

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
BUDH SINGH (D) BY LRS.

DATE OF JUDGMENT: 03/12/1996

BENCH:
FAIZAN UDDIN, B.L. HANSARIA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

B.L. Hansaria,

This appeal was once heard earlier and in the order passed on 25th September, 1995 it was stated that as the High Court in the impugned judgment has relied on the earlier pronouncement by Division Bench of the same High Court in Krishan Kumar's (Civil Misc. Writ Petition No. 3073 of 1977), 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 impugned judgment misread the view taken by the Division Bench in Krishan Kumar's case. In that judgment, the Division Bench has really held that section 38-B was wide enough to "capture finding or decisions given under the Ceiling Act as well 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 Krishan Kumar's case as 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 the section had no impact on the applicability of section 38-B.

In view of the above, the view taken in the impugned judgment cannot be upheld. The same is, therefore, set aside and the decision of the Prescribed Authority rendered on 29th June, 1976, which was affirmed by the Appellate Court by its judgment dated July 25, 1977 is restored. The High Court's remand order has, therefore, no leg to stand.

The appeal is allowed accordingly, in the facts and circumstances of the case, we make no order as to costs.