

Sri Ram Vs State of U.P. and Others

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: Jan. 24, 2012

Acts Referred: Constitution of India, 1950 " Article 252(2)
Urban Land (Ceiling and Regulation) Act, 1976 " Section 11, 12, 13, 14
Urban Land (Ceiling and Regulation) Repeal Act, 1999 " Section 4

Hon'ble Judges: S.C. Chaurasia, J; Devi Prasad Singh, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

1. Heard the Learned Counsel for the petitioner and learned Standing Counsel.

2. Application for Substitution [CMA No.86031 of 2010] is allowed. Let necessary amendments be carried out forthwith.

3. With the consent of parties counsel, this petition is being decided finally.

4. The land in dispute falls within the domain of Urban Land (Ceiling and Regulation) Act, 1976. It was repealed by Urban Land (Ceiling and

Regulation) Repeal Act, 1999. According to the petitioners' counsel, after repeal of the Act, the proceedings initiated in pursuance to the Repeal

Act became nonest and the petitioners are entitled to retain the possession of land in question with hereditary right. Attention of this Court has been

invited to the judgment of Hon'ble Supreme Court in the case reported in Mukarram Ali Khan Vs. State of U.P. and Others, and other judgment

reported in 2011 (3) SCCD 1382 (SC) Ritesh Tewari and another versus State of U.P. & others.

5. In the case of Mukarram Ali Khan (supra), their Lordships of Hon'ble Supreme Court ruled that in view of repeal of 1976 Act (supra) and

being adopted by the State of U.P. by a resolution as required under Art. 252(2) of the Constitution and the repealing Act having come into force

in the State of U.P. with effect from 18.3.1999, all pending proceedings under 1976 Act shall be treated to have abated. The operation portion of

the judgment from Mukarram Ali Khan (supra) is reproduced as under :

2. Though many points were urged in support of the appeal, the primary point urged was that possession has not been taken pursuant to orders

passed by the authorities under the Act. An affidavit has been filed indicating that the possession of the land has not been taken and the land in

question continues to be in possession of the appellant and his sons.

3. Learned Counsel for the respondent-State and its functionaries on the other hand contended that the point regarding earlier adjudication was not

urged before the High Court and therefore the High Court has rightly decided that in the absence of any specific plea a new plea cannot be taken

before it.

4. It is to be noted that the Act has been replaced under the Urban Land (Ceiling and Regulation) Act, 1999 (in short the "Repeal Act").

Admittedly the State of Uttar Pradesh has since adopted the provisions of the Repeal Act by a resolution as required under Article 252(2) of the

Constitution of India, 1950 (in short the "Constitution"). Repealing Act has since come into force in the State of Uttar Pradesh with effect from

18.3.1999.

5. Section 4 of the Repeal Act reads as follows:

4. Abatement of legal proceedings-All proceedings relating to any order made or purported to be made under the principal Act pending

immediately before the commencement of this Act, before any court, tribunal or other authority shall abate;

Provided that this section shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the principal Act insofar as such proceedings

are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State

Government in this behalf or by the competent authority.

6. In view of the affidavit filed by the appellant to which no objection has been filed, undisputed position is that the State has not taken the

possession over the surplus land. Therefore, the proceedings have to be treated to have abated u/s 4 of the Repeal Act.

7. That being so, the appeal deserves to be allowed which we direct.

6. In the case of Ritesh Tewari (supra), again their Lordships of Hon"ble Supreme Court have considered the question with regard to the affect of

the repeal Act. Their Lordships held that the communication between the officers of the department shall not be a ground to affect the rights of the

parties. With regard to Repeal Act in the case of Ritesh Tewari (supra), Hon"ble Supreme Court has considered earlier judgment and held that all

pending proceedings under 1973 Act shall be abated automatically on the commencement of Repealing Act, 1999 provided the possession of the

land involved in a particular case has not been taken taken by the State. To quote relevant portion :

13. We find full force in the submissions so made by Shri Jayant Bhushan to a certain extent, and hold that all proceedings pending before any

court/authority under the Act, 1976, stood abated automatically on commencement of the Act 1999 in force, provided the possession of the land

involved in a particular case had not been taken by the State. Such a view is in consonance with the law laid down by this Court in Pt. Madan

Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and Others, Mukarram Ali Khan Vs. State of U.P. and Others, and Smt. Sulochana

Chandrakant Galande vs. Pune Municipal Transport and others, JT 2010 SC 298.

7. In view of above, we dispose of the writ petitions finally directing the revenue authorities/respondents to abide by the judgment of Hon"ble

Supreme Court(supra) and not to interfere with the petitioners" peaceful possession of the land in question in case in view of the provisions

contained in 1976 Act (supra), if the State had not taken possession of the land in dispute.

8. The writ petitions are disposed of accordingly. No order as to costs.