
Smt. Shanti Devi Vs State of U.P. and Others

C.M.W.P. No. 64470 of 2009

Court: Allahabad High Court

Date of Decision: Jan. 18, 2010

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 " Section 10(1), 10(3), 10(5), 10(6), 35#Urban Land (Ceiling and Regulation) Rules, 1976 " Rule 8(4)

Citation: (2010) 4 AWC 4244 : (2010) 2 UPLBEC 1323

Hon'ble Judges: Jayashree Tiwari, J; Devendra Pratap Singh, J

Bench: Division Bench

Judgement

Devendra Pratap Singh and Jayashree Tiwari, JJ.
Heard learned Counsel for the parties.

2. The relief claimed in this petition is for a mandate to the respondents not to take actual physical possession of the disputed land treating as

having been declared surplus and further restrain them from interfering with their possession and for a declaration that proceedings under the Urban

Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Act) vis-a-vis the disputed land stood abated.

3. The relevant facts are that upon the promulgation of the Act Amru, the predecessor in interest of the petitioner submitted his return u/s 6(1) and

without any notice or opportunity u/s 8(3) thereof an order u/s 8(4) was issued on 2.6.1984 declaring about 1471 square metres land as excess

from plot Nos. 156/6 and 156/7. However, since the order was not served on the land holder, he executed a registered Will dated 10.5.1991 in

favour of the petitioner who was his daughter-in-law and subsequently the land holder died on 4.3.1996. After the death of the land holder, the

petitioner applied for mutation of her name which was duly entered in the revenue records. However, a notice u/s 10(5) was issued on 26.6.1999

against the deceased land holder calling upon him to surrender the possession of the alleged excess land but the said notice was returned by the

process server with the endorsement of his death. Nevertheless, in pursuance of the aforesaid notice the name of the State was mutated in the

revenue record and now they are seeking to dispossess the petitioner thus, the present petition with the allegation that the Act was repealed by the

Repeal Act of 1999 abating all proceedings under the Act wherein actual physical possession was not taken over.

4. The State respondents have filed their counter-affidavit inter alia stating that a notice u/s 8(3) of the Act was issued to the land holder who had

filed his objection on 12.12.1983 but he did not produce any evidence in support of his objection and therefore, the objections were rejected on

2.6.1984 declaring about 1471 sq. metres of land as surplus under the Act. It is further alleged that a notice u/s 10(3) was duly published in the

official Gazette and after publication of the notice the name of the State Government was duly mutated on 10.6.1999 and possession was also

taken over and therefore, the petitioner is not entitled to any relief.

5. Before the Court proceeds further it would be relevant to go through the scheme of the Act. Upon promulgation of the Act a statement has to

be prepared by the Competent Authority with regard to holding of excess land and the draft statement is required to be served u/s 8(3) on the land

holder inviting his objection. After receipt of objection the Competent Authority, after reasonable opportunity to the land holder can pass a final

order under Rule 8(4) declaring excess vacant land u/s 8(4) and a draft statement has to be prepared u/s 9. Thereafter, the Competent Authority

has to issue a notification u/s 10(1) inviting persons who are interested in such vacant land to lodge their claims whereafter, it has to publish a

notification u/s 10(3) by which the land would deem to have vested in the State free from encumbrances with regard to taking over possession of

the vacant land. The Competent Authority has to issue a notice u/s 10(5) of the Act ordering the land holder to surrender or deliver possession to

the Government or any person authorised in that behalf within 30 days of the receipt of notice failing which the Competent Authority is authorized

to take possession by force u/s 10(6).

6. It is evident from the record that notice u/s 10(5) asking the land holder to surrender possession was issued on 26.6.1999 and a copy of the

same is annexed with the counter-affidavit. The notice shows it was returned with endorsement of the process server that the land holder is dead

and therefore, notice could not be served. Thus, it is established beyond any shadow of doubt that the notice u/s 10(5) was issued for the first time

in June, 1999. Before the notice could be issued, the Legislature intervened and promulgated the Repeal Act of 1999 which was adopted by the

State of U.P. w.e.f. 18.3.1999. Under the Repeal Act all proceedings have been abated except those where actual physical possession has been

taken over and it makes a distinction between ""possession"" u/s 10(5) or Sub-clause (6) and ""vesting"" as u/s 10(3). A Division Bench of our Court

in the State of U.P. v. Hari Ram 2005 (60) ALR 535, after considering in detail the scheme of the Act and the Repeal Act has held that where

actual physical possession before 18.3.1999 is not taken, all proceedings under the Act would abate and no action on the basis of the Act can be

taken.

7. However, learned standing counsel contends that the possession of the vacant land after it vested in the State u/s 10(3) was taken over by the

State. Apart from a bald allegation in the counter-affidavit there is no documentary proof to prove the factum of possession. In fact even the date

on which the possession was allegedly taken by this State is not disclosed in the counter-affidavit. The State Government itself in exercise of

powers u/s 35 of the Act has issued directions known as U.P. Urban Land Ceiling (Taking of Possession, Payment of Amount and Allied Matters)

Direction, 1983 for the purposes of taking over possession. These directions provide that where possession of the excess vacant land is taken

either under Sub-section (5) or Sub-section (6) of Section 10, entry would have to be made in the register in Form No. ULC-III and also in

column No. 9 of the Form No. ULC-I. It further mandates the Competent Authority to put his signatures in the column No. 2 of Form No. ULC-I

and column No. 10 in Form No. ULC-III in token of verification of the entries of possession. Neither there is any allegation in the counter-affidavit

nor copies of any of the forms have been annexed to show that in fact possession was taken.

8. The issue can be examined from another angle. Learned standing counsel does not dispute that there is no other provision for taking of

possession under the Act except the power provided under Sections 10(5) and 10(6). Admittedly, the very first step of taking over possession

was taken through a notice u/s 10(5) dated 26.6.1999 which was issued in the name of the land holder. The fact that the land holder died on

4.3.1996 has not been denied. Thus, even the notice u/s 10(5) was void and would not give any right or power to the respondents to seek or take

over possession of the disputed land.

9. Thus, it is apparent that all proceedings taken against the deceased land holder stood abated under the Repeal Act, 1999 and accordingly, it is

declared as such and the writ petition succeeds and is allowed. The respondents are further directed not to interfere in the possession of the

petitioner over the disputed land and to further enter their names in the relevant revenue register.

10. In the circumstances of the case, no order as to costs.