[2010] 12 S.C.R. 958

A PITAMBAR SINGH AND ORS.

v.

STATE OF BIHAR AND ORS.

(Civil Appeal No. 8865 of 2010)

B OCTOBER 8, 2010

[V.S. SIRPURKAR AND CYRIAC JOSEPH, JJ.]

Land Ceiling:

C *Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 – ss.2(ee), 11(1) and 32 B – Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982 – Class-II land – Mitakshara joint family comprising of appellant* D *no.1, his wife and sons having a total family holding of 33.95 acres – Draft statement made and published showing that appellant No.1 was entitled to retain only 18 acres of land and thus, the family was holding 15.95 acres of land as surplus land – Appellate Authority recorded that one son of appellant* E *no.1, namely, appellant No.2 was major, thus, he was entitled to be treated as a separate family from that of appellant no.1 – Order not challenged by the State and attained finality – Amendment Act came into force – Section 32B relied upon by State Government – Initiation of fresh proceedings –* F *Ceiling re-determined – Challenge to – Rejected by High Court – Held: In the facts and circumstances, s.32B could not have been relied upon by the State Government, and the High Court erred in legalizing the subsequent reopening of the proceedings, which had come to a dead end – Since the order passed by the appellate authority attained finality, there was* G *no question of any further proceedings – Even on the merits, the High Court committed a patent error in treating the family as one family and proceeding to limit the entitlement of the family holding to 18 acres – The rights of appellant Nos.1 and*

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2 as coparceners was intact – Further, since they were major on the relevant date, they could not have been held as member of one family and were entitled to be treated as independent families with the result that there would be two families and the total land being only 33.95 acres, there could be no surplus, as has been wrongly held by the courts below, particularly, after the reopening of the proceedings under s.32B of the Amendment Act.

Appellant no.1 is the son of 'B', the original land holder. They were members of a Mitakshara joint family and were having a total family holding of 33.95 acres of class-II land. The ceiling fixed by the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 is 18 acres in respect of such land. After the death of 'B', proceedings were started by a Ceiling Case against appellant No. 1. A draft statement was made and published showing that appellant No. 1 was entitled to retain only 18 acres of land and thus, the family was holding 15.95 acres of land as surplus land.

On the service of the draft statement, appellant No. 1 filed objections under Section 10(3) of the Act stating that his son, appellant no.2 was major on 9.9.1970, the relevant date under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, and as such, he also was entitled to his own share and he could not be held as a member of family of appellant no.1. The objection was rejected. The appellate authority by its order dated 15-2-1977 recorded a finding that appellant No. 2 was major on 9.9.1970, and accordingly, he was entitled to be treated as a separate family from that of appellant No.1, and that there was no surplus land in between the two families, namely, appellant no.1 and his son appellant no.2. This order was not challenged by the State by way of a revision and the said order attained the finality.

A Subsequently, the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982, came into force, pursuant to which a fresh draft statement was issued and the ceiling was re-determined, holding the family of the appellants
B (appellant no.1 and appellant no.2) to be one family. This order was confirmed by the Tribunal. Aggrieved, the appellants moved the High Court by way of a writ petition. The Single Judge of the High Court noted that there was a final order holding that the appellants were entitled to
C be counted as two families, yet held that the said old notification/publication would be deemed to be operative on the date of coming into force of the provisions of s.32B of the Amendment Act. The Division Bench affirmed the said order.

D Allowing the appeal, the Court

HELD:1. The Single Judge of the High Court erred in taking the view that since there was no final publication of draft statement under Section 11(1) of the Ceiling Act
E prior to coming into force of the provisions of Section 32B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982, the authority was justified in disposing of the proceeding afresh in accordance with the provisions of Section 10
F of the Ceiling Act and passing final order upon the objection filed under Section 10(3) of the Ceiling Act filed on behalf of the appellants. The Single Judge did not, in any manner, go into the merits of the matter nor did he give effect to the order dated 15.12.1977, where it was
G unequivocally held that the land holders were entitled to be treated as two families. The whole course undertaken was completely illogical and unjust. In view of Section 11(1) of the Ceiling Act, there ought to have been the finalization of draft statement and the publication thereof

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after passing of the order dated 15.12.1977 altering the earlier published final statement. [Para 5] [969-B-E]

2. In the instant case, as noted by the High Court in the LPA, the old draft statement was published when in fact even the matter was not finally decided in between the State and the land holders. Such draft statement which was published prematurely, could not be treated as a proper draft statement and there could be no publication thereof also. In fact, the Division Bench correctly noted that the publication, as contemplated, is to be made only after the disposal of the objection, appeal and revision and if the publication is made before the disposal of the objection or appeal or revision and no change is brought in the draft statement by the disposal of the objection, the appeal or the revision, the publication will hold good, but if any orders in such objection, appeal or revision bring about a change, the publication will not hold good because the sub-Section mandates publication of a draft statement as changed while disposing of the objection or appeal or revision. The Division Bench has also drawn a correct conclusion holding that "by reason of the appellate order dated 15.12.1977 final publication of the draft statement as was made prior thereto stood obliterated with the order passed on the objection, on the basis whereof the same had been published." The Division Bench, however, noted that no such draft statement was ever published altering the earlier draft statement, and then proceeded to hold that since there was no final publication made on the basis of the order dated 15.12.1977, Section 32B came into operation and, therefore, there could be the initiation of the fresh proceedings in terms of that Section, which is a completely erroneous view. In fact, after the order dated 15.12.1977 was passed, it was not for the appellants to do anything, but it was the duty of the State

A Government to issue a final draft statement on the basis of that order and then to publish it in the light of the order dated 15.12.1977, which duty emanated from the positive language of Section 11(1) of the Act. It is not at all the fault of the land holders/appellants if the State Government did
B not do anything for four years i.e. between 16.12.1977 and 9.4.1981 when the Amendment Act came into force. Though the inaction on the part of the State Government is noted by the High Court, the Division Bench refused to act upon it and went on to observe that "although
C there is no just reason for the Collector not finally publishing the draft statement immediately after the appellate order dated 15.12.1977 was passed, but still then in view of the mandate contained in Section 32B of the Act, fresh proceeding became necessary in respect
D of the land in question." One cannot approve of such approach as it would be patently unjust to give a premium to the State Government on its inaction. The appellants had nothing to do with the creating or publishing of the draft statement. It was the duty of the State Government. If the State Government did not follow
E its duty, it has to suffer and the appellants cannot be made to suffer on account of the inaction shown by the State Government either deliberately or otherwise. Therefore, under the circumstances, Section 32B could not have been relied upon by the State Government and
F both the Single Judge as well as the Division Bench have erred in legalizing the subsequent reopening of the proceedings, which had come to a dead end on 15.12.1977. [Paras 5, 6] [970-B-H; 971-A-H]

G 3. Even on the merits, the Division Bench has committed a patent error in treating the family as one family and proceeding to limit the entitlement of the family holding to 18 acres. The father of appellant No. 1 was alive on 9.9.1970 and appellant No. 1 was a major at that

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time. Further, the major sons are not part of the family. The definition of the 'family' in Section 2(ee) of the Act clearly suggests that the major son would be outside the definition of 'family'. In the instant case, on 9.9.1970, 'B' was alive and so was appellant No. 1 was major. Even otherwise, appellant No. 2 was also a major person in the family on 09.09.1970, as held by the appellate authority vide order dated 15.12.1977. Thus, under no circumstance could it be held to be a single family. The Division Bench tried to get over this by saying that there was no pleading that on or before 9.9.1970, there was any partition effected under the joint family and that appellant No. 1 became individually entitled to holding any land Raiyat, but there is no question of treating appellant No. 1 not to be a Raiyat, particularly, when appellant No. 1 and his father were the coparceners of a Mitakshara joint family holding the land in question and, as such, each of them were entitled to the land to the extent of their share. The Division Bench strangely held that they were only entitled to enforce their right by seeking disruption of the joint family by claiming and obtaining partition of the joint family properties;however, that having not been done their individual rights did not crystallize. The Division Bench also mentioned further that though they had "floating right" in the land in question, but having regard to the explanation inserted to the definition of the word 'family' in Section 2(ee) of the Act, such floating right could not be taken into consideration for determining the composition of the family for the purpose of the Act. This approach is to be disapproved. The right of a coparcener comes in his favour with his birth and considering the definition of 'family', which includes only a person, his/her spouse and minor children, the logic of the Division Bench is erroneous. Explanation II to Section 2(ee) of the Act makes the matters clear when it says that personal law shall not be relevant or be taken into consideration

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in determining the composition of the family for the purposes of the Act. Therefore, though it was a joint family of B' and appellant No. 1 and thereafter of appellant no.2, the rights of appellant Nos.1 and 2 as coparceners would be intact. Further, since they were major on the relevant date, they could not have been held as member of one family and were entitled to be treated as independent families with the result that there would be two families and the total land being only 33.95 acres, there could be no surplus, as has been wrongly held by the Courts below, particularly, after the reopening of the proceedings under Section 32B of the Amendment Act. On both counts, therefore, the High Court has erred. Therefore, it is held that since the order dated 15.12.1977 has attained finality, there would be no question of any further proceedings. [Para 7] [971-H; 972-A-B-E-H; 973-A-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8865 of 2010.

From the Judgment & Order dated 30.11.2006 of the High Court of Patna in LPA No. 1483 of 1997.

Nagendra Rai, Shantanu Sagar, Smarhar, Gopi Raman and T. Mahipal for the Appellants.

Gopal Singh and Manish Kumar for the Respondents.

The Judgment of the Court was delivered by

V.S. SIRPURKAR, J. 1. Leave granted.

2. A judgment dismissing the Letters Patent Appeal and confirming the order of the Single Judge has fallen for consideration in this appeal. The learned Single Judge of the High Court had dismissed the Writ Petition. By order dated

31.12.1983 passed by the Sub-Divisional Officer in Ceiling Case No. 15 of 1973, the objection filed under Section 10(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as 'the Ceiling Act') was rejected. This order was confirmed by the District Collector vide order dated 21.5.1984 and was further confirmed in the revision by Resolution dated 22.5.1986 passed by the Additional Member, Board of Revenue. The appellants moved the High Court by way of a Writ Petition being C.W.J.C. No.3824 of 1986, which was dismissed by the learned Single Judge. The appellants then filed a Letters Patent Appeal (LPA); however, in the LPA, all the aforementioned orders were confirmed.

3. In order to appreciate the contentions raised by Shri Nagendra Rai, learned Senior Counsel appearing on behalf of the appellants, it is necessary to go into the facts of the case.

4. One Bhagwati Singh was the original land holder. His son was Pitambar Singh (appellant No. 1 herein) and Pitambar Singh has two sons, namely, Rabindra Kumar Singh (appellant No. 2 herein) and Jitendra Kumar Singh. Bhagwati Singh was alive on 9.9.1970, which is the relevant date under the Ceiling Act. Pitambar Singh (appellant No.1) and his wife and sons were living with Bhagwati Singh. They were members of a Mitakshara joint family and were having a total family holding of 33.95 acres of class-II land. The ceiling fixed by the Ceiling Act is 18 acres in respect of such land. The proceedings were started vide Ceiling Case No. 15 of 1973 against Pitambar Singh (appellant No. 1); since, by that time, Bhagwati Singh, the father, had died. Still Pitambar Singh (appellant No. 1) also had a major son, Ravindra Singh. A draft statement was made and published showing that Pitambar Singh (appellant No. 1) was entitled to retain only 18 acres of land and thus, the family was holding 15.95 acres of land as surplus land. On the service of the draft statement, Pitambar Singh (appellant No. 1) filed objections under Section 10(3) of the Ceiling Act. It was pointed

A out that whatever may be the status on the relevant date under the Ceiling Act, when the proceedings were taken, Rabindra Kumar Singh (appellant No. 2) was major on 9.9.1970 also and as such, he also was entitled to his own share and he could not be held as a member of family of Pitambar SIngh. This B objection was rejected by the order dated 31.10.1975. An appeal was preferred against this order, wherein it was decided that the appellants should be treated as two families. However, this order was recalled and the appeal filed before the appellate authority came to be dismissed by the order dated 30.6.1976. C A revision was filed against this order, which stood allowed by the order dated 10.5.1977, whereby the matter was remanded to the appellate authority for the purpose of determining the age of Rabindra Kumar Singh (appellant No. 2 herein) as on 9.9.1970. After the remand, the appellate authority, by its order D dated 15.12.1977, recorded a finding that Rabindra Kumar Singh (appellant No. 2 herein) was major on 9.9.1970 and accordingly, he was entitled to be treated as a separate family from that of his father Pitambar Singh (appellant No. 1). It is very significant to note that this order was never challenged by the State by way of a revision and the said order attained the E finality. However, a draft statement under Section 11(1) of the Ceiling Act was finally published and gazetted under Section 15(1) of the Ceiling Act, on the basis of the old orders no draft statement was published after passing of the order dated 15.12.1977, which ought to have been published noting the F change made by the appellate authority, whereby Rabindra Kumar Singh (appellant No. 2) was treated to be a major and that there was no surplus land in between two families, namely, of Pitambar Singh (appellant No. 1) and of his son Rabindra Kumar Singh (appellant No. 2).

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5. It is apparent that on 9.4.1981, the amended Act came into force being Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982 (hereinafter called 'the Amendment Act'). Two new Sections H were introduced, they being 32A and 32B. They were as under:-

32A. Abatement of appeal, revision, review or reference: A

An appeal, revision, review or reference other than those arising out of orders passed under Section 8 or Sub-Section (3) of Section 16 pending before any authority on the date of commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982, shall abate: B

Provided further that such appeal, review or reference arising out of orders passed under Section 8 or sub-Section (3) of Section 16 as has abated under Section 13 of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Ordinance, 1981 (Bihar Ordinance No. 66 of 1981), shall stand automatically restored before the proper authority on the commencement of this Act. C D

32B. Initiation of fresh proceeding:

All those proceedings, other than appeal, revision, review or reference referred to in Section 32A pending on the date of commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982, and in which final publication under sub-Section (1) of Section 11 of the Act as it stood before the amendment by aforesaid Act, had not been made, shall be disposed of afresh in accordance with the provisions of Section 10 of the Act. E F G

Very surprisingly, after coming into force of the Amendment Act, a fresh draft statement was issued. The objection was raised that such draft statement should never have been issued. However, a re-determination was taken under Section H

A 4A of the Ceiling Act as inserted by the Amendment Act and as such, a whole exercise was taken and it was enquired whether there was any transfer of land made in between 22.10.1959 and 9.9.1970 or thereafter. In fact, in case of the appellants, no such transfer was effective in between those two
B dates. However, the objection filed to the said draft statement was rejected by the order dated 31.12.1983, whereby again the ceiling was re-determined holding the family of the appellants to be one family. This order was confirmed up to the Tribunal's order. These orders were challenged before the
C learned Single Judge, who, though noted that there was a final order passed on 15.12.1977 holding that the appellants were entitled to be counted as two families, yet held that because of the language of Section 32B, the State Government was entitled to reopen the case. The learned Single Judge took the view
D that there was already a final publication made under Section 11(1) of the Ceiling Act prior to the passing of the order of remand by the revisional authority and the same was not quashed by the appellate authority. The learned Judge, therefore, took the view that the said old notification/publication would be deemed to be operative on the date of coming into
E force of the provisions of Section 32B of the Amendment Act. The learned Judge went on to compare the matter with the civil cases relating to partition. The learned Judge also took a view that in view of the unequivocal language of Section 11(1) of the Ceiling Act, the authority was required to make final publication
F of draft statement in accordance with the order passed by it upon the objections, irrespective of the fact whether, according to the said order, the land holder was holding any surplus land or holding land within the ceiling limit specified under law. The authority in such case where the objection by the land holder
G is upheld has to make the draft statement and final publication has to be made to the effect that the land holder does not possess surplus land. However, in those cases, where objection is either partially allowed or it is found that the land holder is possessing surplus land, it is incumbent upon the
H concerned authority to make final publication of the draft

statement by making alteration therein and showing that the land holder was not possessing any surplus land. The learned Single Judge noted that no such step was taken for the final publication inspite of passing of the order dated 15.12.1977. The learned Judge, therefore, took the view that since there was no final publication of draft statement under Section 11(1) of the Ceiling Act prior to coming into force of the provisions of Section 32B of the Amendment Act, the authority was justified in disposing of the proceeding afresh in accordance with the provisions of Section 10 of the Ceiling Act and passing final order upon the objection filed under Section 10(3) of the Ceiling Act filed on behalf of the appellants. It is very significant to note that the learned Single Judge did not, in any manner, go into the merits of the matter nor did he give effect to the order dated 15.12.1977, where it was unequivocally held that the land holders were entitled to be treated as two families. It was pointed out during the letters patent appeal that the whole course undertaken was completely illogical and unjust. Relying on Section 11(1) of the Ceiling Act, it was reiterated before the Division Bench in LPA that there ought to have been the finalization of draft statement and the publication thereof after passing of the order dated 15.12.1977 altering the earlier published final statement.

6. In our opinion, this contention was absolutely right in view of the language of Section 11(1) of the Ceiling Act, which runs as under:-

> 11. Final publication of draft statement:
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> (1) When the objection under sub-Section (3) of Section 10, appeal and revision, if any, relating thereto have been disposed of, the Collector shall subject to the provision of Section 15A(5) make such alteration in the draft statement as may be necessary to give effect to any order passed on the objection or on appeal or revision and shall cause the said statement with the alteration, if any, to be finally

A published at such places and in such manner, as may be prescribed under sub-Section (2) of Section 10 and a copy thereof duly certified by the Collector in the prescribed manner shall be given to the land holder concerned.

B Now, in this case, as has been noted by the High Court in the LPA, it was the old draft statement published when in fact even the matter was not finally decided in between the State and the land holders. A specific contention was, therefore, raised that unless the controversy between the State and the C land holders was completed, there could be no draft statement, much less, publication thereof. Such draft statement which was published prematurely, could not be treated as a proper draft statement and there could be no publication thereof also. In fact, when we see the order passed by the Division Bench, it is D correctly noted therein that the publication, as contemplated, is to be made only after the disposal of the objection, appeal and revision and if the publication is made before the disposal of the objection or appeal or revision and no change is brought in the draft statement by the disposal of the objection, the E appeal or the revision, the publication will hold good, but if any orders in such objection, appeal or revision bring about a change, the publication will not hold good because the sub-Section mandates publication of a draft statement as changed while disposing of the objection or appeal or revision. The F Division Bench has also drawn a correct conclusion holding:-

> "The logical conclusion, therefore, would be that by reason of the appellate order dated 15.12.1977 final publication of the draft statement as was made prior thereto stood G obliterated with the order passed on the objection, on the basis whereof the same had been published."

The Division Bench, however, noted that no such draft statement was ever published altering the earlier draft statement. Taking this in view, the Court then proceeded to hold H that since there was no final publication made on the basis of

the order dated 15.12.1977, Section 32B came into operation and, therefore, there could be the initiation of the fresh proceedings in terms of that Section. In our opinion, this is a completely erroneous view. In fact, after the order dated 15.12.1977 was passed, it was not for the appellants to do anything, but it was the duty of the State Government to issue a final draft statement on the basis of that order and then to publish it in the light of the order dated 15.12.1977, which duty emanated from the positive language of Section 11(1) of the Ceiling Act. It is not at all the fault of the land holders/appellants if the State Government did not do anything for four years i.e. between 16.12.1977 and 9.4.1981 when the Amendment Act came into force. Though the inaction on the part of the State Government is noted by the High Court, the Division Bench refused to act upon it and went on to observe:-

> "Thus although there is no just reason for the collector not finally publishing the draft statement immediately after the appellate order dated 15.12.1977 was passed, but still then in view of the mandate contained in Section 32B of the Act, fresh proceeding became necessary in respect of the land in question."

We do not approve of such approach as it would be patently unjust to give a premium to the State Government on its inaction. We reiterate that the appellants had nothing to do with the creating or publishing of the draft statement. It was the duty of the State Government. If the State Government did not follow its duty, it has to suffer and the appellants cannot be made to suffer on account of the inaction shown by the State Government either deliberately or otherwise. We, therefore, under the circumstances, hold that Section 32B could not have been relied upon by the State Government and both the learned Single Judge as well as the Division Bench have erred in legalizing the subsequent reopening of the proceedings, which had come to a dead end on 15.12.1977.

7. This is apart from the fact that even on the merits, the

A Division Bench has committed a patent error in treating the family as one family and proceeding to limit the entitlement of the family holding to 18 acres. It was an admitted position that the father of Pitambar Singh (appellant No. 1 herein) was alive on 9.9.1970. There is further no dispute that Pitambar Singh
B (appellant No. 1 herein) was a major at that time. Further, there can be no dispute again that the major sons are not part of the family. The definition of the 'family' runs as under:-

> *"'family' means and includes a person, his or her spouse and minor children.*
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> *Explanation I – In this clause the word person includes any company, institution, trust association or body of individuals whether incorporated or not;*
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> D
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> *Explanation II – The personal law shall not be relevant or be taken into consideration in determining the composition of the family for the purposes of the Act"*

Therefore, the language clearly suggests that the major son would be outside the definition of 'family'. In this case, on
E 9.9.1970, Bhagwati Singh was alive and so was Pitambar Singh (appellant No. 1 herein) was major. Even otherwise, Rabindra Kumar Singh (appellant No. 2 herein) was also a major person in the family on 09.09.1970, as held by the appellate authority vide order dated 15.12.1977. Thus under no
F circumstance could it be held to be a single family. The Division Bench has tried to get over this by saying that there was no pleading that on or before 9.9.1970, there was any partition effected under the joint family and that Pitambar Singh (appellant No. 1 herein) became individually entitled to holding
G any land Raiyat. Now, there is no question of treating Pitambar Singh (appellant No. 1 herein) not to be a Raiyat, particularly, when Pitambar Singh (appellant No. 1 herein) and his father were the coparceners of a Mitakshara joint family holding the land in question and as such, each of them were entitled to the
H land to the extent of their share. The Division Bench has

strangely held that they were only entitled to enforce their right by seeking disruption of the joint family by claiming and obtaining partition of the joint family properties; however, that having not been done their individual rights did not crystallize. The Division Bench also mentioned further that though they had "floating right" in the land in question, but having regard to the explanation inserted to the definition of the word 'family', such floating right could not be taken into consideration for determining the composition of the family for the purpose of the Act. We disapprove of this approach. The right of a coparcener comes in his favour with his birth and considering the definition of 'family', which includes only a person, his/her spouse and minor children the logic of the Division Bench is erroneous. Explanation II makes the matters clear when it says that personal law shall not be relevant or be taken into consideration in determining the composition of the family for the purposes of the Act. Therefore, it will be clear that though it was a joint family of Bhagwati Singh and Pitambar Singh (appellant No. 1) and thereafter of Ravindra Singh, the rights of Pitambar Singh (appellant No.1) and Ravindra Singh as coparceners would be intact. Further, since they were major on the relevant date, they could not have been held as member of one family and were entitled to be treated as independent families with the result that there would be two families and the total land being only 33.95 acres, there could be no surplus, as has been wrongly held by the Courts below, particularly, after the reopening of the proceedings under Section 32B of the Amendment Act. On both counts, therefore, the High Court has erred. We, therefore, allow this appeal, set aside all the orders starting from the order dated 31.12.1983 and hold that since the order dated 15.12.1977 has attained finality, there would be no question of any further proceedings.

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8. The appeal is allowed in terms of what is stated above.

B.B.B. Appeal allowed.

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