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**(2011) 05 AHC CK 0362**

**Allahabad High Court**

**Case No:** Writ C. No. 3978 of 1995

Jai Pal Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** May 6, 2011

**Acts Referred:**

- Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 - Section 29

**Hon'ble Judges:** Sibghat Ullah Khan, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

Sibghat Ullah Khan, J.

Heard learned Counsel for the parties.

2. Proceedings under U.P. Imposition of Ceiling on Land Holdings Act were initiated against Sri Kunwar Sen father of the Petitioner. In those proceedings all the land held by Kunwar Sen was held to be unirrigated and thereafter it was declared that he possessed 15 acres land as surplus. Possession of the said land was taken by the State. Sri Kunwar Sen died and apart from the Petitioner left behind five more sons whose names are Dharam Pal Singh, Kuber Pal Singh, Vijay Pal Singh, Suraj Pal Singh and Mahendra Pal Singh. After the death of Kunwar Sen fresh ceiling proceedings were initiated against all his sons. Ultimately, Prescribed Authority through order dated 26.07.1993 declared that Petitioner did not possess any surplus land. Similar orders were passed in the cases against other sons of Kunwar Sen. Against the said judgments and orders State filed seven appeals being Appeal Nos. 9 to 11 and 13 to 16 all of 1993-94. Appeal No. 10 of 1993-94 related to the Petitioner of the instant writ petition. Other appeals related to other brothers of the Petitioners. The Appellate Court/Additional Commissioner, Moradabad allowed all the appeals. Appellate Court held the land inherited by the sons of Kunwar Sen from him to be irrigated. Copy of judgment of the Appellate Court dated 21.11.1994 is Annexure-4 to the writ petition and has been challenged through it. Against the

judgments and orders of the Lower Appellate Court different sons of Kunwar Sen filed different writ petitions. One such writ petition was filed by Kuber Pal Singh one of the brothers of the Petitioners number of which was 40688 of 1994. The said writ petition was allowed on 26.04.2005 and matter was remanded to the Lower Appellate Court. Copy of the said judgment has been filed as Annexure-I to the supplementary rejoinder affidavit. Perusal of the said judgment shows that the question involved was regarding application of Section 29(b) of U.P. Imposition of Ceiling on Land Holdings Act which deals with the situation where unirrigated land becomes irrigated subsequently. After remand the Appellate Court decided (dismissed) the appeal which had freshly been numbered as Appeal No. 11 of 2009-10 in favour of Kuber Pal Singh through judgment and order dated True copy of the said judgment passed by Additional Commissioner, Moradabad Division Moradabad is Annexure SA-II to the Supplementary Rejoinder Affidavit. Against the said judgment State filed writ petition No. 23339 of 2011 which has been dismissed on 22.04.2011 uncertified copy of the High Court judgment has been placed on record.

3. As the point involved in both the cases was same hence this writ petition deserves to be allowed. Two similar writ petitions filed by other brothers of the Petitioner, i.e. Writ Petition No. 4199 of 1995, Dharam Pal Singh v. State of U.P. and Writ Petition No. 4188 of 1995, Vijay Pal Singh and two Ors. v. State have been allowed by me on 25.04.2011 and on 04.05.2011. Accordingly, this writ petition is also allowed and impugned order dated 21.11.1994 in respect of appeal against Petitioner passed by the Appellate Court is set aside.