

Bhera Ram and ors. Vs. the State of Rajasthan and ors.

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SooperKanoon Citation : sooperkanoon.com/756908

Court : Rajasthan

Decided On : Mar-09-1979

Reported in : 1979WLN224

Judge : M.C. Jain, J.

Appeal No. : S.B. Civil Writ Petition Nos. 1462, 1569, 1570, 1571, 1572, 1582, 1583, 1584, 1585, 1586, 1587, 1588

Appellant : Bhera Ram and ors.

Respondent : The State of Rajasthan and ors.

Advocate for Pet/Ap. : Mr. M.L. Shrimali

Disposition : Petition dismissed

Judgement :

M.C. Jain, J.

1. These 26 are writ, petitions where in orders passed by he Sub-Divisional Officer, Sojat, (respondent No. 3) dated 18.9.75 and the Revenue Appellate Authority, Jodhpur (respondent No. 5). dated 26.3.76 in ceiling proceedings in relation to the lands held and transferred by respondent No. 4 in favour of the petitioners, have been sought to be quashed.

2. The petitioners have averred in their writ petitions that they are agriculturists domiciled in Rajasthan within the definition of the term as given in explanation to Section 30DD of Chapter III of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act') They are permanently residing In Rajasthan since birth and earn their livelihood wholly from agriculture and cultivate their lands by their own labour and the labour of the members of their family They being landless cultivators as defined in the Act purchased Agricultural lands described in para 2 of the writ petitions not exceeding 30 acres from respondent No. 4. Except in four writ petitions, in all the other writ petitions, the lands are said to have been purchased on 28.3.61. In writ petitions Nos. 1462/76, 1572/76, 1590/76 and 1600/76. the dates of purchase are said to be 18 6 61, 26 6 66, St. 2023 and St. 2023 respectively. It was alleged that after the purchase of the land, possession was handed over by respondent No. 4 to the petitioners and the lands were duly mutated in their names and their names were entered and recorded in the records of rights as well, in place of respondent No. 4 and thus the petitioners became 'khatedar' tenants of the land. It was also averred by the petitioners that they are In possession of less than thirty standard acres within the ceiling limit. The petitioners in their writ petitions gave the history of the litigations wherein vires of the provisions of Chapter III B were challenged and stated that on coming into force of the Rajasthan Imposition of Ceiling on Agricultural Holdings Ordinance, 1973, replaced by the Raj. Imposition of Ceiling on Agricultural Holdings Act, 1973, the writ petitions were dismissed by a common short order on submissions of the counsel that they had become in fructuous. It is common ground between the parties in view of the settled portion of law that the old cases would be governed by the old law and as such it is not necessary to go into various grounds on the basis of which the impugned orders were sought to be challenged The petitioners have alleged that respondent Mo. 3 initiated ceiling proceeding against respondent No. 4 in respect of lands held by him including the petitioners' lands The respondent No. 4-mentioned in his declaration form etc. that, he had sold the lands described In para two of the writ petitions to the present petitioners and they are in possession of the same as 'Khatedar' tenants. Their lands should not be included in his lands and those lands are entered in their names in the record of rights. The learned Sub-Divisional Officer, Sojot, respondent No. 3, by his order

dated 18 9 75 did not recognize the transfers on the ground that respondent No. 4 led no evidence and failed to prove the transfers. The respondent No. 4 preferred an appeal against the order of the Sub-Divisional Officer, but his appeal was dismissed by the learned Revenue Appellate Authority and the learned Revenue Appellate Authority did not allow the application under Order 41, Rule 27 CPC, for production of additional evidence. The respondent No. 4 made a prayer to produce and prove mutations, sale-deeds etc., but the respondent No. 4 was not allowed to adduce any additional evidence. The respondent No. 4 thereafter did not avail of any further remedy against the order of the learned Revenue Appellate Authority and he opted the surrender of the lands including the petitioners lands sold by him to the petitioners. The only ground of attack made on behalf of the petitioner in these writ petition before me is that the petitioners were not afforded any opportunity of being heard. No notice what so ever was issued to the petitioners. The petitioners can not be deprived of their lands in pursuance of the orders passed at their back whereby the transfers effected by respondent No. 4 in favour of the petitioners, though valid under the law were not recognized. According to the petitioners the provisions of Chapter IIIB of the Act were amended from time to time and with effect from August 18, 1970 a new provision Section 30DD was added by Act No. 14 of 1970. Section 30D makes a provision for non-recognition of certain transfers for fixing ceiling area under Section 30D. Voluntary transfer on or after 25-2-1958 by way of partition, or in favour of person who was landless person before the said date and continued to be so till the date of transfer, only were saved. All other transfers shall be deemed to be transfer calculated to defeat the provisions of this Chapter. The petitioners case is that by introduction of Section 30DD, the legislature gave a mandate for recognition of certain transfers under this provision. The petitioners have averred that their transfers are covered under this provision and transfers ought to have been recognised as transfers of lands not exceeding thirty standard acres were made prior to 31-12-69, & they were made in favour of agriculturists domiciled in Rajasthan. The petitioners were not given an opportunity to prove transfers in their favour and the Sub-Divisional Officer and the Revenue Appellate Authority passed the impugned orders in complete disregard of the accepted principle of natural justice audi alteram partem. The petitioner Bhera Ram and two others along with their writ petitions submitted a

photostate copy of the registered sale deed dated 18 6 64 and a certified copy of the 'jamabandi' si. 2031 to st 2034 In the other writ petitions the petitioners submitted certified copies of the mutations and certified copies of the 'jamsbandis' in their favour. The Sub-Divisional Officer in disregard of the statutory presumption of correctness of the entries in the records of rights under Section 140 of the Rajasthan Land Revenue Act without holding an inquiry, as contemplated under Rule 14 of the Rajasthan Tenancy (Fixation of Ceiling of land) Government Rules, 1963 (hereinafter referred to as 'the Ruhs') after notice to the petitioners, did not recognize the transfers, which has highly prejudiced the petitioners' rights & interests in the lands. The petitijeers have prayed for quashing of the orders on the grounds stated above.

3. On behalf of the respondents Nos. 1 to 3 replies to the writ petition were tiled wherein it was stated that no notice was required to be given to the petitioner in determining the ceiling & surplus area of respondent No.4, as the petitioners being transferees cannot be regarded as interested persons. It was alleged that the respondent No.4 has shown the transfers to defeat the provisions of the Ceiling law and lands transferred in favour of the petitioners were more than of Rs. 100/- in value, but the petitioners did not get executed any sale-deed registered. As such, the transfers cannot be regarded as legal transfers and consequently the mutations sanctioned by the village Panchayat, cannot confer any legal title to the petitioners. The respondent No. 4 was under a legal obligation to prove the alleged transfers, but he failed to produce any evidence, so the authorities were justified not to recognise the transfers and the petitioners were not required to be given any notice. It was also averred that after the decision of the Revenue Appellate Authority, possession of the lands in dispute has been taken by the Naib Tehsildar, Sojat, on 29-6-76. The petitioners can claim the refund of their consideration money and apply for allotment of land to the Sub Divisional Officer, Sojat. They can claim priority in allotment, if they are landless persons, according to the provisions of the Act and the Rules made thereunder. Further, they cannot enforce transfers as against the State Government in view of the provisions of Section 30D of the Act. In the end, it was prayed that the writ petitions may be dismissed with costs.

4. Mr. M.L. Shrimali, learned Counsel for the petitioners, vehemently & strenuously contended that the Sub Divisional Officer, while enforcing and functioning under the ceiling law is required to act quasi judicially. He referred to the scheme of the Rules contained in Chap. III regarding fixation of ceiling on land and Urged that the land holders and tenants are required to file their declarations under Rule 9 & under Rule 10 the Sub Divisional Officer may issue notice to any land holder or tenant calling for declarations within such time as may be specified in the notice and under Rule 12 after receipt of the declarations either under Rule 9 or Rule 10, the Sub Divisional Officer is required to forward to the tehsildars concerned the declarations with instructions to check the particulars given in the declarations with reference to the entries in the various records mentioned in Rule 12. The Tehsildar then is required to submit a report in respect of the accuracy or inaccuracy of such entries. Then under Rule 14 the Sub Divisional Officer is required to issue notice to the land-holders and tenants informing them of the receipt of the Tehsildar's report and calling them to appear if they wish to be heard before he (Sub-Divisional Officer) determines the ceiling area applicable to such person. If the land-holder or tenant appears, he shall be given a hearing, otherwise the Sub Divisional Officer shall, on the basis of the tehsildar's report and 'such further inquiry, if any, as he may deem fit to make' proceed to determine the ceiling area, in accordance with Rules 15 to 21. The learned Counsel then referred to Rule 21, which lays down the contents of the Sub-Divisional Officer's order. The Sub-Divisional Officer is required to state in the order the particulars of the transfers as detailed in Clause (5) and he is also required to mention as to whether the transferee has claimed the refund of the consideration money, if so, his decision thereon. The learned Counsel submitted that it is true that under Section 30D of the Act the burden is placed on the transferor to prove the transfer falling under Clause (i) or Clause (ii) of Sub-section (1) of Section 30D, but no such provision is embodied in Section 300 Besides that from the provision of the burden of proof it should not be taken that inquiry in respect of transfer is not required to make in the presence of the transferee. Rule 14 does not prohibit holding of an inquiry in the presence of the transferee. This provision keeps open for the Sub-Divisional Officer to hold such further inquiry as he may deem fit to make and under this provision it was essential for the Sub-Divisional Officer to hold an inquiry after

notice to the transferees, as they were vitally interested, being in possession of the lands which, stand already matured in their names and entered so in the records of right. The learned Counsel urged, firstly, Rule 14 should be so construed Secondly, even if it is not so construed, still it was obligatory for the Sub-Divisional Officer, while functioning as a quasi judicial tribunal to have afforded an opportunity to the transferees of being heard, so that their rights and interest in the lands may not be prejudiced After the lands having been transferred, as provided under Section 30DD, the transferor ceased to have any interests, whatsoever, in the lands transferred and the transferees cannot be made to suffer far inaction, and negligence on the part of the transferor. If an opportunity would have been afforded to the transferees they would have established that the transfers in their favour were in conformity with the provision of Section 30 D and are valid and legal transfers. The learned Counsel urged that in Bhera Ram's case, Bhera, Ram, Bhanwara Ram and Rajaram purchased 39 'bighas' 10 'biswas' land for a sum of Rs. 1000/- through a registered site-deed on 18-6-64 and their names were entered in the records of rights in pursuance of the sale-deed. Similarly the other transfers were also valid The Revenue Appellate Authority did not even afford an opportunity to produce additional evidence to the transferor. The learned Counsel urged that this could not be the intention of the legislature that the transferees of lands under valid transfers may be deprived of their lands on account of inaction or slackness on the part of the transferor The learned Counsel supported his submissions by reference to decisions on analogous laws of Punjab and Haryana High Court & Assam & Nagaland High Court, which are, S. Balwant Singh Chopra and Ors. v Union of India and Ors. (FB); Hirnek Singh and Anr. vi The State of Punjab and Ors. (FB); Associated Industries Assam Ltd. v. Sub-Divisional Officer (Sadar), Gouhati and Ors. AIR 1972 Assam & Nagaland 4 and Gurcharan Singh and Ors. v. Prithi Singh and Ors. : AIR 1974 SC223 . Support has also been taken from the exposition of principles of natural justice made by the Supreme Court in A.K. Kraipak and Ors. v. Union of India and Ors. : [1970]1SCR457 .

5. Shri M.D. Purohit, Additional Government Advocate, on behalf of the State, on the other hand contended with all vehemence at his command that in order to bring about agrarian reforms and to make the land available to the landless persons by distribution of lands, ceiling provisions were introduced in the Tenancy

Act by embodying Chapter III-B. If the scheme of the provisions contained in Chapter IIIB & the Rules framed under the Act, is examined, it would show the anxiety of the legislature to implement its policy expeditiously & in order to achieve this object under Section 30D, the burden of proof has been placed on the transferor to prove the recognizable transfers. Introduction of Section 30DD would not mean that the other provisions of Section 30D would not be operative. The provisions of Section 30DD should be read as If the list of the recognizable transfers is extended in Section 30D, & the rest of the provisions of Section 30D would have their full operation. He urged that when burden of proof has been placed on the transferor, there is no room or scope for the argument that the transferees of the lands should be given notice of the proceedings. Rule 14, as well, does not contemplate issue of any such notice to the transferees. If the legislature intended that the question of recognizable transfers should be determined in presence of the transferees, it would have embodied such a provision either under the Act or the Rules framed thereunder. By necessary implication, notice to transferees stands thus excluded and impugned orders cannot be said to be bad in the eye of law for want of notice or for want of any opportunity of being heard given to the transferees. The learned Additional Government Advocate submitted that the rights of transferees have been amply protected. They may apply for refund of consideration money and they have been given a preferential right of allotment of lands in their favour under Rule 46. The legislature had in its view the lit of the transferees so provided for refund of consideration money, keeping charge thereof on compensation amount payable to the transferor, and allotment of lands to them as landless persons Shri Purohit referred to the various decisions of the Board of Revenue for Rajasthan wherein consistently this view has been taken that transferees are not entitled to any notice and the same view is taken in a Bench decision of this Court *Nandlal v. State of Rajasthan* 1978 WLN 272, in which reference has been made to the observations of their Lordships of the Supreme Court in *Union of India v N.N. Sinha and Anr. : (1970)IILLJ284SC* , He also referred to two more decisions of the Supreme Court *The Chairman, Bond of Mining Examination and Chief Inspector of Minis and Anr. v. Ramjee* AIR 1977 SC 963 and *Smt. Menaka Gandhi v. Union of India and Anr. : [1978]2SCR621* .

6. Besides meeting the above contentions Shri Purohit also raised contention's which en ay disentitle the petitioners to claim any relief in this extras-ordinary remedy.

7. I may now proceed to consider the sole contention advanced on behalf of the petitioner. The point in controversy, though seems to be short, but appears to be far reaching in its consequences and thus of vast magnitude. Simple question is, as to whether the transferees are required to be given an opportunity of being heard in ceiling proceedings if the transfers are shown to have been made within the specified time in favour of permissible persons within permissible limit, that is, if transfers are nude, which are recognizable in law? I am not concerned in the present writ petitions to take into consideration the transfers, which may be shown to have been made beyond the specified date and are not recognizable in law. It is not in dispute as to how the Sub Divisional Officer is required to act under Chapter III-B of the Act and the Ceiling Rules. He is called upon to adjudication as to whether the transfers have to be ignored for determining the surplus area of the landholder or the tenant or they have to be recognized & excluded from the total land of the land holder or tenant for determination of his surplus area. He is required to consider the oral & documentary evidence, that may be produced before him in proof of the transfers and under Rule 14 he is further required Jo hold such further inquiry, as he may deem fit. His order of non-recognition of transfers and declaration of surplus area by him entails the consequences affecting the rights and interests of the transferees in the lands in their possession and depriving them of their lands. Thus, considering the consequences of his order and the manner in which he is required to pass the order clearly go to point out that the Sub-Divisional Officer is required to discharge his function quasi judicially It is true that the Act and the Rules are silent with regard to the issue of notice to the transferees and to determine the reconcilability of the transfers in the presence of the transferees, but the question which arises for determination is as to whether by necessary implication sue of notice to the transferees is dispensed with under the Act and the Rules? It is so, principles of natural justice will have no application. If by necessary implication statutorily such notice has been excluded the principles of natural justice audi alteram partem will necessarily come into operation, for no person can no deprived of his properly without being heard under

the rule of law and legal order, as prevailing.

8. Thus, it is to be seen as to whether issue of notice to the transferees is excluded or dispensed with by necessary implication under the Act and the Rules? For determination of this question the provisions of the Act and the Rules require scrutiny.

9. Chapter III B beings from Section 30B and ends with Section 30J. Section 30B defines the expression 'family' and 'person'. Section 30D provides the extent of ceiling area. Section 30D makes a provision for non-recognition of certain transfers for fixing ceiling area under Section 30C. It lays down that any voluntary transfer effected on or after the 2nd February, 1958 shall be deemed to be transfer calculated to defeat the provisions of this Chapter and shall not be recognized and taken into consideration, but there are two exceptions,- (1) transfer by way of partition; and the other (2) transfer in favour of a person who was a landless person before the said date and continued to be so till the date of transfer. The burden of proving of these excepted transfers shall be on the transferor, and a further condition has been imposed in relation to the second type of transfers, that the transfer of land in excess of the ceiling area applicable to the transferee, shall not be recognized or taken into consideration and there is further time limit placed in relation to the second category of transfers that in case such transfers are effected after 9.12.59 they will not be recognized. Sub-clause (2) of Section 30D provides that the transfer shall not be enforceable as against the State Government in respect of any land forming the subject-matter of such transfer and coming to the State Government under Section 30E. Sub-section (3) confers a right on the transferee of the land to claim from the transferor a refund of the consideration money and it is further provided that the consideration money shall be a charge on the compensation payable by the State Government in respect of such land, which is the subject-matter of transfer under Section 30D. It would appear from these provisions that in case of non recognizable transfers, transferor has got a right of refund of the consideration money and this amount shall be a charge on the compensation money payable by the State Govt. to such transferors & such transfers shall not be enforceable against the State Government and the State Government can take possession of such land, after

declaration of the same as surplus area not opted to be retained by the landholder or the tenant.

10. Section 30DD was added by the Amending Act 15 of 1970 with effect from 18.8.1970. It enlarges the scope of recognizable transfers by two Causes Clauses (1) only is relevant. It begins with non-obstante clause. Thus it over-rides what is contained in Section 30D and thereby it adds some more category of transfers to be recognized to that two categories of transfers recognizable under Section 30D. Clause (1) of Section 30DD lays down that for the purpose of determining the ceiling area in relation to a person under Section 30C every transfer of land not exceeding thirty standard acres made by a person upto the thirty first day of December, 1969 in favour of an agriculturist domiciled in Rajasthan shall be recognised. The second of Clause (1) also is not relevant for our purpose. The expressions 'agriculturist' and 'domiciled in Rajasthan' have been defined in the explanation added to this provision. From this provision it would appear that if. Transfers are effected within the specified limit before the specified date in favour of a person, who is an agriculturist domiciled in Rajasthan, then such transfers will have to be recognized.

11. Section 30E lays down the maximum land that can be held by any person with effect from the date notified by the State Government in this behalf. It places restrictions on holding of land and acquisition of land in excess of the ceiling area applicable to him with effect from the notified date and if he is In possession of land of in excess of the ceiling area applicable to him with effect from the notified date or subsequently acquires lands, which may exceed his ceiling area, he is required to make a report of such possession or acquisition and is further required to surrender such excess land to the State Govt. Failure to make a report or to surrender the land, has been made punishable and further person holding land in excess of the ceiling area shall be deemed to be a trespasser liable to ejectment from such excess land and to pay penalty in accordance with Clause (a) of Sub-section (1) of Section 183. Lands coming to the State Government by voluntary surrender or by ejectment, shall vest in the State Government free from all incumbrances. Sub-section (6) has been added in Section 30E by the Amending Act No. 15 of 1970 with effect from 18.8.1970, which provides that nothing

contained in Section 30E shall operate as against the transferor to the extent his transfers are recognized under Section 30DD. This would mean transfers covered under Section 30DD would not be considered for the purposes of determining the ceiling area. Section 30F makes provision for allotment of land vesting in the State Government under Section 30E, to landless and other persons in accordance with the rules which may be made by the State Government in this behalf and Section 30D makes a provision for payment of compensation for all lands vesting in it under Section 30E to the persons so surrendering the same. The other provisions have no bearing in the present case.

12. The scheme of the Rules may now be considered which have been framed in exercise of the powers conferred by Section 257 of the Rajasthan Tenancy Act, 1951. The rules are divided into VII Chapters. Chapter II deals with the registration of landless persons; Chapter III with fixation of ceiling on land; Chapter IV with exemption from ceiling; Chapter V with determination and payment of compensation; Chapter VI with allotment of vested lands; and Chapter VII is miscellaneous. Under Chapter III we find provisions for filing of declaration by landholders and tenants; for issue of notice by the Sub Divisional Officer calling for declarations; checking of the declarations received; preparation of lists & statements by the Tehsildars & action to be taken by the Sub Divisional Officer in Rules 9, 10, 12, 13 and 14. Under Rule 9 the land holders and tenants are required to furnish the declarations of their holdings within the prescribed time & under Rule 10 the Sub Divisional Officer is empowered to issue a notice without prejudice to the provisions of Rule 9, requiring any land-holder or tenant to furnish to him a declaration of his holding, when he has reason to believe that such land holder or tenant holds land in excess of the ceiling area applicable to him and it is enjoined on such land holder or tenant to furnish a declaration on receipt of the notice within the time specified therein. Under Rule 12 the declarations so received are required to be forwarded to the Tehsildars for checking. The particulars given in the declarations have to be checked with reference to the entries in 'jamabandi', 'Khasra girdawari', register of mutations, monthly statements of registered deeds received from the Registrars and Sub-Registrars, Patwari's diary of events; and any other relevant records. The Tehsildar is required submit a report of the accuracy or inaccuracy of such entries. Under Rule 13 the Tehsildars are required

to draw up lists of land-holders and tenants from whom declarations have not been received and to prepare statements of their holdings. Rule 14 is very material, which is reproduced hereunder:.

14. Action by Sub-Divisional Officer-On receipt of the reports mentioned in Rule 12 and of the statements referred to in Rule 13 the Sub-Divisional Officer shall issue notice to land-holders and tenants, in Form Ceiling VII informing them of the receipt of the Tehsildar's report and directing them to appear before the Sub-Divisional Officer, on a date to be specified, if they wish to be heard before he (Sub-Divisional Officer) determines the ceiling area applicable to each of such person. If a land-holder or tenant appears, he shall be given a hearing, otherwise the Sub-Divisional Officer shall, on the basis of the Tehsildar's report and such further enquiry, if any, as he may deem fit to make, proceed to determine the ceiling area in accordance with Rule 15 to 21.

13. According to the above rule the Sub Divisional Officer is required to issue notice to the land holders and the tenants informing them of the receipt of the Tehsildar's report and directing them to appear before him if they wish to be heard. If they appear, they shall be given a hearing. It further empowers the Sub-Divisional Officer to conduct 'such further enquiry, if any, as he may deem fit to make', before he proceeds to determine the ceiling area. Rule 21 lays down the contents of Sub-Divisional Officer's Order Under Clauses (5) and (6) of Rule 21, the Sub-Divisional Officer is required to make a mention about any such transfer which may come within the permissible categories and which cannot be recognised and is also required to mention as to whether the transferee has claimed the refund of the consideration money and if so; his decision thereon Rule 22 lays down that a transferee of the land referred to in Sub-section (1) of Section 30D, who claims a refund in accordance with the provisions of Sub-section (3) of Section 30D, may apply to the Sub-Divisional Officer and Rule 23 provides for not for of such an application to the transferor and after hearing for disposal of any objections raised and passing appropriate orders on the application of the transferee. It may be stated that it appears that Rule 22 has not been amended and transfers contemplated under Section 30DD are not included under Rule 22. Under Chapter VI dealing with allotment of vested lands there is a provision for

allotment of vested lands to individual and less persons under Rule 41. There is no provision for allotment of vested lands to agriculturists domiciled in Rajasthan, as contemplated in Section 30DD, Under Rule 46 there is a provision for, order of priority for allotment and in order of priority first in number is a person who is a transferee within the meaning of Sub-section (2) of Section 30D and to whom the provisions of Sub-section (3) of Section 30D and of Rule 22 are applicable with further condition that the would continue to be a landless person within the meaning of the Act if the area transferred to him were not taken into account. It appears that corresponding amendment has also not been made in Rule 46 whereby including transferee under Section 30DD.

14. From the survey, scrutiny and analysis of the relevant provisions of the Act and the Rules, it is clear that the provisions are silent for issue of notice to the transferees of the land and only persons under Section 30D have been given a right to claim refund of consideration money under Section 30D and Rule 22, and similarly they alone have been given preferential treatment in allotment under Rule 46, provided they are landless persons as defined under the Act. There are no such provisions for the transferees under Section 30DD, so this argument is not available to the State that the rights of transferees under Section 30DD, as well, are well protected and no injustice would be perpetrated to them. But still the question will remain as to whether by necessary implication notice to transferees covered under Section 30DD is excluded? In this connection it has been contended that the legislature in order to acquire the surplus land expeditiously did not provide for giving opportunity of being heard to the transferees of the land and in case the transferees of the land and in case the transferees were required to be given notice, the very object of the Act would have frustrated & the land would not have come in possession of the State for being distributed to the landless persons early. I am unable to agree with this contention of Shri Purohit. From the provision of Section 30DD, it would appear that the object of the legislature is to recognize the transfers falling under Section 30DD and in case such transfers are not recognized on account of any lapses on the part of transferees, the object of the legislature would be defeated. That is why, under Rule 14, the Sub-Divisional Officer is empowered so hold such further inquiry, if any, as he may deem fit to make.

15. In the Bench decision of this Court *Nand Lal v. State of Rajasthan and Ors.* (supra) the transfer was not a recognizable one, as it was effected after 31st December, 1969, beyond the specified date, though there are general observations made in this case to the effect that it is manifest that the legislature by necessary implication excludes the right of transferee-purchasers to be heard. But these general observations need to be read in the context of the facts of that case. The learned Judges were not concerned with a transfer within the specified time to specified persons within permissible limits. In this connection reference may be made to the remarks of Lord Halsbury in (1901) AC 495 at p. 506 *Quinn v. Leatham* that every judgment must be read as applicable to the particular facts proved or assumed to be proved since the generality of the expressions which may be found there, are not intended to be expositions of the whole law, but governed or qualified by the particular facts of the case in which such expressions are to be found. Shrivastava, J., speaking for the Court, while dismissing the two appeals in limine in para 9 of the judgment observed that as regards the petitioners' right to be heard, suffice it to say, that the transfers of the lands made by a Khatedar tenant after December 31, 1969, cannot be recognised and they are rendered ineffective against the State Government. For the purpose of determining surplus land of the Khatedars, such transfers are required to be ignored. In para 6 it was observed that the appellants have no grievance against the order of declaration. Their grievance relates to the manner of exercise of option by the Khatedar tenant and its acceptance by the Sub Divisional Officer and non interference in the said order by the Revenue Appellate Authority. In the context of the facts of that case it was observed that the legislature, by necessary implication, excludes the application of the principles of natural justice regarding audi alteram partem in favour of the transferees. In sum, they have no right of being heard and reliance was placed on the observations of their Lordships of the Supreme Court *Union of India v. J.N. Sinha and Anr.* (supra). The Division Bench considered the right of reimbursement of the amount of the transferee under Rule 22 out of the compensation amount. Having considered so, the Division Bench made the observations that the principles of natural justice are excluded. From what has been stated in para 11 of the judgment it would further appear that the observations should be taken to be circumscribed to the facts of that case. It has

been stated at the end of para 11 that 'the legislature, in order to acquire expeditiously the surplus land, did not make any provision under Chapter III B of the Rajasthan Tenancy Act or the Rules made thereunder regarding giving an opportunity of being heard to the transferees of the land whose transfers have not been recognised under the law of the land for ceiling purpose. Then it was observed that the principle of natural justice cannot be stretched to defeat the very purpose or object of the Act itself. From these observations it would appear that the Division Bench considered the exclusion of the principle of natural justice by necessary implication in case of the transferees whose transfers are not recognised under the law. Further, in case of a recognizable transfer, in my opinion, it cannot be said that issuance of notice to such transferees would defeat the purpose and object of the Act. On the contrary, in case the transferees are in a position to prove their transfers permitted by law it would advance the purpose and object of the Act. By recognizable transfer the purpose of distribution of land to landless persons and agriculturists domiciled in Rajasthan, is achieved.

16. In J.N. Singh's case (supra) their Lordships, while dealing with the Fundamental Rule 56(3) regarding compulsory retirement, after noticing the observations made in A.K. Kraipak v. Union of India (supra), observed as under:

It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures & the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules of principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

17. The question is as to how the above observations are to be viewed in the light of the provisions of law and facts of the present case, that is, in relation to the recognizable transfers? There is no quarrel with the principle that where by necessary implication law excludes the operation of principles of natural justice, the principles of natural justice can have no application. The application of the principles of natural justice, as observed above, would depend upon the actual words of the provision conferring power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power. From the provision of Section 30DD and Rule 14 it would be evident that there is a power of recognition conferred on the Sub-Divisional Officer. The purpose of conferring the power is to exclude recognizable transfers from the consideration of the ceiling area. No doubt, under Section 30D burden has been placed on the transferor to prove that a permissible transfer is effected. From such a provision it cannot be inferred that a transferee need not be heard. The onus has been placed on the transferor, because he has claimed in his declaration that he had effected certain permissible transfers. If the inquiry would have been restricted to the hearing of the transferor alone, perhaps, it can be said that the transferee is excluded from being afforded an opportunity of being heard, but under Rule 14, the Sub-Divisional Officer is empowered to conduct 'such further enquiry, if any; as he may deem fit to make' beyond affording an opportunity of hearing to the transferor. The expression 'such further enquiry, if any as he may deem fit to make' confers wide powers on the Sub Divisional Officer and enlarges the scope of inquiry. I am restriction and confining myself to only permissible and recognizable transfers mentioned in the declaration. One can conceive of a situation when transferor may die leaving no heir or when the transferor takes no interest, what so ever. He does not even submit any declaration or may content himself with furnishing a declaration with incomplete particulars of the transfers. Even after having afforded an opportunity of hearing he may be negligent in the conduct of the case & may not adduce necessary evidence to prove the transfers. A situation of this nature may also be conceived that a transferee may go in for in purchase of a land after due deliberation & consultation regarding the validity of the transfer completing all essential legal formalities, appears before the Sub-Divisional Officer & submits necessary documents to show that there is a

recognizable transfer in his favour Will such a transferee be not heard when the transferor has not adduced any evidence to prove the transfer? In my opinion if various situations of recognizable transfers are conceived of or visualized it cannot be imagined that the legislature by necessary implication has excluded an opportunity of being heard to the transferees. Rather the conferment of power on the Sub Divisional Officer to holding 'such further enquiry, if any, as he may deem fit to make', necessarily implies that the transferee may be heard In any case it should be taken that by necessary implication hearing of the transferees is not excluded and principles of natural justice can be resorted to and will supplement the law.

18. In *A.K. Kraipak and Ors. v. Union of India and Ors.* (supra) their Lordships of the Supreme Court in para 20 considered development of principles of natural justice and observed as under:

The aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice These rules can operate only in areas not covered by any law validly made In other words they do not supplant the law of the land but supplement it....

If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcate administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry....

What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstanced of that case, the frame-work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of the facts of that rule was necessary for a just decision

on the facts of that case....

19. Shri Purohit drew my attention to the reported decisions of the Board of Revenue wherein this view has been taken that transferees are not required to be heard. They are not necessary parties and they are not aggrieved persons He referred to Patel Jaikaran Bhai Moti Bhai and Ors. v. State and Devandra Singh 1975 R.R.D. 163; State of Raj v. Asa 1976 R.R.D. 88; Madanlal v. Shyam Singh and State 1977 R.R.D. 78; and Dhanna Lal v. Suraj Bai 1978 R.R.D. 300.

20. In Patel Jaskaran Bhai's case (supra) the learned Member, Board of Revenue, (as he then was), after reproducing the relevant provisions of the Act, and the Rules, observed that the provisions of law are basically different from the provisions of law prevailing in the States of Punjab & Haryana, Gujarat, Assam and Nagaland and Mysore. After stating so observed that if notices to the transferees are to be issued then the proceedings would become extremely indicate and the delay so caused would defeat the very purpose of the enactment. The transferees have no right to be heard except for payment of compensation and it was further observed that whether particular transfers are hit by the provisions contained in Chapter III-B of the Rajasthan Tenancy Act is a matter between the land-holders whose lands are being resumed and the State. The transferees may take such recourse of law as might be deemed fit & proper. The learned Member considered the earlier decisions of the Board to the same effect and in para 11 it was observed that the transferees cannot be said to be aggrieved persons and they are not debarred from seeking any legal remedy if available to them. It was a review petition for the first time Sled by the transferees in a ceiling case between the transferors and the State. It would appear that the learned Member proceeded to consider the question on the basis of the avowed object of the legislature and on the basis that it is a matter between the landholders or tenants on the one hand and the State on the other. In fact after recognizable transfer, the matter should be considered to be, between the transferees and the State, as the transferor ceases to have any interest after effecting the valid transfer.

21. In the State of Rajasthan v. Asa (supra) it was observed that Sub-section (3) of Section 30D entitles a transferee to claim a refund of the consideration money paid to the transferor and his claim can be disposed of in accordance with Rules 22 and 23. Thus, his interests are adequately protected and there is no need to hear him even at the stage of exercise of option. It was observed that the Punjab and the Supreme Court rulings, which are based on the principles of natural justice, will, therefore, have no application to cases in Rajasthan. In this case the remand order of the Revenue Appellate Authority for issuance of notices to all transferees was set aside in revision preferred by the State.

22. The other two Revenue Board decisions do not deal with the point. In these cases it would appear that the implications of the Act and the Rules, as in force in Rajasthan, have not been considered and I am unable to approve of the view taken by the Board of Revenue in relation to permissible transfers under Section 30DD.

23. The other two decisions of the Supreme Court dealing with the rule of audi alteram partem cited by Shri Purohit may now be noticed.

24. In Chairman, Board of Mining Excavation and Chief Inspector of Mines, and Anr. v. Ramjee (supra) their Lordships of the Supreme Court were dealing with Regulation 26 of the Goal Mines Regulations, 1957. In this case Ramjee was a shot-firer in a colliery. He handed over an explosive to an unskilled hand, who fired it and an accident occurred resulting into injuries to one employee. The Regional Inspector enquired into the cause of the accident and gave the delinquent an opportunity for explanation. There was an admission by him and thereafter he forwarded the report to the Chairman of the Board with a recommendation for cancellation of the certificate under Regulation 25. The Board after considering the explanation sent by the delinquent cancelled the certificate. The cancellation was set aside by the High Court on the ground of violation of Regulation 26, but their Lordships of the Supreme Court observed that the requirements of Regulation 26 were complied with. If the observations made in this case are taken into consideration, in my opinion, the observations do not in any way help the State. Their Lordships observed that principles of natural justice are satisfied in the facts

and circumstances of the case. His Lordship Krishna Iyer, J, in the facts and circumstances of that case made the following relevant observations:

To be literal in meaning is to see the skin and miss the soul of the Regulation. The judicial key to construction is the composite perception of the de ha and the dehi of the provision. So viewed, Regn. 26 is easy of comprehension.

The last violation regarded as a lethal objection is that the Board did not enquire of the respondent, independently of the one done by the Regional Inspector. Assuming it to be necessary, here the respondent has, in the form of an appeal against the report of the Regional Inspector, sent his explanation to the Chairman of the Board. He has thus been heard and compliance with Reg. 26, in the circumstances, is complete. Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential procession propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt that is the conscience of the matter.

25. Similarly the observations made in Maneka Gandhi's case (supra) do not in any way help the State. In Maneka Gandhi's case her passport was impounded 'in public interest' by an order dated July 2, 1977, and the Government of India declined 'in the interests of the general public' to furnish the reasons. The validity of the said order was challenged. Their Lordships of the Supreme Court did not interfere with the impugned order in view of the statement made by the Attorney General that the petitioner could make a representation in respect of impounding of passport and her representation would be dealt with expeditiously. Even if the impounding of the passport was confirmed, it would not exceed a period of six months. Such a course in the nature of post remedial hearing would satisfy the requirements of principles of natural justice. In this case their Lordships made the following observations:

Although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. The principle of audi alteram partem, which mandates, that no one shall be condemned unheard, is part of the rules of natural justice.

Natural justice is a great humanising principle intended to invest law with fairness and secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The inquiry must, always be; does fairness in action demand that an opportunity to be heard should be given to the person affected.

The law must now be taken to be well settled that even in an administrative proceeding which involves civil consequences, the doctrine of natural justice must be held to be applicable.

XX XX XX XX XXIt would not therefore, be right to conclude that the audi alter am partem rule is excluded merely because the power to impound a passport might be frustrated, if prior notice and hearing were to be given to the person concerned before impounding his passport. The Passport Authority may proceed to impound the passport without giving any prior opportunity to the person concerned to be heard, but as soon as the order impounding the passport is made, an opportunity of hearing, remedial in aim, should be given to him so that he may present his case and controvert that of the Passport Authority and point out why his passport should not be impounded and the order impounding it recalled. This should not only be possible but also quite appropriate, because the reasons for impounding the passport are required to be supplied by the Passport Authority after the making of the order and the person affected would, therefore, be in a position to make a representation setting forth his case and plead for setting aside the action impounding his passport. A fair opportunity of being heard following immediately upon the order impounding the passport would satisfy the mandate of natural justice and a provision requiring giving of such opportunity to the person concerned can and should be read by implication in the Passport Act, 1967 If such a provision were held to be incorporated in the Passport Act, 1967 by necessary implication, as we hold it must be, the procedure prescribed by the Act for

impounding a passport would be right, fair and just and it would not suffer from vice of arbitrariness or unreasonableness. We must, therefore, hold that the procedure established by the Passport Act, 1967 for impounding a passport is in conformity with the requirement of Article 21 and does not fall foul of that article.

26. As regards the Assam, and Nagaland and Punjab decisions referred to by Sri Shrimati. it may be stated that the provisions obtaining in those States are somewhat different and it can be said that the scope of the provisions may be wide requiring an opportunity of being heard to be given to the transferees, but still in the Full Bench decision of the Punjab & Haryana High Court consisting of five judges in Harneek Singh and Anr. v. State of Punjab and Ors. , their Lordships expressed the view that the principles of natural justice require that the transferees should be heard. In para 18 at page 239 it was stated that it is not necessary to enter into the controversy as to whether a transferee is included in the expression 'person concerned' occurred in Section 32-D(2) of the PUPSU Tenancy and Agricultural Lands Act and is, therefore, entitled to be heard at all stages relating to the declaration of the surplus area of the transferor for the simple reason that even if the statute and the rules framed thereunder are silent on the point, it appears to be necessary for satisfying the principles of natural justice, without which it is impossible to maintain the rule of law, to give an adequate opportunity to a transferee to safeguard his interest in proceedings which can possibly culminate in decision prejudicially affecting him and his property rights. The earlier decision of the Punjab High Court in Pritam Singh Cuabil v. State of Punjab : [1967]2SCR536 was not approved and in para 20 of the judgment it was observed that principles of natural justice may be excluded by the Legislature, but it is not the case here.

27. In Gurcharan Singh and Ors. v. Prithi Singh and Ors. (supra) the question arose with regard to the determination of permissible and surplus area of the land owner, who failed to reserve or select his permissible area within time under the Punjab Security of Land Tenures Act, the transferee-appellants had notice of the proceedings and participated in the same, but at the stage of exercise of the powers by the Collector under Section 5B while determining as to which surplus land is to be taken possession of, their Lordships observed that the Collector has

to act judicially. He is bound to give notice to the land owner, and the transferees from him, if known. Thereafter he has to hear the parties who appear, and to take into consideration their representations and then pass such order as may be just. In so exercising his discretion, the Collector may, subject to the adjustment of equities on both sides, include the transferred area in the permissible area or the surplus area of the land owner. He may consider the wishes of the land owner to the extent they are consistent with the equities of the case. It is true that the observations have been made in background of the provisions of the Punjab Act, but still they throw light on the question as to how the Collector is required to act under the Punjab provisions. The cases of the other States no doubt are based on their respective State laws, but it can be noticed that specifically there was no provision for issue of notice to the transferees. Different phraseologies 'person concerned', 'persons affected', 'persons interested', had been made use of, but still the idea had been that the cases of the transferees may not be allowed to suffer without opportunity being afforded to them.

28. It may be contended that there is only mention of opportunity of hearing being given to the transfer and burden is placed on him to prove the transfer so it should be inferred that it excludes any notice to the transferees and the maxim *Expressio unius est exclusio alterius* will come into play. His Lordship Bhagwati, J, in Maneka Gandhi's case in para 63 considered the question of exclusion of opportunity of hearing by implication and reference was made to S.A. De Smith's 'Judicial Review of Administrative Action' His Lordship observed that analysis of these exceptions a little closely, it would be apparent that they do not in any way militate against the principle which requires fair play in administrative action Reference may also be made to a decision *Colquhoun v. Brooks* (1888; Vol. XXI Queens Bench Division 52), wherein it was observed as under:

The maxim '*Expressio unius, exclusio alterius*,' has been pressed upon us. I agree with that is said in the Court below by Wills, J. about this maxim. It is often a valuable servant, but a dangerous master to follow in the construction of statutes or documents The exclusion is often the result of inadvertence or accident, and the maxim ought not to be applied, when its application, having regard to the subject-matter to which it is to be applied, leads to inconsistency or injustice.

29. Shri Shrimali urged that the legislative intent under the old law appears to be the same as finds manifestation in Section 12 of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973; In this provision explicitly it is provided that the draft statement shall be served on the persons concerned and on all other persons, who in the opinion of the authorised officer have interest in the land to which draft statement relates together with the notice stating that any objection to the draft statement shall be preferred within 15 days from the date of service of such notice and the authorised officer shall consider the objection after giving the objector a reasonable opportunity of being heard and then decide by order in writing. It appears that the legislative inadvertence or omission in the old law stands rectified in Section 12 of the 1973 Act, so even under the old law, it cannot be presumed that the legislature impliedly dispensed with the notice to the transferees when the provision of Rule 14 is capable of being so construed and of being given this meaning and content. Thus, either on construction of Rule 14 or by invoking the rule of audi alteram partem, in my opinion, the petitioner-transferees, were entitled to notice and of an opportunity of being heard and the same having been deprived to them, so the orders by the respondents Nos. 2 and 3 are vitiated and rendered ineffective in relation to the lands transferred to them by respondent No. 4 and on this ground the orders deserve to be quashed and set aside.

30. But there is a serious impediment in the way of the present petitioners. According to the State the present petitioners have already been dispossessed. The petitioners have not averred that they were not in the know of the ceiling proceedings conducted against respondent No. 4. They have not given the date as to when they were informed by the Patwari that the possession of the lands transferred to them by respondent No. 4 is to be taken, as the same have been declared surplus and opted to be surrendered by respondent No. 4. The petitioners have not filed any re-joinder with regard to these particulars and that they deny to have been dispossessed from the land. However, in the second stay application they have asserted that they are in possession of the lands. Thus the question of possession is a disputed one. Order these circumstances the question arises as to whether the petitioners should be granted any relief in this extraordinary jurisdiction when a remedy by way of suit is available to them. On

behalf of the petitioners it is urged that the impugned orders cannot be called in question before any civil court as the same is barred under Section 256 of the Rajasthan Tenancy Act, so the remedy by way of suit is not available to the petitioners. I am unable to agree with this contention of Shri Shrimali. Section 256 runs as under:

Section 256. Bar to jurisdiction of civil courts : (1) Save as otherwise provided specifically by or under this Act, no suit or proceeding shall lie in any matter arising under this Act or the rules made thereunder, for which a remedy by way of suit, application, appeal or otherwise is provided therein.

(2) Save as aforesaid no order passed by the State Government or by any revenue court or officer in exercise of the powers conferred by this Act or the rules made thereunder shall be liable to be questioned in any civil court.

According to the provision contained in Sub-section (1) of Section 256, if remedy by way of suit, application, appeal or otherwise is provided with respect to any matter under the Rajasthan Tenancy Act then no suit or proceeding shall lie in any civil court in respect to the same, except where specifically otherwise provided for under the Rajasthan Tenancy Act. Sub-section (1) further provides that the order of the State Government or of Revenue Court or officer passed in exercise of the powers conferred by the Rajasthan Tenancy Act or Rules made thereunder shall not be liable to be questioned in any civil court except by availing of the remedies as provided in Sub-section (1). Thus, it would appear if a remedy by way of suit, application, appeal or other wise is available under the Rajasthan Tenancy Act, then such remedy can be availed of questioning the disputed orders of the State Government or of the Revenue Courts or officers. The petitioners are entitled to seek a declaration of their 'khatedari' rights under Section 88 and may further claim relief of possession or injunction, as the case may be, under Section 183 or Section 92 A of the Rajasthan Tenancy Act. The present petitioners were not parties to the ceilings proceeding and as such the impugned orders would not in any way bind them. Thus, the orders passed behind their back would not come in their way. In State of Rajasthan v. Narain 1968 RLW 376 the plaintiff was dispossessed of his agricultural land by the State without authority and the State

was alleged to be the trespasser. It was held that revenue court is not precluded from entertaining the suit. In this case the suit was instituted in the civil court, but the High Court directed to return the plaint to the plaintiff for being presented to the proper revenue court. Under Article 226 of the Constitution as amended by the 42nd Amendment Act it is provided that no petition for redress of any injury referred to in Sub-clause (b) or Sub-clause (c) of Clause (1) shall be entertained, if any other remedy for such redress is provided for by or under any other law for the time being in force. As discussed above remedy by way of suit is not barred under Section 256 (2). Provision of Section 256 only bars the jurisdiction of the civil court and it does not bar the jurisdiction of the revenue courts when any relief can be claimed by any suit or under the provisions of the Rajasthan Tenancy Act from any revenue court. The position appears to be different in the new ceiling law, Section 32 whereof bars the jurisdiction of any civil or revenue court to decide or deal with any question or matter which is required to be decided or dealt with by the authorised officer or any other authority by or under the New Ceiling Act. The writ petitions could have been disposed of on this point alone, but as elaborate and lengthy arguments were advanced before me from both the sides and the question involved was of considerable importance, so it was thought proper to deal with the same.

31. In the result, these writ petitions are hereby dismissed on the ground of availability of alternative remedy. In the circumstances of the case. I leave the parties to bear their own costs of these writ petitions.