
(2016) 10 AHC CK 0117

ALLAHABAD HIGH COURT

Case No: Writ C. No. 26706 of 2009

Smt. Basmatti

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Oct. 3, 2016

Acts Referred:

- Urban Land (Ceiling And Regulation) Act, 1976 - Section 10
- Urban Land (Ceiling and Regulation) Repeal Act, 1999 - Section 4

Citation: (2017) 1 ADJ 54 : (2017) 2 AllWC 1176 : (2017) 121 ALR 294 : (2017) 135 RD 360 : (2017) 1 RJ 604

Hon'ble Judges: Krishna Murari and Prashant Kumar, JJ.

Bench: Division Bench

Advocate: C.S.C, for the Respondent; T.N. Tiwari, Advocate, for the Petitioner

Final Decision: Allowed

Judgement

Prashant Kumar, J. - In this writ application, petitioner has prayed for quashing of the order dated 26.3.2007 whereby the representation of the petitioner filed before the District Magistrate, Varanasi has been rejected. Petitioner further prayed for quashing of the entire proceedings of Case No.666/2577/81-82, initiated against the petitioner under the provisions of Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the "Act of 1976") by declaring that the said proceeding had abated under Section 4 of Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as the "Repeal Act"). The petitioner also prayed that a writ of mandamus may be issued restraining the respondents from interfering with the peaceful possession of the petitioner over the land in dispute.

2. Sans unnecessary details, the facts of the case is that the petitioner being the owner of the land, pertaining to plot nos. 281, 251 and 8 situated in village Karaundi and Susuwahi respectively of the District Varanasi, had given details of the land under Section 6 (1) of the Act of 1976 as demanded by the respondents. It appears that the

respondent-authority initiated a proceeding under the provisions of the Act of 1976 vide Case No.666/2577/81-82 against the petitioner and issued notice to the petitioner to show cause as to why the land in question be not declared surplus. It appears that the respondent-authority passed order on 10.6.1981 declaring 1575.22 sq. meter of land of plot no.281, 159.27 sq. meter of land of plot no.251 of village Karaundi and 25 decimal land of plot no.8 of village Susuwahi of the District Varanasi as surplus land. It then appears that by an order passed under Section 10 (3) of the Act of 1976, the aforesaid surplus land declared to have vested in the State of U.P. with effect from 31.1.1998. Thereafter a notice, under Section 10 (5) of the Act of 1976 issued on 21.3.1998 and the petitioner was directed to handover the possession of above surplus land within 30 days from the date of notice, otherwise a proceeding under Section 10 (6) of the Act of 1976 will be initiated against the petitioner for taking forceful possession.

3. It is stated by the petitioner that in compliance of notice issued under Section 10 (5) of the Act of 1976, she had not surrendered and/or delivered possession of the land to the respondents. It is further stated that the respondents had not taken forceful possession of the land in question under Section 10 (6) of the Act of 1976.

It is stated that the Urban Land (Ceiling & Regulations) Repeal Act, 1999 had come into force w.e.f. 22.3.1999, whereby the Act of 1976 has been repealed. It is stated that as per Section 4 of the Repeal Act, proceeding pending against the petitioner had abated. It is stated that petitioner filed a writ application in this Court vide Civil Misc. Writ Petition No.6804 of 2005 for restraining the respondents from taking possession of the surplus land. The aforesaid writ application disposed of by this Court vide order dated 22.2.2005 and the petitioner was directed to file a representation before the District Magistrate, Varanasi for redressal of her grievances and the District Magistrate, Varanasi was directed to dispose of the representation within three months. It appears that in pursuance of above direction, the petitioner filed a representation on 30.8.2005. The aforesaid representation rejected by the District Magistrate, Varanasi vide order dated 26.3.2007 on the ground that the land in question vested in the State of U.P. and the same has already published in the Govt. Gazette on 31.1.1998 and thereafter notice under Section 10 (5) of the Act of 1976 issued on 21.3.1998 and the name of U.P. Government already mutated in the revenue records, therefore, possession of the land already taken before coming into force of Repeal Act, thus the proceeding initiated under the Act of 1976 has not abated. The aforesaid order challenged in this writ application.

4. A counter affidavit filed on behalf of the State, wherein it is stated that after declaring the land as surplus land, an order passed under Section 10 (3) of the Act of 1976 for vesting the surplus land in the State of U.P. It is further stated that same was published in the Government Gazette on 31.1.1998. Thereafter on 23.3.1998 a notice issued under Section 10 (5) of the Act of 1976 and the name of the State Government already mutated in the revenue record. Accordingly, it is stated that the State of U.P. had taken possession of the surplus land prior to coming into force of the Repeal Act. Hence, this writ application is liable to be dismissed.

5. It is submitted by learned counsel for the petitioner that Section 3 of the Repeal Act saves only those proceedings, initiated under the Act of 1976, in which after vesting of the surplus land, the State Government had taken actual possession of the same. It is submitted that in the instant case actual possession of the land had not been taken by the State Government, therefore, the proceeding initiated under the Act of 1976 has abated as per Section 4 of the Repeal Act. Accordingly, it is submitted that after coming into force of the Repeal Act, the State of U.P. has no right to interfere with the peaceful possession of the petitioner over the land in question.

6. On the other hand, learned standing counsel appearing for the State submits that since the land has already vested in the State of U.P. with effect from 31.1.1998 and thereafter notice under Section (10) 5 of the Act of 1976 issued on 23.3.1998 and as the name of State of U.P. already mutated in the revenue record, prior to coming into force of Repeal Act, the question of abatement of proceeding, initiated under the provisions of the Act of 1976, does not arise. Hence, it is submitted that the writ application be dismissed.

7. Having heard the learned counsel for the parties, we have gone through the record of the case.

8. From perusal of Annexure-1, it is clear that by order dated 10.6.1981, the appropriate authority under the provisions of the Act of 1976 passed an order declaring 1575.22 sq. meter of land of plot no.281, 159.27 sq. meter of land of plot no. 251 and 25 decimal of land of plot no. 8, situated in village Karaundi and Susuwahi respectively, as surplus land. It further appears that thereafter by order passed under Section 10 (3) of the Act of 1976, it was declared that the above surplus land vested in the State of U.P. w.e.f. 31.1.1998. By the same order, a direction issued for mutating the name of State of U.P. in the revenue records. It further appears that on 21.3.1998, a notice issued under Section 10 (5) of the Act of 1976 whereby the petitioner was directed to handover possession of above land within 30 days, otherwise a proceeding under Section 10 (6) of the Act of 1976 will be initiated.

9. The petitioner specifically stated that in pursuance of notice under Section 10 (5) of the Act of 1976, she had not surrendered and/or handed over possession of the land to the State of U.P. or any other officer authorised by it. It is further stated that the appropriate authority had not taken forceful possession of the land in question under Section 10 (6) of the Act of 1976. In the counter affidavit, the respondents stated that since the land vested in the State of U.P. w.e.f. 31.1.1998 and thereafter name of the State of U.P. mutated in the revenue records, thus, it will be presumed that the State had taken possession of the surplus land.

10. Sections 3 and 4 of the Repeal Act, 1999 reads as follows :-

"3. Savings. - (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 by 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 subsection (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 any 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."

11. From a careful reading of the aforesaid provisions, it is clear that only in cases where, actual possession of the surplus land was taken by the State Government or any person duly authorised by it or by the competent authority, after vesting of the same, the Repeal Act has no affect on the proceeding initiated under the Principal Act, i.e. the Act of 1976. On the contrary, if the possession of the land has not been taken till the date of enforcement of Repeal Act, the proceeding initiated under the provisions of the Act of 1976, would abate under Section 4 of the Repeal Act.

12. In the instant case, from perusal of notice dated 21.3.1998 (Annexure- 5) it is clear that till the date of issuance of notice, possession of the surplus land has not been taken by the State Government or any officer authorised by it or by the competent authority, because, by the same notice petitioner was directed to handover the possession within 30 days. The petitioner has specifically stated that she has not given possession of the land and still she is in possession of the same. The State Government in its counter affidavit has not stated as to when it had taken actual possession of the land. In the

counter affidavit only a vague reply given by making an averment that since the land has vested in the State of U.P. and the name of the State of U.P. mutated in the revenue record, therefore, it will be presumed that the State has taken actual possession of the land.

13. A Division Bench of this Court in **Veer Nagar Sahakari Awas Samiti Ltd., Agra v. State of U.P. and others (Writ C. No. 43554 of 2010)** has held that normal mode of taking possession is preparing a Panchnama in presence of Panchas and taking possession and giving delivery to the beneficiary. A similar view also taken by the Hon"ble Supreme Court in **Banda Development Authority v. Moti Lal Agarwal (2011) 5 SCC 394** wherein their Lordship has held that:-

"(i) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

(ii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iii) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document."

14. In the instant case nothing has been brought on the record by the State Govt. to show that any authority of the State Government and/or the competent authority had gone to the spot and prepared a Panchnama and took possession of the land in presence of independent witnesses. It has been held by the Hon"ble Supreme Court in the case of **State of U.P. v. Hari Ram, reported in 2013(4) SCC 280**, that :-

"42. 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 delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under subsection (6) of Section 10. On failure to establish any of those situations, the landowner or holder can claim the benefit of Section 4 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 4 of the Repeal Act."

15. Thus, in view of the aforesaid law laid down by the Hon"ble Supreme Court, it is necessary for the State Government to prove that it has taken actual peaceful possession of the land in question either under Section 10 (5) of the Act of 1976 or forcefully dispossessed the erstwhile landowner under Section 10 (6) of the Act of 1976. Failure of the State Government to establish and/or prove the factum of taking possession will give a right to the landowner to claim of benefit under Section 4 of the Repeal Act.

16. In the instant case, the petitioner who is the landowner has filed certified copy of revenue records, Annexures 7 & 8 series to show that the land in question still in the name of petitioner. It is worth mentioning that a Bench of this Court vide order dated 30.7.2012 appointed Sri Arnab Banerji, an Advocate of this Court to visit the site as Advocate-Commissioner and file a report as to who is in actual possession of the land in question. In pursuance of the direction of this Court, Sri Arnab Banerji carried out inspection on 18.8.2012 and submitted report on 30.8.2012. It is worth mentioning that the State Government has not filed any objection against the report submitted by Advocate-Commissioner, Sri Arnab Banerji. From perusal of the said report, we find that on the land in question i.e. plot no.251 and 281 of village Karaundi and plot no.8 of village Susuwahi, dwelling houses of the petitioner situates, where the petitioner and her family members are residing. Thus, the aforesaid report of the Advocate-Commissioner goes to show that the State of U.P. has not taken actual possession of the land in question after issuance of notice under Section 10 (5) of the Act of 1976.

17. In view of the aforesaid facts and circumstances, since the State Government has failed to prove and establish that it had taken actual possession of the surplus land, before coming into force of Repeal Act, in our considered view, the proceeding initiated under the provisions of the Act of 1976 bearing Case No. 666/ 2577/ 81-82 has abated under Section 4 of the Repeal Act. Therefore, now it is not open for the State Government to take possession of the surplus land as declared by Annexure-1. Accordingly, we find that the order dated 26.3.2007, passed by the District Magistrate, Varanasi as contained in Annexure-18, cannot be sustained.

18. In the result, this writ application is allowed. The impugned order dated 26.3.2007 (Annexure-18) is hereby quashed. It is declared that the proceedings initiated under the provision of the Act of 1976 bearing Case No. 666/ 2577/ 81-82 has abated under Section 4 of the Repeal Act, 1999. Therefore, the State Government restrained from interfering with the peaceful possession of the petitioner over the land in dispute.