(2013) 08 AHC CK 0226

Allahabad High Court

Case No: Writ-C No. 62283 of 2012

State of U.P.	APPELLANT
Vs	
Jagdish Chandra	RESPONDENT

Date of Decision: Aug. 19, 2013

Citation: (2013) 7 ADJ 533 : AIR 2013 All 152 : (2013) 5 ALJ 642 : (2013) 101 ALR 161 : (2014) 1 AWC 864 : (2013) 121 RD 445

Hon'ble Judges: Manoj Kumar Gupta, J; Ashok Bhushan, J

Bench: Division Bench

Advocate: Sanjay Goswami, A.C.S.C, for the Appellant; Ram Prakash Singh and Dipak Srivastava, for the Respondent

Judgement

Ashok Bhushan, J.

This writ petition raises an important issue as to whether after the repeal of The Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "Act 1976") by The Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as "Repeal Act, 1999") an appeal challenging the order of the competent authority dated 31/3/1997, declaring surplus vacant land can be filed u/s 33 of the Act, 1976. This writ petition has been filed challenging the order dated 13/8/2012, passed by the District Judge, Kanpur Nagar allowing the Appeal No. 68/2011 filed by the respondent against the order dated 31/3/1997, of the competent authority under the Act, 1976 by which 48266.42 square metres was declared as surplus vacant land in excess of the ceiling limit.

2. Brief facts of the case giving rise to the writ petition are Proceedings under to Act, 1976 were initiated by issuing a notice dated 27/12/1996 u/s 6(2) to the tenure holder Jagdish Chandra-respondent to the writ petition. The tenure holder did not submit any return of the land held by him. A draft statement was prepared and sent to the tenure holder along with the notice u/s 8(3) of the Act, 1976 dated 28/2/1997. No objection having been filed in response to the aforesaid notice, the competent authority passed an order dated 31/3/1997 u/s 8(4) of the Act, 1976 declaring

48266.42 sq. meters land as surplus vacant land in the hands of the tenure holder. Notification u/s 10(1) of the Act, 1976 dated 26/6/1997, was issued to the tenure holder giving particulars of the land held by the tenure holder in excess of the ceiling limit. Notification u/s 10(3) of the Act, 1976 dated 25/3/1998 was issued declaring 48266.42 square metres of land shall be deemed to have been acquired by the State. Notice u/s 10(5) of the Act, 1976 dated 29/7/1998, was issued to the tenure holder asking him to hand over the possession of the land within 30 days, failing which proceedings u/s 10(6) of the Act, 1976 shall be undertaken. The possession of the land is claimed to have been taken on 10/2/1999 exercising power u/s 10(6) of the Act, 1976. The tenure holder having failed to deliver the possession of the land, the State Government transferred the land to the Kanpur Development Authority whose name came to be recorded in the revenue records in 1406-1411 Fasli. Thereafter the Act, 1976 was repealed by Repeal Act, 1999 which was published in the Gazette w.e.f. 18/3/1999. The tenure holder filed an appeal u/s 33 of the Act, 1976 against the order dated 31/3/1997 of the competent authority after more than a decade in the year 2007. An application for condonation of delay was also filed. The District Judge condoned the delay in filing the appeal and heard the appeal on merits and allowed the same by judgment and order dated 13/8/2012. This writ petition has been filed by the State of U.P. challenging the order dated 13/8/2012, passed by the District Judge.

3. Counter affidavit and rejoinder affidavits have been exchanged between the parties and with the consent of the learned counsel for the parties, we proceed to decide the writ petition finally.

4. We have heard Shri Sanjay Goswami, learned Additional Chief Standing Counsel appearing for the State, Shri Manish Nigam and Shri Dipak Srivastava have been heard for the sole respondent.

5. Shri Sanjay Goswami, learned Additional Chief Standing Counsel appearing for the State challenging the order dated 13/8/2012, passed by the District Judge submitted that after the repeal of the Act, 1976 by the Repeal Act, 1999, no appeal could have been filed by the tenure holder and the appeal filed by the tenure holder in the year 2007 against the order dated 31/3/1997, was not maintainable and the order dated 13/8/2012, passed by the District Judge allowing such appeal is without jurisdiction. It is submitted that after the repeal of Act, 1976, no appeal could have been filed u/s 33 of the Act, 1976 which provision stood repealed and in view of the clear intendment of the Repeal Act, 1999 by abating all the pending proceedings there was no contemplation of giving any right of appeal against any order which was passed in the year 1997 under the Act, 1976 prior to the Repeal Act, 1999. The surplus land having already vested in the State whose possession was taken on 10/2/1999 by the State Government, the proceedings regarding declaration of surplus land which culminated on 31/3/1997 could not have been reopened after the Repeal Act, 1999. It is submitted that the District Judge assumed jurisdiction in

hearing the appeal against the order dated 13/8/2012 which jurisdiction did not vest in him by virtue of the Repeal Act, 1999. The order of the District Judge dated 13/8/2012 being without jurisdiction, any observation or finding regarding the status of possession of the land was uncalled for and is also without jurisdiction.

6. Shri Manish Nigam, learned counsel appearing for the respondent submitted that the order dated 31/3/1997 passed by the competent authority was passed without service of any notice on the respondent, hence he had every right to challenge the same before the District Judge by filing an appeal. He submits that even after the Repeal Act, 1999, the right to challenge an illegal order passed under the Act, 1976 cannot be said to be lost. He submits that if it is held that there is no right to challenge an illegal order passed under the Act, 1976, the aggrieved person shall be remediless. It is submitted that the possession of the land declared as surplus was never taken by the State, hence by virtue of Section 3 of the Repeal Act, 1999, the land shall not vest in the State and the respondent was entitled to continue in possession by virtue of the Repeal Act, 1999 and the benefit of the Repeal Act, 1999 was clearly extendable to the respondent.

7. Referring to Section 6 of the General Clauses Act 1897, (hereinafter called the "Act, 1897") it is submitted that Section 6 of the Act, 1897 saves the right to appeal unless a different intention appears from the Repeal Act, 1999. It is submitted that the reading of Section 4 of the Repeal Act, 1999 does not specifically provide any different intention of the legislature. The Repeal Act, 1999, did not say that (no appeal etc.) can be initiated/entertained by any court of law after the Repeal Act, 1999. The Repeal Act, 1999 gives a right to the land holder to retain his land even if the land is vested in the State u/s 10(3) of the Act, 1976 where the actual, physical possession has not been taken.

8. The question as to whether the land holder is in actual, physical possession of the land can only be determined by an authority u/s 33 of the Act, 1976. There is nothing in the Repeal Act, 1999 which may prevent the appellate authority from deciding the said question. Once the appellate authority comes to the conclusion that the actual, physical possession of the land has not been taken by the State before the repeal of the Act, 1976, it will abate the appeal as well as all the proceedings so taken under the Act, 1976. The appellate authority having recorded a finding that the actual, physical possession of the land was never taken by the State, no error has been committed by the appellate authority in setting aside the order of the competent authority. It is further submitted that even if it is assumed that the appeal was not maintainable, the order passed by the appellate authority dated 13/8/2012 being eminently just and in accordance with law should not be interfered by this Court in exercise of writ jurisdiction. It is submitted that by setting aside the order of the appellate authority dated 13/8/2012, the result would be restoration of an illegal order, hence this Court may not exercise its discretion to interfere with the order passed by the appellate authority.

9. We have considered the submissions of the learned counsel for the parties and have perused the record.

10. From the submissions of the learned counsel for the parties and the materials brought on the record following are the main issues which have arisen for consideration in this writ petition.

(I) Whether after the Repeal Act, 1999, the right to file an appeal u/s 33 of the Act, 1976 against an order passed by the competent authority under the Act, 1976 still survives and can be availed by a person whose land was declared surplus?

(II) Whether the right of filing an appeal after the Repeal Act, 1999 is saved u/s 6 of the General Clauses Act, 1897?

(III) Whether the Appellate Authority (District Judge) could have entertained and decided the appeal u/s 33 of the Act, 1976 against an order passed by the competent authority under the Act, 1976 subsequent to Repeal Act, 1999?

(IV) Whether the order passed by the appellate authority dated 13/8/2012 is without jurisdiction?

(V) Whether in view of the findings of the appellate authority that no notice was served on the tenure holder u/s 8(3) of the Act, 1976 and there being no sufficient material to prove that actual physical possession was handed over to the State Government, this Court should interfere with the said finding in exercising its jurisdiction under Article 226 of the Constitution of India?

11. Issue Nos. 1 to 4 being interconnected are being taken up together.

12. Before we answer the above issues, it is necessary to look into the statutory schemes of the Act, 1976 and the Repeal Act, 1999.

13. Act, 1976 was enacted to provide for imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein and with a view to bringing about an equitable distribution of land in urban agglomerations to sub-serve the common good.

14. According to Section 6 of the Act, 1976, persons holding vacant land in excess of ceiling limit are required to file a statement. Section 8 of the Act, 1976, provides for preparation of draft statement as regards vacant land held in excess of ceiling limit. Section 8(3) of the Act, 1976, provides that the draft statement shall be served in such manner as may be prescribed on the person concerned together with a notice stating that any objection to the draft statement shall be preferred within thirty days of the service thereof. Section 8(4) of the Act, 1976, enjoins upon the competent authority to consider any objection received and pass such orders as it deems fit.

Section 9 of the Act, 1976, provides for final statement. Section 10 of the Act, 1976, provides for acquisition of vacant land in excess of ceiling limit. Section 10 of the Act, 1976, which is relevant in the present case is quoted below:

10. Acquisition of vacant land in excess of ceiling limit. (1) As soon as may be after the service of the statement u/s 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that-

(i) such vacant land is to be acquired by the concerned State Government; and

(ii) the claims of all person interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land, to be published for the information of the general public in the Official Gazette of the State concerned and in such other manner as may be prescribed.

(2) After considering the claims of the persons interested in the vacant land, made to the competent authority in pursuance of the notification published under sub-section (1), the competent authority shall determine the nature and extent of such claims and pass such orders as it deems fit.

(3) At any time after the publication of the notification under sub-section (1) the competent authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to in the notification published under sub-section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government tree from all encumbrances with effect from the date so specified.

(4) During the period commencing on the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made under sub-section (3)-

(i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void; and

(ii) no person shall alter or cause to be altered the use of such excess vacant land.

(5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice.

(6) If any person refuses or fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary.

Explanation.-In this section, in sub-section (1) of section 11 and in sections 14 and 23, "State Government", in relation to-

(a) any vacant land owned by the Central Government, means the Central Government;

(b) any vacant land owned by any State Government and situated in the Union Territory or within the local limits of a cantonment declared as such u/s 3 of the Cantonments Act, 1924 (2 of 1924), means that State Government.

15. Section 11 of the Act, 1976 deals with payment of amount for vacant land acquired. Section 12 of the Act, 1976 provides for Constitution of Urban Land Tribunal and appeal to Urban Land Tribunal. u/s 12(4) of the Act, 1976 if any person is aggrieved by an order of the competent authority u/s 11, he may, within thirty days of the date on which the order is communicated to him, prefer an appeal to the Tribunal. Section 20 of the Act, 1976 provides for power to exempt. Section 33 of the Act, 1976 provides for appeal which is quoted below:

33. Appeal. (1) Any person aggrieved by an order made by the competent authority under this Act, not being an order u/s 11 or an order under sub-section (1) of section 30, may, within thirty days of the date on which the order is communicated to him, prefer an appeal to such authority as may be prescribed (hereafter in this section referred to as the appellate authority):

Provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard, pass such orders thereon as it deems fit as expeditiously as possible.

(3) Every order passed by the appellate authority under this section shall be final.

16. Section 34 of the Act, 1976 provides for revision by State Government.

17. Thereafter came the Repeal Act, 1999 to repeal the Act, 1976. The Statement of Object and Reasons of the Act, 1999 are to the following effect:

1. The Urban Land (Ceiling and Regulation) Act, 1976 was passed when Proclamation of emergency was in operation with a laudable objective in mind. The said Act was passed pursuant to resolution passed by the State Legislature under clause (1) of

Article 252. Unfortunately public opinion is nearly unanimous that the Act has failed to achieve what was expected of it. It has on the contrary pushed up land prices to unconscionable levels, practically brought the housing industry to a stop and provided copious opportunities for corruption. There is wide spread clamour for removing this most potent clog on housing.

2. Parliament has no power to repeal or amend the Act unless resolutions are passed by two or more State legislatures as required under clause (2) of Article 252.

3. The Legislature of Haryana and Punjab have passed 10 resolutions empowering Parliament to repeal the Act in those States. The Act, in the first instance will be repealed in those States and in the Union Territories and subsequently if any State Legislature adopts this Act by resolution, then from the date of its adoption the Act will stand repealed in that State.

4. The proposed repeal, along with some other incentives and simplification of administrative procedures is expected to revive the stagnant housing industry and provide affordable living accommodation for those who are in a state of underserved want and are en-tided to public assistance. The repeal will not however, affect land on which building activity has already commenced. For that limited purpose exemption granted u/s 20 of the Act will continue to be operative. Amounts paid out by the State Government will become refundable.

5. The bill seeks to achieve the above purpose.

18. Sections 3, 4 and 5 of the Repeal Act, 1999 which are relevant are quoted below:

3. Saving-(1) The repeal of the principal Act shall not affect-

(a) the vesting of any vacant land under sub-section (3) of section 10, possession of which has been taken over the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of section 20.

(2) Where

(a) any land is deemed to have vested in the State Government under sub-section (3) of section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land

then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

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 in so far 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.

5. Repeal and saving.-(1) The Urban Land (Ceiling and Regulation) Repeal Ordinance, 1999 (Ord. 5 of 1999) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

19. What are the consequences of the Repeal Act, 1999 have to be found out for answering the questions which have arisen in this writ petition.

20. Justice G.P. Singh in his Principles of Statutory Interpretation, 12th Edition 2010, while examining the consequences of repeal has stated as following at page 695.

Under the common law rule the consequences of repeal of a statute are very drastic. Except as to transactions past and closed, a statute after its repeal is as completely obliterated as if it had never been enacted. The effect is to destroy all inchoate rights and all causes of action that may have arisen under the repealed statute. Therefore, leaving aside the cases where proceedings were commenced, prosecuted and brought to a finality before the repeal, no proceeding under the repealed statute can be commenced or continued after the repeal.

21. The Apex Court in Mohan Raj Vs. Dimbeswari Saikia and Another, , has quoted the above passage with approval in paragraph 23 which is quoted below:

23. It is now well settled that such Repealing Act shall be construed to have not taken away the accrued right of a person. In GR Singh''s Principles of Statutory Interpretation (10th Edn.) 2006 at page 631, it is stated:

Under the common law rule the consequences of repeal of a statute are very drastic. Except as to transactions past and closed, a statute after its repeal is as completely obliterated as if it had never been enacted. The effect is to destroy all inchoate rights and all causes of action that may have arisen under the repealed statute. Therefore, leaving aside the cases where proceedings were commenced, prosecuted and brought to a finality before the repeal, no proceeding under the repealed statute can be commenced or continued after the repeal.

22. Learned counsel for the respondent, elaborating his submission contended that Section 6 of the Act, 1897 saves the right of appeal unless a different intention appears from the Repeal Act, 1999. Heavy reliance has been placed by the learned counsel for the respondent on the judgment of the Apex Court in Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others, .

23. In the above case, the appellant was assessed by the Assistant Commissioner under the Central Provinces and Berar Sales Tax Act, 1947 on 08/4/1950. The assessee on 10/5/1950, preferred an appeal to the Sales Tax Commissioner, Madhya Pradesh. The appeal not having been accompanied by any proof of the payment of the tax in respect of which the appeal had been preferred, the authorities declined to admit the appeal. A revision application was filed by the assessee before the Board of Revenue, Madhya Pradesh, against the order of the Sales Tax Commissioner contending that his appeal was not governed by the proviso to Section 22(1) of the Act, 1947 as amended on 25/11/1949, but was governed by the proviso to Section 22(1) of the Act as it stood when the assessment proceedings were started, i.e., before the said amendment. The revision application as well as leave to appeal filed by the appellant were dismissed. The assessee thereupon applied to the Supreme Court for Special Leave to Appeal on 12/5/1952. The Apex Court in the said appeal considered the question of the effect of the amendment of Section 22 of the Act. In the above context after noticing various earlier decisions including the decision of the privy council held that the right of appeal is a matter of substantive right which right cannot be taken away except by expressed enactment or necessary intendment. Following proposition was laid down in paragraph 8 of the judgment which is quoted below:

8. The above decisions quite firmly establish and our decisions in Janardan Reddy and Others Vs. The State, and in Ganpat Rai Hiralal and Another Vs. Aggarwal Chamber of Commerce Ltd., uphold the principle that a right of appeal is not merely a matter of procedure. It is a matter of substantive right. This right of appeal from the decision of an inferior tribunal to a superior tribunal becomes vested in a party when proceedings are first initiated in, and before a decision is given by, the inferior Court. In the language of Jenkins C.J., in Nana Aba Katkar Vs. Sheku Andu Bokade, to disturb an existing right of appeal is not a mere alternation in procedure. Such a vested right cannot be taken away except by express enactment or necessary intendment.

24. This Apex Court in the said case held that the pre-existing right of appeal is not destroyed by the amendment, if the amendment is not made retrospective by express words or necessary intendment. The fact that the pre-existing right of appeal continues to exist must, in its turn necessarily imply that the old law which created that right of appeal must also exist to support the continuation of that right. Following was observed in paragraph 9 which is quoted below:

9. In our view the above observation is apposite and applies to the case before us. The true implication of the above observation as of the decisions in the other cases referred to above is that the pre-existing right of appeal is not destroyed by the amendment, if the amendment is not made retrospective by express words or necessary intendment. The fact that the pre-existing right of appeal continues to exist must, in its turn necessarily imply that the old law which created that right of appeal must also exist to support the continuation of that right. As the old law continues to exist for the purpose of supporting the pre-existing right of appeal that old law must govern the exercise and enforcement of that right of appeal and there can then be no question of the amended provision preventing the exercise of that right. The argument that the authority has no option or jurisdiction to admit the appeal unless it be accompanied by the deposit of the assessed tax as required by the amended proviso to S. 22(1) of the Act overlooks the fact of existence of the old law for the purpose of supporting the pre-existing right and really amounts to begging the question. The new proviso is wholly inapplicable in such a situation and the jurisdiction of the authority has to be exercised under the old law which so continues to exist. The argument of Sri Ganapathy Aiyar on this point, therefore, cannot be accepted.

25. Section 6 of the Act, 1897 on which much reliance has been placed by the learned counsel for the respondent provides for effect of repeal which is as follows:

6. Effect of repeal.-Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not--

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the Repealing Act or Regulation had not been passed.

26. It is relevant to note that the consequences provided for in Section 6 of the Act, 1897 shall flow provided that "Unless a different intention appears", It is true that

one of the consequences as provided in Section 6(e) of the Act 1897 provides that the repeal shall not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, forfeiture or punishment as aforesaid and any such investigation legal proceeding or remedy may be instituted or continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed. Thus the normal consequence is to save the legal proceedings or remedy.

27. The Apex Court in Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others, has also reiterated the same proposition. The Apex Court in the said case held that the right of appeal is a vested right which cannot be taken away except by express enactment or necessary intendment. In the said case by amendment made in Section 22(1) of the Act, 1947, a proviso was added requiring deposit of admitted tax. The Apex Court as noted above in paragraph 9 held that since the preexisting right of appeal is not destroyed by the amendment, the appellant had right of appeal as per the unamended proviso. The crux of the matter is that as to whether the Repeal Act, 1999 expresses any different enactment or intendment to the normal consequences of repeal as provided u/s 6 of the Act, 1897. The judgment in Messrs. Hoosein Kasam Dada''s case (supra) was on its own facts and does not help the appellant in the present case. As noted above, the question to be examined is as to whether the Repeal Act, 1999 expresses any contrary intendment to one which is provided for in Section 6 of the Act, 1897.

28. The proposition laid down by the Apex Court in Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others, was again reiterated by the Apex Court in the case of Glaxo Smith Kline PLC and Others Vs. Controller of Patents and Designs and Others, . Following was laid down in paragraph 15 of the said judgment:-

15. As was observed by this Court in Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others, when pre existing right of appeal continues to exist, by necessary implication the old law which created the right of appeal also exists to support the continuation of that right and hence the old right must govern the exercise and enforcement of that right. In the absence of contrary intention in repealing the enactment, rights under the old statute are not destroyed. In M/s. Gurcharan Singh Baldev Singh Vs. Yashwant Singh and others, , it was observed that right to proper consideration of an application by statutory authority remains alive even after repeal of the enactment under which the consideration had been sought.

29. In a recent judgment of the Apex Court in the case of State of U.P. Vs. Hari Ram, had occasion to consider the consequences of the Repeal Act, 1999 in context of the 1976 Act. The Apex Court noticing the Repeal Act, 1999 has held that the Repeal Act, 1999 has retained the saving clause and question whether right under the statute before it is repealed will in each case depend on the construction of the statute and the facts of particular case. Following was observed in paragraph 38 of the said

judgment:--

38. Let us now examine the effect of Section 3 of the Repeal Act 15 of 1999 on sub-section (3) to Section 10 of the Act. The Repeal Act 1999 has expressly repealed the Act 33 of 1976. The Object and Reasons of the Repeal Act has already been referred to in the earlier part of this judgment. Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute and the facts of the particular case.

30. In Bishambar Nath Kohli and Others Vs. State of Uttar Pradesh and Others, , the Apex Court examined the provisions of Section 6 of the Act, 1897 in context of Administration of Evacuee Property Act, 1950. By order dated October, 12, 1949, the Deputy Custodian of Evacuee Property, Lucknow declared No. 11, Kaiserbagh as "evacuee property". On September 27, 1971 the State of Uttar Pradesh applied u/s 27 of the Administration of Evacuee Property Act 31 of 1950 invoking the revisional jurisdiction of the Custodian General against the order of the Deputy Custodian notifying the property as evacuee property. The Custodian General upheld the plea of the State of Uttar Pradesh and set aside the order of the Deputy Custodian. The heirs and legal representatives of the auction purchasers have filed an appeal before the Supreme Court. The Deputy Custodian General, exercised power under the Ordinance 27 of 1949 called "The Administration of Evacuee Property Ordinance 1949". Ordinance 27 of 1949 was repealed by Administration of Evacuee Property Act, 1950. There was a saving clause in the Act, 1950 namely: sub-section (3) of Section 58 which provided as follows:

The repeal by this Act of the Administration of Evacuee Property Ordinance 1949 or the Hyderabad Administration of Evacuee Property Regulation or of any corresponding law shall not affect the previous operation of that Ordinance, Regulation or corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under that Ordinance, Regulation or corresponding law, shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action was taken.

31. The Apex Court in the aforesaid case while considering Section 6 of the Act, 1897 and the Scheme of the Act, 31 of 1950, interpreted Section 58(3) of Act, 31 of 1950. Following was laid down in paragraph 10 which is quoted below:

10. If by the observations set out, it was intended to, lay down that the legal fiction introduced by S. 58(3) of Act 31 of 1950 by which anything done or action taken in exercise of the powers conferred by the earlier Ordinance was to be deemed to have been done or taken in exercise of the powers by or under the Act applies only if under the earlier Ordinance anything done or action taken had not become final by virtue of the provisions of that Ordinance, we are unable, with respect, to accept

that interpretation. By the first part of S. 58(3) repeal of the statutes mentioned therein did not operate to vacate things done or actions taken under those statutes. This provision appears to, have been enacted with a view to avoid the possible application of the rule of interpretation that where a statute expires or is repealed, in the absence of a provision to the contrary, it is regarded as having never existed except as to matters and transactions past and closed: see Surtees v. Ellison (1829) 9 B and C 750. This rule was altered by an omnibus provision in the General Clauses Act, 1897, relating to the effect of repeal of statutes by any Central Act or Regulation. By S. 6 of the General Clauses Act, it is provided, insofar as it is material, that any Central Act or Regulation made after the commencement of the General Clauses Act repeals any enactment, the repeal shall not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, or affect any investigation legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation legal proceeding or remedy may be instituted, continued or enforced, any such penalty, forfeiture or punishment may be imposed, as if the Repealing Act or Regulation had not been passed. But the rule contained in S. 6 applies only if a different intention does not appear, and by enacting S. 58(3) the Parliament has expressed a different intention, for whereas the General Clauses Act keeps alive the previous operation of the enactment repealed, and things done and duly suffered, the rights, privileges, obligations or liabilities acquired or incurred, and authorises the investigation, legal proceeding and remedies in respect of rights, privileges, obligations, liabilities, penalties, forfeiture and punishment, as if the repealing Act or Regulation had not been passed, S. 58(3) of Act 31 of 1950 directs that things done or actions taken in exercise of the power conferred by the repealed statutes shall be deemed to be done or taken under the repealing Act as if that latter Act were in force on the day on which such thing was done, or action was taken. The rule so enunciated makes a clear departure from the rule enunciated in S. 6 of the General Clauses Act, 1897. By the first part of S. 58(3) which is in terms negative, the previous operation of the repealed statutes survives the repeal. Thereby matters and transactions past and closed remain operative: so does the previous operation of the repealed statute.

32. The Apex Court in the above case has laid down that Section 6 of the Act, 1897 applies only if a different intention does not appear in the repealing Act.

33. In Kalawati Devi Harlalka Vs. Commissioner of Income Tax, West Bengal and Others, , on January 24, 1963, the Commissioner of income tax, West Bengal issued a notice to the appellant for revision of assessment u/s 33B of the Indian income tax Act, 1922. The said notice was challenged. The assessee protested before the Commissioner that the notice is illegal since no proceedings u/s 33B of the Indian income tax Act, 1922, can be commenced after the Act, 1922 having been repealed by the Indian income tax Act, 1961. Referring to Section 297(2) of the income tax Act,

1961, the Court held that Section 6 of the General Clauses Act, shall not be applicable since a different intention is evidenced by Section 297(2) of the income tax Act. Following was laid down in paragraph 15 which is quoted below:

15. The learned counsel for the appellant submits that Parliament had S. 6 of the General Clauses Act in view, and therefore no express provision was made, dealing with appeals and revisions, etc. In our view, S. 6 of the General Clauses Act would not apply because S. 297(2) evidences an intention to the contrary. In The Union of India Vs. Madan Gopal Kabra, while interpreting S. 13 of the Finance Act, 1950, already extracted above, this Court observed at p. 68 (of ITR) : (at p. 162 of AIR):

Nor can Section 6 of the General Clauses Act, 1897, serve to keep alive the liability to pay tax on the income of the year 1949-50 assuming it to have accrued under the repealed State law, for a "different intention" clearly appears in sections 2 and 13 of the Finance Act read together as indicated above.

It is true that whether a different intention appears or not must depend on the language and content of section 297(2). It seems to us, however, that by providing for so many matters mentioned above, some in accord with what would have been the result u/s 6 of the General Clauses Act and some contrary to what have been the result u/s 6, Parliament has clearly evidenced an intention to the contrary.

34. The same proposition was laid down by the Apex Court in Qudrat Ullah Vs. Municipal Board, Bareilly, . Following was laid down by the Apex Court in paragraph 18 which is to the following effect:

18. Certain propositions are clear regarding the consequence of repeal of a statute. The general principle is that an enactment which is repealed is to be treated, except as to transactions past and closed, as if it had never existed. However, the operation of this principle is subject to any savings which may be made, expressly or by implication, by the repealing enactment (vide Halsbury''s Laws of England, Vol. 36 paragraph 714). The U.P. General Clauses Act (Act 1 of 1904) provides for the consequences of a repeal u/s 6. The relevant parts of which may be reproduced here:

6. EFFECT OF REPEAL.-Where any (Uttar Pradesh) Act repeals any enactment hitherto made or thereafter to be made, then, unless a different intention appears, the repeal shall not-

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(e) affect any remedy, or any investigation or legal proceeding commenced before the repealing Act shall have come into operation in respect of any such right,

privilege, obligation, liability; penalty, forfeiture or punishment as aforesaid:

and any such remedy may been enforced and any such investigation or legal proceeding may be continued and concluded, and any such penalty, forfeiture or punishment imposed as if the repealing Act had not been passed. If a contrary intention appears from the repealing statute, that prevails. It was pointed out to us that Section 2 of the later Act specifically states that:

Nothing in this Act shall apply to-

(a) any building belonging to or vested in..... any local authority.

Even so, we have to read this provision in conformity with Section 43 which repealed the Act viz. U.P. Act No. 3 of 1947. Section 43(2) is the saving clause. If the repealing enactment, as in this case, makes a special provision regarding pending or past transactions it is this provision that will determine whether the liability arising under the repealed enactment survives or is extinguished. (See Chakko Bhai Ghelabhai Vs. State of Orissa and Others, and Model Electric Oil Mills and Others Vs. Corporation of Calcutta,). Section 6 of the General Clauses Act applies generally in the absence of a special saving provision in the repealing statute, for when there is one then a different intention is indicated. In any case where a repeal is followed by a fresh legislation on the subject, the Court has to look to the provisions of the new Act to see whether they indicate a different intention.

35. Thus, the law is well settled that consequence of repeal as enumerated by Section 6 of the Act, 1897 shall follow unless a different intention is not expressed by the Repealing Act, 1999. For answering the said question, we have to revert to the scheme as delineated by the Repeal Act, 1999. The Repeal Act, 1999 contains a saving clause. The saving clause in a Repeal Act is normally incorporated when a different consequence to one which is envisaged by Section 6 of the Act, 1897 is contemplated. Section 3 of the Repeal Act, 1999 provides for a saving clause. Section 3(1) of the Repeal Act, 1999 provides that repeal of the Act, 1976 shall not affect the vesting of any vacant land under sub-section (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government. Section 3 of the Repeal Act, 1999 further provides that repeal of principal Act shall not affect the vacant land vested in the State Government under sub-section (3) of Section 10 of the principal Act, but possession of which has not been taken over by the State Government.

35-A. Different consequences have been provided in the situation (1) Where possession has been taken over by the State Government after vesting of land under sub-section (3) of Section 10 and (2) where possession has not been taken over by the State Government after vesting of the land in the State Government under sub-section (3) of Section 10. For a land with regard to which possession has not been taken over by the State Government, the only rider was made that such land shall not restore unless the amount paid, if any, has been refunded to the State

Government.

36. Section 4 of the Repeal Act, 1999 provides for abatement of legal proceedings. All proceedings relating to an 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. Section 4 of the Repeal Act, 1999 contains a proviso that proceedings relating to Sections 11, 12, 13 and 14 of the principal Act in so far as the such proceedings are relatable to the land, possession of which has been taken over by the State Government shall not abate. Thus, all the proceedings were to abate, except the proceedings for payment of compensation for vacant land, proceedings before the Urban Land Tribunal against an order of competent authority for payment of compensation passed u/s 11, second appeal against an order of the Urban Land Tribunal and mode of payment of compensation was to continue. Section 4 of the Repeal Act, 1999 thus expresses clear intendment contrary to normal consequences which flow from consequences of repeal as provided u/s 6 of the Act, 1897. When Section 4 of the Repeal Act, 1999 provides for abatement of legal proceedings, all proceedings relating to any order made or purported to be made under the Act, 1976, the legislature never contemplated giving any right of appeal against an order which was passed prior to Repeal Act, 1999. The legislature cannot be presumed to have intended to retain a right of appeal against an order passed under the Act, 1976 on one hand where clearly by Section 4 of the Repeal Act, 1999 it was provided that all proceedings pending against the order passed under the Act, 1976 shall abate. There cannot be any rational in abating the pending proceedings against an order passed under the Act, 1976 and giving a right of appeal after the Repeal Act, 1999 to the orders which were passed under the Act, 1976. Thus, it is clear that by the Repeal Act, 1999, the legislature never intended to save any right of appeal against an order passed under the Act, 1976.

37. Learned counsel for the respondent contended that the question whether the land holder was in actual, physical possession of the land can only be determined by an authority u/s 33 of the Act, 1976 and no other authority can decide the question of possession and the right of the parties, since the Repeal Act, 1999 gives right to the land holder to retain the land in his own right where the actual, physical possession of the land has not been taken by the State Government which consequence is a statutory consequence flowing from Section 3 of the Act, 1976, the right of appeal has to be conceded.

38. Submission of the learned counsel for the respondent that the question as to whether the possession of the land has been taken over by the State Government or not can only be determined in appeal u/s 33 of the Act, 1976, hence even after the Repeal Act, 1999, the right of appeal is to be provided for cannot be accepted. The Repeal Act, 1999 as observed above, contains a clear different intendment to one to the consequences as are envisaged by Section 6 of the Act, 1897.

39. Learned counsel for the petitioner submits that as per the legal maxim "ubijus ibiremedium" there cannot be a right without a remedy for enforcing such rights. He submits that when the Repeal Act, 1999 gives a right to the land holder to retain the land the remedy has also to be provided. There cannot be a dispute to the principle as contained in the above maxim that there cannot be a right without a remedy, but the remedy for enforcing the right given u/s 3 of the Repeal Act, 1999 can be enforced by normal course provided for in law. Section 9 of me Civil Procedure Code, is wide enough to give a remedy to any person for establishing his right which flows from Section 3 of the Repeal Act, 1999. A civil suit for establishing such right cannot be held to be barred specially when the Act, 1976 stood repealed by the Repeal Act, 1999. Thus, the submission of the learned counsel for the petitioner that the right u/s 33 of the Act, 1976 to file an appeal has to be conceded for giving a remedy to file an appeal by the aggrieved person u/s 33 of the Act, 1976 cannot be accepted.

40. Shri Manish Nigam, learned counsel for the respondent elaborating his submission, has contended that since Section 4 of the Repeal Act, 1999 provides that proceedings in cases where possession has been taken over by the State Government are not to abate, the legality of the orders passed by the competent authority can be examined and the same itself indicates that right to challenge the proceedings still survives even after the Repeal Act, 1999. In support of his submissions, learned counsel for the respondent has placed reliance on a Division Bench judgment of this Court in the case of Qadeer Ali and another v. State of U.P. and others reported in 2002 (46) ALR 551. The Division Bench in Qadeer Ali''s case (supra) had disposed of the petition with following order:-

1. Heard the learned counsel for the parties.

2. This petition relates to the Urban Land (Ceiling and Regulation) Act, 1976 as repealed in 1999. In Pt. Madan Swarup Shrotiya, Public Charitable Trust v. State of U.P. and others, it has been held by the Supreme Court that if possession has been taken over by the State Government then the proceedings under the Act will not abate but if the possession has not been taken over the proceeding shall abate. We make it clear that the word ''possession'' means actual physical possession. Hence if actual physical possession has not been taken over the proceedings shall not abate otherwise they will not abate.

3. The petition is disposed of accordingly.

41. As noted above, proviso to Section 4 of the Repeal Act, 1999 provides that abatement of legal proceedings shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the Act, 1976 insofar as such proceedings are relatable to the land, possession of which has been taken over by the State Government. The proviso to Section 4 of the Repeal Act, 1999, thus saves a limited category of proceedings from abatement as provided therein. The scheme, as delineated by

proviso to Section 4 of the Repeal Act, 1999, cannot be read to mean that abatement or non abatement depends upon possession of land not taken by the State or possession of the land taken over by the State, rather a limited category of proceedings referred to Sections 11, 12, 13 and 14 of the Act, 1976 have been saved with an object. The object for saving the proceedings under Sections 1, 12, 13 and 14 of the Act, 1976 from abatement is not far to seek. For the land, which has been vested in the State of which possession has already been taken by the State, the land holders whose land has been declared surplus is entitled for compensation as provided u/s 11 of the Act, 1976. In a case where vesting of land in the State of a tenure holder has become final, the Repeal Act, 1999 has to save the entitlement of land holders to receive compensation which is a consequence of declaration of ceiling surplus. Not saving such proceeding under which land holder is entitled for compensation would have run contrary to the natural consequences of vesting of land in the State. Thus Sections 11, 12, 13 and 14 of the Act, 1976 are the sections relating to payment of compensation to the land holders consequent to vesting of land in the State. The Division Bench judgment in Qadeer Ali''s case (supra) has to be read in accordance with the scheme as delineated in proviso to Section 4 of the Repeal Act, 1999. Moreover, in the present case the question of abatement of proceeding or non abatement of proceeding is not in issue, hence the judgment of Qadeer Ali''s case (supra) cannot be said to be attracted in the present case. The issue in the present case is as to whether after the Repeal Act, 1999 a land holder whose land has been declared surplus decades before the Repeal Act, 1999 has right of appeal or not. Thus we are of the view that Qadeer Ali''s case does not help the respondent in the present case.

42. The Division Bench judgment of this Court in State of U.P. and another v. Hari Ram and another reported in 2005 (60) ALR 535 : (2005 All LJ 2402) has also been relied by the counsel for the parties. The Division Bench in the said judgment held that mere vesting of land declared surplus under the Act, 1976 without resuming de facto possession is of no consequence and the land holder shall be entitled to the benefit of the Repeal Act, 1999. There cannot be any dispute to the proposition laid down by the Division Bench in the said case. It is relevant to note that in the aforesaid case one of the arguments raised on behalf of the State was that the District Judge had no jurisdiction to allow the appeal after the Repeal Act, 1999 which was enforced in the State of U.P. with effect from 18th March, 1999, hence the judgment of the District Judge was without jurisdiction. The above argument was noted in paragraph 63 of the judgment, however, the said argument was not considered on merits. Paragraphs 63 and 64 of the said judgment are quoted below:-

63. As part of second limb of argument, learned Standing Counsel, representing the petitioners, referred to para 13 of writ petition (sworn on legal advice), which reads:

13. That the learned district Judge failed to consider this aspect of the matter and committed an error in entertaining the appeal and deciding the same on the merit. The impugned judgment and order dated 14.12.1999 which was subsequent to the enforcement of the repealing Act and its adoption by the State of U.P. dated 18th March, 1999, therefore, was wholly without jurisdiction.

64. Before such plea is allowed to be raised, one has to ascertain whether this plea was raised before the Appellate Authority. We find that there is no reference of the Repeal Act in the Appellate judgment. In the writ petition, there is no pleading as of fact, that such "plea" was ''raised'' or ''pressed'' before the Appellate Authority. No affidavit application appears to have been filed before Appellate Authority raising grievance that point raised before it has not been dealt with by him. On the other hand, from perusal of paragraphs 6, 7, 8 and 9 of the writ petition (quoted above) it is clear that Hari Ram, owner of the land in question was never dispossessed on spot. In the case of U.P. Work Charge and Muster Roll IV Class Employees Union and Another Vs. State of U.P. and Others, -para 5 (DB) Apex Court has observed:

Second submission raised by the learned counsel for the appellants before us has not been dealt with by the learned Single Judge. Grievance of the appellants is that this question was raised before the learned Judge in two writ petitions, which have given rise to Special Appeal Nos. 902 of 1994 and 231 of 1995, but it has not been decided. If a question raised by the party is not decided by the Court, it is open to it to apply for review of the judgment. Non-consideration of one of the pleas by a Court is a ground for review of the judgment. The appellants, as such, should ask for review of the judgment. The appellants, as such, should have made an application for review of the judgment before the learned Judge, who has decided the writ petition. The fact that the Hon''ble Judge, who has decided the writ petition is not available now, cannot defeat the right of review.

The above argument also has no merit.

43. The Division Bench in the said case did not decide the issue as to whether the District Judge after the Repeal Act, 1999 could have allowed an appeal on merits, rather the Division Bench in the facts of the said case refused to exercise its discretionary jurisdiction in favour of the petitioner on the premise that by setting aside the order of the appellate authority another illegal order shall revive which is a circumstance for not exercising the writ jurisdiction. Following was observed in paragraphs 70 and 71 of the said judgment:-

70. Petitioners before this Court have attempted to challenge the impugned judgment and order passed by the Appellate Authority on the ground that appeal itself was not maintainable, when the Repeal Act, came into force w.e.f. March 18, 1999.

71. The argument of the petitioners that the appeal filed before the District Judge after Repeal Act, w.e.f. 18.3.1999 was non est and not maintainable, due to the Act

being repealed we may point out that State Government has approached this court under Article 226 of the Constitution of India which is an extra-ordinary discretionary constitutional remedy and this Court, in exercise of its jurisdiction under Article 226, Constitution of India, is not bound to set aside an illegal order if by setting it aside, another illegal order is to revive. It is well settled that Court shall not allow its discretionary jurisdiction to be invoked if substantial justice has been done....

44. Against the Division Bench judgment of this Court in State of U.P. v. Hari Ram, (2005 All LJ 2402) (supra) by which the writ petition of the State of U.P. was dismissed, an appeal was filed by the State of U.P. before the Apex Court being Civil Appeal No. 2326 of 2013 which appeal too was dismissed by the Apex Court on 11th March, 2013. The Apex Court in the State of U.P. v. Hari Ram dealt with effect of the Repeal Act, 1999. Paragraphs 38 and 39 of the said judgment is quoted below:-

38. Let us now examine the effect of Section 3 of the Repeal Act 15 of 1999 on sub-section (3) to Section 10 of the Act. The Repeal Act 1999 has expressly repealed the Act 33 of 1976. The Object and Reasons of the Repeal Act has already been referred to in the earlier part of this judgment. Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute and the facts of the particular case.

39. The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the land owner or holder can claim the benefit of Section 3 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 3 of the Repeal Act.

45. The Apex Court in the said judgment upheld the judgment of the High Court since the State failed to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. It is thus clear that in the State of U.P. v. Hari Ram, the issue whether after the Repeal Act, 1999 the District Judge can entertain the appeal and decide the same on merits has neither been gone into nor decided.

46. By another Division Bench judgment of this Court dated 20th December, 2006 in Civil Misc. Writ Petition No. 12260 of 2002 (State of U.P. v. Ram Adhar and another) a bunch of writ petitions were decided. In the aforesaid case also one of the

submissions which was raised on behalf of the State was that after the Repeal Act, 1999 came into force with effect from 18th March, 1999, the District Judge had no jurisdiction to entertain, hear and decide the appeals u/s 33 of the 1976 Act. The Division Bench did not enter into the issue as to whether the District Judge has rightly exercised jurisdiction in deciding the appeal after the Repeal Act, 1999, rather upheld the judgment on the ground that the order of the District Judge did justice between the parties and there would be no justification to set aside the same in discretionary and equitable jurisdiction of this Court. Following was observed by the Division Bench in the said judgment:-

Now coming to the First Bunch of the writ petitions in which the District Judge entertained the appeals which were filed after the enforcement of the Repeal Act in cases where the proceedings u/s 10(5) of the Act were being taken by the State after the enforcement of the Repeal Act. The District Judge had held that such proceedings were vitiated and accordingly the appeals were allowed and the proceedings abated as admittedly the possession had continued with the land holders.

It may be mentioned that in view of the discussion made above the ultimate result would be the same i.e. the State could not have proceeded to take possession under the Act after the enforcement of the Repeal Act and, therefore, the possession was to continue with the landholders. Initiation of proceedings for possession clearly meant that the State was not in possession either symbolic or actual physical possession. Thus even if the District Judge wrongly exercised the jurisdiction but as the order passed by him was in accordance with the substantive provisions contained in the Repeal Act and ultimately did justice between the parties, there would be no justification to set aside the same in discretionary and equitable jurisdiction of this Court under Article 226 of the Constitution of India. It is well settled that an order without jurisdiction if results into doing justice between the parties and being correct in law otherwise need not necessarily be quashed in writ proceedings. In the case of Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others, , the Supreme Court held that refusal to interfere in writ jurisdiction would be justified where the order of Tribunal if set aside on the ground of lack of jurisdiction, would result into revival of an illegal order. We, therefore, decline to interfere in the orders so passed by the District Judge in the first bunch of writ petition.

47. In view of the foregoing discussions, we come to the conclusion that the consequence and effect of the Repeal Act, 1999 shall not be controlled by Section 6 of the Act, 1897 rather the consequences have to be spelled out in accordance with the saving clause as contained in the Repeal Act, 1999. The Repeal Act, 1999 contains intention contrary to one which flow from consequences as contemplated in Section 6 of the Act, 1897. The Repeal Act, 1999 cannot be interpreted in a manner to save any right of appeal in a land holder u/s 33 of the 1976 Act after the Repeal

Act, 1999 entitling him to file an appeal for challenging an order passed by the competent authority declaring the land ceiling surplus by the competent authority.

48. In the facts of the present case, the conclusion is irresistible that the respondent has no right to file an appeal u/s 33 of the Act, 1976 in the year 2007 challenging the order passed by the competent authority dated 31st March, 1997 passed u/s 8(4) of the Act, 1976. The appeal was not maintainable and the District Judge had no jurisdiction to hear the appeal and decide the same on merits.

49. The learned District Judge in the impugned judgment dated 13th August, 2012 has not gone into the question as to whether appeal was entertainable u/s 33 of the Act, 1976 after the Repeal Act, 1999. The State of U.P. in the writ petition has specifically pleaded that District Judge had no jurisdiction to entertain the appeal u/s 33 of the Act, 1976 after the Repeal Act, 1999. In paragraph 5 of the judgment of the District Judge although it has been noted that appeal is not maintainable but there is no further discussion in the judgment. The question as to whether the appeal could have been entertained u/s 33 of the Act, 1976 after the Repeal Act, 1999 goes to very jurisdiction of the appellate authority to hear and decide the appeal. Learned counsel for the parties have addressed their submission on the above issue in detail, hence we deem it fit and proper to decide the said issue.

50. In view of the foregoing discussions, we are of the considered opinion that appeal filed by the respondent being Appeal No. 68 of 2011 was not entertainable u/s 33 of the Act, 1976 and the learned District Judge went beyond his jurisdiction to decide the appeal on merits by his order dated 13th August, 2012. We answer the Issue Nos. 1 to 4, as noted above, in the following manner:-

(I) An appeal u/s 33 of the Act, 1976 against an order passed by the competent authority declaring a land surplus u/s 8(4) of the Act, 1976 cannot be filed after the Repeal Act, 1999.

(II) The right of appeal u/s 33 of the Act, 1976 is not saved u/s 6 of the General Clauses Act, 1897 after the Repeal Act, 1999.

(III) The appellate authority (District Judge) could not have entertained and decided the appeal u/s 33 of the Act, 1976 against the order passed by the competent authority under the Act, 1976 declaring a land surplus after the Repeal Act, 1999.

(IV) The order passed by the appellate authority dated 13th August, 2012 is without jurisdiction.

51. We having held that the District Judge has no jurisdiction to entertain or decide the appeal on merits, we are of the view that it is not appropriate to rely on the findings recorded by the District Judge in the impugned order. One more reason which is relevant to be noticed in the present case is that this is on the record that in the Khatauni entry the name of Kanpur Development Authority has been recorded since before the Repeal Act, 1999. The appeal was filed by the respondent in the

year 2007 against the order passed by the competent authority dated 31st March, 1997 i.e. after a decade and by that time the name of Kanpur Development Authority was already recorded in the Khatauni entries. The Kanpur Development Authority was neither made party to the appeal proceedings nor had any opportunity to have its say in the matter. The name of the Kanpur Development Authority having been recorded since before the Repeal Act, 1999, we are of the view that the Kanpur Development Authority was also one of the appropriate party to have its say in the matter. Thus findings recorded by the appellate authority cannot be relied due to above reason also.

52. As noticed above, the law being well settled that the vesting of land under sub-section (3) of Section 10 of the Act, 1976 is not sufficient to vest the land in the State unless it is further established that the State has taken possession of the land in accordance with the provisions of the Act, 1976. The issue of taking possession by the State having arisen, on which parties are at variance and have been litigating the matter in the appeal before the District Judge for the last about 6 years, we are of the view that the issue be gone into and decided by the District Magistrate as to whether the State had taken possession of the land in accordance with the provisions of the Act, 1976 and what are the consequences of the Repeal Act, 1999.

53. In view of the above, ends of justice be served in giving liberty to the respondent to submit a detail representation before the District Magistrate, Kanpur Nagar and the District Magistrate after looking to the relevant records and after giving opportunity to both the parties as well as Kanpur Development Authority shall decide the matter. It shall be open for the respondent to enclose relevant materials in support of his case which may be examined by the District Magistrate. In result, the writ petition is allowed. The judgment and order of the learned District Judge dated 13th August, 2012 is set-aside. However, liberty is given to the respondent to submit a representation before the District Magistrate within one month from today which may be considered and decided by the District Magistrate as per the observations made above. Parties shall bear their own costs.