**(2011) 113 RD 326**

**Allahabad High Court**

**Case No:** C.M.W.P. No. 21153 of 2011

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| Ram Naresh and Others | | APPELLANT |
| | Vs | |
| State of U.P. and Others | | RESPONDENT |

**Date of Decision:** April 13, 2011

**Citation:** (2011) 113 RD 326

**Hon'ble Judges:** Amreshwar Pratap Sahi, J

**Bench:** Single Bench

**Final Decision:** Dismissed

**Judgement**

Amreshwar Pratap Sahi, J.
Heard learned Counsel for the Petitioners.

2. The Petitioners claim themselves to be lease holders of surplus land alleged to have been so declared under the orders of the Prescribed Authority dated 15.2.1975 and 18.7.1990. These orders have been set aside in appeal on 11.11.2003 at the instance of tenure holders Respondent No. 4 and 5. Learned Counsel for the Petitioner submits that the Petitioner filed a recall application for recalling the order dated 11.11.2003. This was done on the ground that the Petitioners were not parties to the said appeal. After four years they filed a writ petition assailing the order dated 11.11.2003 before this Court being Writ Petition No. 51827 of 2007 in which an order was passed that it shall be open to the Petitioner to file an application for setting aside the order dated 11.4.2003. The writ petition was got dismissed as not pressed vide order dated 25.10.2007 Annexure 8 to the writ petition.

3. Learned Counsel for the Petitioner has now come up before this Court for a mandamus that the authority be directed to decide the recall application which has been filed pursuant to the directions of this Court dated 25.10.2007.

4. In the opinion of the Court the Petitioners can be valid lease holders provided the land is surplus. In view of the facts that have been brought on record the order of the Prescribed Authority itself has been set aside and the appeal has been allowed. The Petitioners did not press their writ petition challenging the order dated 11.11.2003 passed in appeal.

5. In view of the aforesaid facts it is evident that the State was a party to the proceedings in appeal which has become final in the year 2003 itself. The State did not file any writ petition challenging the order dated 11.11.2003. Learned Counsel submits that the State has also filed a recall application before the appellate authority.

Whether such a recall application is maintainable or not can be looked into by the Appellate Authority under the provisions of U.P. Imposition of Ceiling on Land Holdings Act, 1960 which does not provide for any review or recall of an order finally passed in appeal. The State or the Petitioners therefore may be well advised to pursue their recall application but only in accordance with law provided such an application is maintainable under the act. It is for the Petitioners or the State to pursue their application before the Appellate Authority. There is No. occasion for this Court (sic)o issue any mandamus at this stage.

6. The writ petition is dismissed with he aforesaid observations.