

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
BUDH SINGH & ORS.

DATE OF JUDGMENT 25/09/1995

BENCH:
HANSARIA B.L. (J)
BENCH:
HANSARIA B.L. (J)
FAIZAN UDDIN (J)

CITATION:
1995 SCC (6) 146 JT 1995 (7) 372
1995 SCALE (5) 540

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

HANSARIA, J.

The appeal raises a question of some importance with regard to the effect of section 38-B, inserted in the U.P. Imposition of Ceiling on Land Holdings Act, 1960, by U.P. Act No. 20 of 1976, which had come into force on October 10, 1975.

2. Section 38-B reads as below :

"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 re-trial of such proceeding or issue under this Act, in accordance with the provisions of this Act as amended from time to time."

3. The need for finding out the effect of the aforesaid section has arisen because, on the proceeding under the aforesaid Act being taken up, the Civil Judge, Jalaun, by an order of May 1, 1975 held that no land of the appellant (respondent No.1 herein) could be declared as surplus. On the proceeding being reinitiated, the Addl. Sub-Divisional Officer, who is the Prescribed Authority, determined an area of 31.73 acres of land (in terms of irrigated land) as surplus. On appeal being preferred, the Civil Judge, Jalaun, modified the order of the Prescribed Authority, as indicated in his order dated July 25, 1977. When a contention was advanced on behalf of the appellants therein (who are respondents herein) that the finding of the previous proceeding operated as res judicata, the learned Civil Judge stated that judgment having been delivered before 10.10.1975, the same could not operate as res judicata. The respondents approached the High Court by filing a petition

under Article 226. The view taken by the High Court is that the findings operate as res judicata, on the basis of pronouncement dated 21st September, 1979 by a Division Bench in Krishan Kumar's case (Writ Petition No.3073 of 1977).

4. As section 38-B on its language may not support the stand of the High Court, but keeping in mind the averment made in the counter-affidavit of the respondents that more than ten thousand cases were decided by the High Court on the basis of the view presently taken, it would be appropriate to peruse the judgment rendered by the High Court in Krishan Kumar's case, which is not on record.

5. The counsel for the appellant is, therefore, directed to place that judgment on record, and let us know whether it was appealed against; if so, what was the result. It would also be necessary to know under what circumstances the second proceeding came to be initiated against the respondents. A responsible officer of the State would swear an affidavit in this regard. We allow four weeks time for this purpose. When the case shall be taken up next, the records of the Prescribed Authority shall be made available.

6. Put up for further hearing after four weeks.

7. Let a copy of this order be served on the learned counsel of the parties urgently.