

## Jagannath Vs State of Uttar Pradesh and Others

**Court:** Allahabad High Court

**Date of Decision:** July 22, 2015

**Acts Referred:** Urban Land (Ceiling and Regulation) Act, 1976 - Section 10, 10(3), 10(5), 10(6)  
Urban Land (Ceiling and Regulation) Repeal Act, 1999 - Section 3

**Citation:** (2015) 7 ADJ 528

**Hon'ble Judges:** Krishna Murari, J; Amar Singh Chauhan, J

**Bench:** Division Bench

**Advocate:** Aran Kumar Singh, S.V. Goswami and Sanjay Kumar, for the Appellant; S.K. Mishra, Advocates for the Respondent

**Final Decision:** Allowed

### Judgement

1. We have heard Shri S.V. Goswami, learned counsel for the petitioner and learned Standing Counsel for the respondents-State. The case of the

petitioner is that though the land of the petitioner was declared as surplus under the Urban Land (Ceiling and Regulation) Act, 1976 (in short

hereinafter referred to as "Act"), but actual physical possession has not been taken and, thus, he would be entitled to the benefit of sub-section (3)

of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (in short hereinafter referred to as "Repeal Act").

2. Specific case of the petitioner is that actual physical possession had not been taken and mere symbolic possession would not be sufficient as the

petitioner continues in possession of the plot in question.

3. The issue was considered by the Division Bench of this Court in the case of Ram Chandra Pandey Vs. State of U.P. and Others, (2011) 3

AWC 2850 , wherein it was held that mere symbolic possession does not amount to taking over actual physical possession. It was further held that

unless actual physical possession has been taken by the State, the party would be entitled to the benefit of the Repeal Act, 1999.

4. The same view has been taken by the Apex Court in the case of State of U.P. Vs. Hari Ram, (2013) 6 AD 266 : AIR 2013 SC 1793 : (2013)

4 JT 275 : (2013) 2 RCR(Civil) 499 : (2013) 3 SCALE 348 : (2013) 4 SCC 280 : (2013) AIRSCW 1683 . The question for consideration

before the Apex Court in the said case was whether deemed vesting of surplus land under Section 10(3) of the Act would amount taking over de

facto possession depriving the landholders to the benefit of the saving clause under Section 3 of the Repeal Act. This issue was answered by the

Apex Court in para 39 of the said judgment, which reads as under:

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.

5. The same issue has been reaffirmed by the Apex Court in the case of Gajanan Kamlya Patil Vs. Addl. Collector and Comp. Auth. and Others,

AIR 2014 SC 1843 : (2014) AIRSCW 1359 : (2014) 3 JT 211 : (2014) 3 RCR(Civil) 477 : (2014) 2 SCALE 286 : (2014) 6 SCJ 90 .

6. There is no material in the counter-affidavit to demonstrate that the State has taken peaceful possession, nor there is any material to demonstrate

that the possession was handed over by the petitioner voluntarily or was taken over by use of force. There is not even a whisper in respect of any

notice having been issued under Section 10(6) of the Act. Entire case of the State in the counter-affidavit is based upon Annexure CA "1", an

alleged memo (Dakhalnama). Though it is mentioned therein that possession is being taken under Section 10(6) but the counter-affidavit is totally

silent about issuance of any notice. The said document appears to be mere noting prepared by the officials sitting in the office. There are no details

of alleged witnesses except for their signature in whose presence the possession is said to have been taken. The facts clearly indicates that only

dejure possession has been taken by the State, not de facto possession, before coming into force of the Repeal Act.

7. It has also been stated in the counter-affidavit that possession has been taken over on the basis of the Government Order and handed over to

the Development authority. The issue with respect to transfer of a surplus land to the local authority/development authority by the State

Government after taking symbolic possession through Government Orders, was subject-matter of consideration by a Division Bench in the case of

Lalla and others v. State of U.P. and others, 2014(9) ADJ 524 (DB), wherein it has been held as under.

11. The law does not contemplate transfer of possession by Government orders. It needs to be clarified that the land for the purposes of

management would vest in the local authorities/development authorities only when the State came in valid possession over land, pursuant to lawful

proceedings under Section 10(5) or 10(6) of the Act. The local authorities/development authorities merely steps into shoes of the State

Government. If the State Government through the Collector/District Magistrate has not taken possession over the land in question, as

contemplated by law, the transfer of possession in favour of the local authorities/development authorities cannot be presumed under Government

order. If the possession of land has not been taken by the State, as per the procedure already determined by the Apex Court, the local

authorities/development authorities cannot claim independent right over the land merely on the strength of the Government order.

12. We are of the view that large number of pending writ petitions before this Court, as well as disputes pending at the level of the District

Magistrate etc. can be conveniently resolved, if the State Government at its own level issues appropriate Government instructions in light of the law

settled by the Apex Court, providing that possession of land declared surplus cannot be taken by the local authorities/development authorities or

other state agencies, merely by Government orders and that only where possession of land declared surplus has been delivered to State peacefully

by the tenure holders pursuant to Section 10(5), or possession is forcibly taken by the State Government pursuant to notice under Section 10(6),

the benefit of Repeal Act of 1999 would enure to the tenure holders. The intention of legislature is clear, once the State has adopted the Repeal

Act 1999 on 18.3.1999, the State must take all steps to implement its legislation and allow the consequences of repeal to the benefit of the tenure

holders and the tendency to somehow or the other hold on to claim merely because notices under Section 10(3) or 10(5) have been issued/served,

must not be encouraged/tolerated.

8. In view of above facts and discussions, the petitioner is, thus, entitled to benefit of Section 3 of Repeal Act and in the facts and circumstances,

the writ petition deserves to be allowed. Accordingly, the writ petition succeeds and stands allowed. A writ of mandamus is issued commanding

the respondents not to interfere in the actual physical possession of the petitioner over the land in dispute and they are further directed to restore

the entry of the name of the tenure holders in the revenue records. There shall be no order as to costs.