountants and filed with the Registrar of Companies all go to show that this School of Farm Mechanization has a separate and independent entity, other than the objector Company. The school owns 250 acres of land as its own property. I, therefore, exclude this area from the holding of the tenure-holder" **

From the above part of the order of the prescribed authority, it becomes clear that 250 acres of land was found to be held by the school as a separate legal entity. Exemption clause (ix) of Section 6 as it stood in original Section 6 was deleted by resubstitution of new Section 6 by Amendment Act 18 of 1973 with effect from 8-6-1973. By insertion of new Section 6, the exemption earlier available to land held by educational institution has been done away with effect from 8-6-1973.

It is true that the above order of the prescribed authority dated 11-8-1967 excluding 250 acres of land as belonging to the school was not questioned by the State in appeal. The finding that the land was held by the school as a separate legal entity is obviously a mistake because in all subsequent proceedings before the Ceiling Authorities, the High Court and in this Court the land is stated to be held by the Company or Farm for running the school as one of its activities. The land was in use for the purposes of educational institution run by the Company or the Farm. It qualified for exemption under clause (ix) of Section 6, as it stood then. It is to be noted that when the ceiling limit was reduced by the Amendment Act of 1973, which was brought into force with effect from 5-6-1973, the land measuring 250 acres, although excluded from ceiling limit of the holder, in law and in reality continued to be held and recorded in the name of the Farm which was its agent. Under the Amendment Act of 1973, the exemption of land held by an educational institution was taken away by substitution of new Section 6 to the Act. Under Section 5, ceiling limit was reduced and under sub-section (6) of Section 5, as inserted by the Amendment Act of 1973, the cut-off date fixed was 24-1-1971. It was provided that all transfers made by the holder of a land after the above date would be ignored unless, as provided in clause (b) of sub-section (6) of Section 5 read with the explanation thereunder, the holder discharges his burden of proving to the satisfaction of the prescribed authority, that the transfers made after 24-1-1971 were in good faith, for adequate consideration and were not benami transactions.

It is not disputed that all the seventy-four transfers of parcels of land from 250 acres of school land were made after the cut-off date 24-1-1971. The named transferor in all the transfer deeds or sale deeds is the holder Company and not the school which has, in reality, no separate existence in law. The school was not registered as a society and was not a separate legal entity. Although, the prescribed authority in its order made under the original Act (prior to the Amendment Act of 1972) held the land to be belonging to the school as a separate legal entity, such a finding was not challenged by way of appeal by the State. The factual and legal position admittedly existing on 5-6-1973, when the Amendment Act of 1973 was brought in force, was that the land was held by the Company. It is evident from the fact that all transfers or sale deeds have been executed in favour of

seventy-five transferees, after the cut-off date 24-1-1971 by the Company to which the provisions of sub-section (6) of Section 5, as introduced by the Amendment Act of 1973, were clearly attracted. A finding of fact has been recorded by the Commissioner and confirmed by the High Court in the writ petition that transfers of the land used for school have been made with full knowledge of the impending legislation proposing reduction of ceiling limit and intent to evade the effect of ceiling law. In our considered opinion, on the above, admitted legal and factual premise, the bar of res judicata is not available to the holder Company or the Farm. Their own subsequent conduct of effecting transfers of school land estops them from raising a plea of res judicata on an apparently erroneous finding recorded in the order of the prescribed authority in the course of proceedings under the original unamended Act.

For determining the ceiling limit and the surplus area of a holder, in proceedings under the Amendment Act of 1973, it was competent for the prescribed authority to accept the admitted position of the land used for school as being owned and held throughout by the holder Company through the Farm and ignore the apparently erroneous statement of the earlier prescribed authority recorded in the order passed on 11-8-1967 in original proceedings under the Ceiling Act that the land belonged to the school as a separate legal entity. The land excluded from the holding of the Company or the Farm, treating it to have been held by the school as a separate legal entity, even otherwise was entitled to be exempted from determination of the ceiling limit of the holder Company or the Farm because, in accordance with clause (ix) of Section 6 of the original unamended Act, the said land was in use for purposes of an educational institution. The inaction of the State in not filing appeal against the erroneous exclusion of the land from the holding of the Company and treating it to be of the school as separate entity, cannot debar, in law, the State in subjecting such land to the ceiling limit in the proceedings initiated under the Amendment Act of 1973 whereby the ceiling limit was further reduced. On the date of enforcement of Amendment Act 18 of 1973, school land was held by the Company and not by the school which had no separate legal existence as an entity. On the cut-off date 24-1-1971 as fixed in sub-section (6) of Section 5 of the Amendment Act of 1973, admittedly, the school land was claimed to be held by the Company and its exclusion was sought on the basis of its transfer in various portions to different parties by the Company on the premise that, having been excluded in the earlier proceedings from the holding of the Company, it was so transferable and the transfers were, therefore, bona fide.

The learned counsel for the State seems to be right in his submission that on the aforesaid admitted facts the finding in the original proceeding regarding 250 acres of land to be belonging to the school as separate legal entity, was apparently a mistake which is clear from the holder Company's own action of transferring separate portions of that land in its own name.

On behalf of the State, it is submitted that with the purpose of giving full effect to the ceiling provisions, in the Amendment Act of 1973 by subsequent Amendment Act of 1976, which was brought into force with effect from 10-10-1975, Sections 38-A and 38-B were introduced for creating a bar on raising plea of res judicata based on proceedings concluded under the original unamended Act existing prior to 1973 :

"38-A. Power to call for particulars of land from tenure-holders. - (1) Where the prescribed authority or the appellate court considers it necessary for the enforcement of the provisions of this Act, it may, at any stage of the proceedings under this Act, require any tenure-holder to furnish such particulars by affidavit in respect of the land held by him and members of his family as may be prescribed.

(2) The particulars of land filed under sub-section (1) may be taken into consideration in determining the surplus land of such tenure-holder.

*38-B. Bar against res judicata. - 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 the retrial of such proceeding or issue under this Act, in accordance with the provisions of this Act as amended from time to time." **

Res judicata is a plea available in civil proceedings in accordance with Section 11 of the Code of Civil Procedure. It is a doctrine applied to give finality to "lis" in original or appellate proceedings. The doctrine in substance means that an issue or a point decided and attaining finality should not be allowed to be reopened and reagitated twice over. The literal meaning of res is

"everything that may form an object of rights and includes an object, subject-matter or status"and res judicata literally means :" a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment". Section 11 CPC engrafts this doctrine with a purpose that

*" a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action" **

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Proceedings under the Ceiling Act are not adversarial as are proceedings in suit. The Ceiling Act is a legislation to give effect to the directive principles contained in clauses (b) and (c) of Article 39 of the Constitution. The State is advised by the directive principles contained in the Constitution to take necessary legislative measures so as to ensure social justice by equitable distribution of ownership and control of material resources and avoid concentration of wealth and means of production in a few hands. The laudable social objective sought to be achieved by the ceiling legislation is to take surplus land from the holders and distribute the same to the landless agricultural labourers and peasants surviving on agriculture. In applying the principles of res judicata, therefore, to the ceiling proceedings, the object of the Act cannot be lost sight of. All principles of res judicata contained in Section 11 CPC cannot be strictly and rigorously made applicable to ceiling proceedings. Section 38-B introduced by the Amendment Act of 1976 with the transitory provisions made both in Amendment Act 18 of 1973 and Act 20 of 1976 is a departure from the provisions of Section 11 of the Code of Civil Procedure and indicates non-applicability of bar of res judicata in ceiling proceedings under the Act.

Plea of res judicata is also not available where there is no contest on an issue between the parties and there is no conscious adjudication of an issue. In the original order dated 11-8-1967 of the prescribed authority passed under the unamended Ceiling Act, the school land to the extent of 250 acres, under an obvious mistake, was treated to be land held, not by the holder Company but by the school treating the latter to be a separate legal entity. It was never the case of the holder Company or the Farm that 250 acres of land was held not by the Company but by the school as a separate legal

entity. Their claim with regard to the school land was for exemption under clause (ix) of Section 6, as it stood prior to the Act of 1973. The Company was claiming exemption for 250 acres of land being the land held by the holder Company for educational purposes and such claim for exemption could be laid on behalf of the Company in accordance with clause (ix) of Section 6, as it stood in the original Amendment Act. The prescribed authority, it appears, by an inadvertent mistake, instead of considering the claim of the holder Company for exemption of land under clause (ix) of Section 6, as it stood then, excluded the land as belonging to the school as separate legal entity. This exclusion of 250 acres of land of the school from the extent of holding of the holder Company was not a decision or a finding on an issue arising between the parties but it was a clear mistake which is apparent from the fact that this land was throughout treated by the holder Company as its own land and was transferred by the Company by different sale deeds to seventy-five persons after the cut-off date of 24-1-1971. On the date of second ceiling introduced by the Amendment Act of 1973, the so-called land belonging to the school is claimed to be held by the holder Company as the Company had transferred it to various persons. On these admitted facts and nature of title of the land, plea of res judicata cannot be allowed to be raised. The case initiated and proceeded with in ceiling law is not an adversarial litigation between the State and the landowners. It is enforcement of a social welfare legislation enacted in accordance with the directive principles of State policy enshrined in Article 39 of the Constitution.

The plea of res judicata has been held to be barred in proceedings under ceiling law in the decisions of the Allahabad High Court reported in Ram Lal v. State of U.P. 1978 All(LJ) 1197: 1978 (4) All(LR) 802: 1978 All(WC) 713 and Kedar Singh v. ADJ, Varanasi 1980 All(LJ) 36: 1979 All(WC) 692 which have held the field in the State of U.P. as a settled legal position.

Ambit and effect of provisions of Section 38-B imposing bar on the plea of res judicata in civil proceedings came up before this Court in State of U.P. v. Budh Singh (1) and State of U.P. v. Budh Singh (0). The decision of a Division Bench of the Allahabad High Court in Krishna Kumar case (Krishna Kumar v. State of U.P., CMWP No. 3073 of 1977 dated 21-9-1979 (All)) was considered. It was held that amendments made to the Ceiling Act justify reopening of proceedings undertaken under the Act prior to the amendment and Section 38-B bars plea of res judicata to the parties on the basis of findings and decisions in the earlier ceiling proceedings. The relevant part of the judgment of this Court in the second case of Budh Singh (0) reads thus :

"1. This appeal was once heard earlier and in the order passed on 25-9-1995 it was stated that as the High Court in the impugned judgment has relied on the earlier pronouncement by the Division Bench of the same High Court in Krishna Kumar case (Krishna Kumar v. State of U.P., CMWP No. 3073 of 1977 dated 21-9-1979 (All)) it would be appropriate to peruse that judgment, which being not on record a direction was given to place the same for our perusal. It has been so done. We have gone through the judgment and, according to us, the learned Single Judge who rendered the impugned judgment misread the view taken by the Division Bench in Krishna Kumar case (Krishna Kumar v. State of U.P., CMWP No. 3073 of 1977 dated 21-9-1979 (All)). In that judgment, the Division Bench has really held that Section 38-B was wide enough to 'capture findings or decisions given under the Ceiling Act as well as prior to the commencement of Section 38-B'. It has really not been held in that case that 'in the subsequent ceiling proceedings, the earlier finding would be binding unless it can be shown that after the earlier ceiling proceedings there occurred some amendments in the Ceiling Act which justified that reopening of a finding recorded in the earlier ceiling proceedings' as observed in the impugned judgment. No doubt in Krishna Kumar case an argument was advanced to cut down the width of Section 38-B by inviting the attention of the Bench

*to Section 31(5); the Bench, however, held that that section had no impact on the applicability of Section 38-B." **

In view of our above discussion on the issue of applicability of the doctrine of res judicata, it is not necessary for us to deal and discuss cases cited by the counsel for the parties on the power of the Appellate Authority, by invoking provisions of Order 41 Rule 33 of the Code of Civil Procedure, to hold the land of school as includible for determination of ceiling area, in the appeals instituted against the order of the prescribed authority by the holder of the land and the transferees and without any appeal by the State.

5. Denial of opportunity of hearing to the transferees of land/breach of principles of natural justice

A serious grievance has been raised on behalf of the transferees from 250 acres of land earlier exempted in favour of the school that they were neither made parties to the appellate proceedings nor were heard before denying exemption from ceiling to such lands and nullifying the transfers in their favour by describing them as lacking in bona fides.

Learned counsel appearing for the State contended that as the transferor i.e. the Company through the Farm were parties before the Appellate Authority and were heard, the transferees who derived title from the transferors were not necessary but only proper parties. Their interest was protected by the transferor. It is also submitted that the burden of proof that the transfers were bona fide was on the transferor who failed in successfully discharging the said burden of proof to the satisfaction of the Ceiling Authorities and the High Court.

Reading the provision of sub-section (6) of Section 5 with proviso (b) Explanation II thereunder, it is difficult to accept the contention advanced on behalf of the State that the transferees were merely proper parties and were not entitled to be arrayed, noticed and heard in the proceedings under the Ceiling Act. The transfer made after the cut-off date could have been saved only on proof of good faith and payment of adequate consideration for the transfers. This burden of proof can be discharged jointly or singly either by the transferor or transferee. The transferee is the party likely to be adversely affected by the order nullifying the transfer if found to be lacking in good faith. The transferee is clearly covered by the expression "the party claiming its benefit" as used in Explanation II sub-section (6) of Section 5. The burden of proof in respect of bona fides of transfers is also on the person or "party claiming its benefit". It was therefore necessary to make the transferees as parties in the appeal and grant them opportunity of hearing by the Appellate Authority. To that extent the order of the Appellate Authority can be said to have been vitiated for not following the required procedure.

For a different reason, however, we decline to set aside the appellate order of the Commissioner which has been confirmed by the High Court. Non-joinder of transferees as parties and denial of opportunity of hearing to them, in the facts and circumstances found here, cannot be said to be fatal to the entire ceiling proceedings.

The transferees of the school land were not parties and were not heard by the Appellate Authority but when, on being aggrieved by the order of the Appellate Authority, they preferred writ petitions in the High Court, a very detailed hearing with full opportunity to them to prove good faith and

payment of adequate consideration for the transfers made in their favour was granted to them by the High Court. All necessary information showing the background of the sales and their claims of bona fides, as furnished both by the transferor and transferees, has been fully gone into by the High Court and a definite finding has been reached that the transfers lacked in good faith and were obviously effected to evade ceiling law. All possible pleas available to the transferees, were projected before the High Court in the writ petition preferred by the transferees. Thus, all available material facts and evidence were placed and considered by the High Court. The High Court has in great detail critically examined all the relevant evidence produced by the transferees before arriving at an adverse conclusion against them. This Court would have been inclined and justified in making a remand of the case to the Appellate Authority to make all transferees as parties and give them opportunity of hearing in respect of the portions of land purchased by them from out of 250 acres of land held in the name of the school. Since, however, the High Court has already given full opportunity of hearing to the transferees on this aspect we refrain from making any order of remand just for the sake of completing a formality of granting them similar opportunity of hearing by the Appellate Authority with no likelihood of any conclusion different from the one reached by the High Court and this Court on merits of the case.

In similar case, involving large-scale sales effected to defeat provision of ceiling law, this Court took recourse to Article 142 of the Constitution and observed in the case of State of A.P. v. S. Vishwanatha Raju ( ) thus :

*"It cannot be said that in appropriate cases, this Court is prevented from taking suo motu judicial notice of glaring injustice having recourse to Article 142 of the Constitution for serving the ends of justice. The very purpose of the Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 is to prescribe the maximum holding so that the excess land becomes available for distribution among the landless persons so as to serve the object of socio-economic justice envisaged in the Preamble to the Constitution and its directive principles of State policy. When a large extent of land of about 900 acres is sought to be taken out of the purview of the Act by the device of agreements of sale and the officers overlook the same because of their negligence or otherwise in not carrying the orders of authorities in revision and when the facts came to the notice, this Court having taken suo motu notice of the same, mete out justice. Accordingly suo motu notice is taken of the cases concerned and they are treated as special leave petitions against the orders passed by the Appellate Authority and considered its legality by granting leave. Hence, we hold that the lands covered under Ext. A-1 and Ext. A-4 should be treated as lands held by the vendor and the vendee. The Land Reforms Tribunal concerned is, therefore, directed to reopen the CCs filed by the respective partners and the managing partners of the company and determine the surplus lands according to law and then pass the appropriate orders according to law." **

Similarly, in the instant case, it has been found that large-scale transfers were effected to defeat ceiling law. We, therefore, decline to upset the concurrent findings of the Appellate Authority and the High Court in our discretionary powers under Article 136 of the Constitution. We have also come to the same conclusion that the transfers made after the cut-off date were not in good faith hence liable to be ignored for determining the extent of surplus land with the holder. That apart, we have also recorded a conclusion that the entire lands being held under a government grant were not transferable without permission of the Government and they were invalid being in clear breach of the conditions of the grant.

Right of hearing to a necessary party is a valuable right. Denial of such right is serious breach of statutory procedure prescribed and violation of rules of natural justice. In these appeals preferred by the holder of lands and some other transferees, we have found that the terms of government grant did not permit transfers of land without permission of the State as grantor. Remand of cases of a group of transferees who were not heard, would, therefore, be of no legal consequence, more so, when on this legal question all affected parties have got full opportunity of hearing before the High Court and in this appeal before this Court. Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we, therefore, refrain from remanding these cases in exercise of our discretionary powers under Article 136 of the Constitution of India.

6. Costs imposed as damages

The High Court has imposed heavy cost of rupees ten lakhs on the Farm and has further directed its deposit within one month. In case of default its recovery is directed to be made from the Farm or Shri P. N. Mehta. The justification given by the High Court for imposing such heavy cost is that by manoeuvring and manipulating transactions the Farm, with the help of Shri P. N. Mehta and the Company, were able to retain possession of the land and take its advantage and usufruct for a long period of seventeen years.

We find that in the name of imposing cost, the High Court has, in effect, awarded lump sum damages for unauthorized use and occupation of surplus land. Section 16 of the Ceiling Act empowers levy of damages for use and occupation of surplus land and reads thus :

"16. Damages for use and occupation of surplus land. - Where any tenure-holder holds any land on or after the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, in excess of the ceiling area applicable to him, he shall be liable to pay to the State Government for the period commencing from the first day of July, 1973, until the date on which the Collector takes possession of such surplus land under sub-section (8) of Section 14, or the date on which the tenure-holder voluntarily delivers possession to the Collector under the proviso to the said sub-section, whichever is earlier, such compensation for use and occupation as may be prescribed." *****

The quantification of damages payable to the State for use and occupation of surplus land under Section 16 is required to be done in accordance with the principles laid down in Rule 18-A of the Rules framed under the Ceiling Act. The provisions of Section 16 read with Rule 18-A require separate proceedings to be undertaken for determination and quantification of amount of damages for use and occupation of the surplus land. The said exercise ought to have been left to the Ceiling Authorities. The High Court, in our opinion, should not have awarded lump sum damages by imposing heavy costs. P. N. Mehta was found to have taken active part in formation of partnership firms and obtaining the transfers for favoured parties. He did it, not in his individual capacity but, as a managing partner of one of the partnership firms and on being invited by the holder Company in the meeting of the Board of Directors to help out the Company from the effect of ceiling law. In the event of default of payment of costs by the Company, the direction made by the High Court to Shri P. N. Mehta to pay the cost is not justified. This part of the order of the High Court imposing rupees ten lakhs as costs on the Farm and directing its payment by the Farm or by P. N. Mehta is liable to

be set aside.

Before parting with the case, only mention has to be made of the submissions made by the learned counsel appearing for subsequent transferees of the lands involved and by some of the interveners who claim to have been allotted some lands. In our opinion the subsequent transferees and such interveners deserve no indulgence in this appeal. The subsequent transferees have stepped into the shoes of the original transferees. They can claim no different or better rights than their transferors. The contentions raised on their behalf are, therefore, not entertained. No relief can be granted to them. The interveners have to work out their independent rights and remedies, if any, and can claim no right of hearing in these appeals.

In the result, all the appeals are dismissed. The order of the High Court under appeal, which confirms the order of the Appellate Authority, is maintained except to the extent of imposition of cost of rupees ten lakhs. The costs imposed in the impugned order are hereby set aside. Taking into consideration the nature of the controversy involved and the acts and omissions both on the part of the State authorities and the private parties, we leave them all to bear their own costs and expenses in these appeals.

J