

**(2008) 03 MP CK 0031**

**Madhya Pradesh High Court (Gwalior Bench)**

**Case No:** None

Sohan Singh and Others

APPELLANT

Vs

State of Madhya Pradesh and  
Others

RESPONDENT

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**Date of Decision:** March 26, 2008

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Urban Land (Ceiling and Regulation) Act, 1976 - Section 10

**Citation:** (2008) ILR (MP) 2184 : (2008) 3 MPHT 97 : (2008) 3 MPJR 42 : (2008) 3 MPLJ 365

**Hon'ble Judges:** Sanjay Yadav, J; A.K. Gohil, J

**Bench:** Division Bench

**Final Decision:** Allowed

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### **Judgement**

The appellants have filed this writ appeal u/s 2 (1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Pith Ko Appeal) Adhiniyam, 2005 aggrieved by order dated 10-3-2006 passed by learned Single Judge in W.P. No. 1323/2006.

The brief facts of the case are that agricultural land bearing Survey Nos. 858,859,869,870,875 and 876 having a total area of 2.027 hectares situated in Village Shakarpur Tehsil and District Gwalior, was belonging to one Kanno alia Hargovind. Deceased Kanno was having two sons, i.e., Chimman Singh alias Chimmanlal and Harprasad. It was the case of the petitioner that Chimmanlal died on 8-11-93 and thereafter, his legal heirs Sohanlal, Balwant, Sovran Singh and Pokhran alongwith Harprasad were looking after the agricultural land and became Bhumiswami of the aforesaid land.

Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter shall be referred to as "Act of 1976") has found the aforesaid land lying vacant and therefore, proceedings under the Act of 1976 were initiated in the year of 1995. It was directed that notice be issued to holders of land but it is admitted

position on record that notices were not served, as the correct address of the appellants was not known to the Competent Authority and therefore, return was not submitted as required under the Act of 1976 by the holders of the land. By order dated 30-1-1996 the land admeasuring 15770 sq. metre were declared "surplus" without notice and again it was directed that notice be served on the holders of the land. But from the record, it is clear that the notices could not be served on the appellants for one or the other reason. Thereafter, on 20-8-96 the "surplus" land was notified and proceedings u/s 10(3) of the Act of 1976 were initiated. The notice of aforesaid notification and institution of proceedings u/s 10(3) of the Act of 1976 were also not served on the respondents. Thereafter, it was the case of the respondent/State that on 30-7-97 receipt of possession was obtained and possession of the land was taken.

But the case of the appellants is that no notice was ever served on them either of registration of ceiling case or of preliminary enquiry or declaring the land "surplus" or notifying the land or before taking the possession of the land from them. It is their submission that still the land is in their possession and in the year of 1995 the respondents have sold some portion of the land to the purchasers.

It is also the case of the appellants before the Writ Court that after the death of Chimmanlal, no notices have ever been issued to the legal heirs of Chimmanlal for ceiling proceedings. It is also their case that some of the portion of the land have been sold to the purchasers and the land is mutated in their names in the revenue record. But even then proceedings were not dropped, therefore, they have filed W.P. No. 1323/2006 claiming the relief that the orders Annexures P-I, P-2 and P-3 may be quashed. In reply the stand of the State was that the proceedings are legal.

The learned Writ Court was of the view that the appellants are having alternative remedy of filing civil suit and, therefore, the writ petition was dismissed with a liberty to the appellants to avail the remedy of filing civil suit. Against which the appellants have filed this writ appeal.

We have heard the learned Counsel for the parties and perused the original record of the ceiling proceedings maintained by the Competent Authority under the Act of 1976. It is admitted position on record that since very beginning, i.e., from the start of the ceiling proceedings till taking over possession of the land, the notices were not duly served on the appellants. We have also perused the order-sheet dated 8-11-1995, in which it is mentioned that registered letter were sent on wrong address. Order-sheet dated 8-12-1995 indicates that when service was not affected by post, directions were given to serve notices under Rule 5 (2) (c) of the Act of 1976 and affix on notice board and also on their last known address. Order-sheet dated 5-1-96 indicates that service was affected on notice board and case was fixed on 30-1-1996. On 30-1-96 the land was declared "surplus" and it was directed that notice be issued. Order-sheet dated 8-3-96 indicates that notices returned unserved due to incomplete address and direction was given to the Patwari to furnish the

complete address. Again on 20-3-1996 notices were sent on the address given by Patwari by registered post, but the same could not be served. The names of the legal heirs of the holder were disclosed by Patwari but on 29-3-96 or thereafter, no attempt was made to issue notice to the legal heirs by the Competent Authority nor any action was taken to substitute the name of legal heirs of deceased Chimmanlal. On 22-4-96 it was mentioned that service by post is not possible, therefore, direction was again given to effect the service under Rule 5 (2) (c) on the address of holders. On 24-5-96, it was found that order dated 22-4-96 is not complied with. In the order-sheet dated 20-8-96, it is mentioned that services are affected but there is no document on record to show that how these notices were served. From bare reading of this order-sheet, it appears that the notices were affixed on the notice board of the office. It is also clear that there is no report in the record whether any notice was affixed on the disputed land. Therefore, it cannot be held that notices were ever personally served on the appellants. Subsequently, direction was given that notification be sent for publication in Gazette u/s 10(1) of the Act of 1976. On 23-9-1996 proceedings u/s 10(3) were taken up. From the record of Competent Authority, it is, not clear whether the preliminary draft statement/final draft statement or the notification was ever served on the appellants personally though the receipt of possession dated 30-7-1997 is available in the record of the Competent Authority but that was also not valid and duly served on the appellants. In the notice of possession, it is mentioned that Chimmanlal is dead and notice was accepted by his son but notice was not addressed to his son but was addressed to Chimmanlal. Therefore, it is clear that the fact of the death of Chimmanlal was in the knowledge of the Competent Authority but even then neither the notices were ever served on the legal heirs or on purchasers nor the legal heirs of the deceased Chimmanlal were brought on record nor physical possession of the land was taken from them. Copy of the Panchnama has also not been produced for taking the physical possession from the holders of the land. Therefore, it cannot be held that the State has obtained possession legally of the aforesaid land. Possession taken from dead person is no possession in the eye of law. Paper possession without notice to holder is also no possession and cannot be affirmed or maintained. So far as question of challenging the aforesaid order in the writ petition is concerned, in the writ petition if facts are not disputed nor any evidence is necessary, then the writ petition cannot be dismissed merely on the ground of availability of alternative remedy. There is no bar for filing writ petition and writ petition is also maintainable.

The Hon<sup>ble</sup> Supreme Court in case of State of Uttar Pradesh v. Mohd. Nooh AIR 1958 SC 86 and subsequently relied on in case of [Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others](#), has held as under:

If an Inferior Court or Tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in

a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the Superior Court's sense of fairplay the Superior Court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the Court or Tribunal of first instance even if an appeal to another Inferior Court or Tribunal was available....

In case of [A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another](#), the Hon"ble Supreme Court has further held that a writ under Article 226 is not denied when, for instance, the alternative remedy is ill-suited, burdensome and onerous, or the petitioner has lost it through no fault of his. In case of [New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Others Vs. Municipal Corporation of The City of Ahmedabad and Others](#), the Hon"ble Supreme Court has held that if the Tribunal in question acts under an ultra vires law, or without a law, or exceeds its jurisdiction, or had not followed the principles of natural justice, the jurisdiction of Writ Court cannot be denied. In case of [Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others](#), the Hon"ble Supreme Court has held that when an order has been made completely in violation of natural justice, the aggrieved party is entitled to invoke the writ jurisdiction of the High Court instead of availing the alternative statutory remedy. In case of [Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others](#), and [Hy Lay Poultry Farms Vs. State of Haryana](#), it was held by the Hon"ble Supreme Court that it is not palatable to "our jurisprudence" to turn down the prayer for a writ on the negative plea of "alternative remedy" since the root principle of law "married to justice, is ubi jus ibi remedium".

Admittedly, in this case the question before the Writ Court was whether the proceedings which were initiated by the Competent Authority under the Act of 1976 were legal or not. When the notices were not served, the proceedings were not conducted manifestly in a legal manner, no attempt was made to serve the notice nor the principles of natural justice were followed, it cannot be held that the proceedings were lawful or in such cases writ jurisdiction of the High Court is barred. Since no evidence is required to assess the aforesaid question of legality of the proceedings, the question can be examined by the Writ Court in writ petition.

In view of the aforesaid discussion, we are of the view that the orders passed by the Competent Authority are not legal, the proceedings are also not legal and all orders passed and actions taken are also not binding on the appellants, as appellants were not noticed and they were also not brought on record legally. Therefore, as a necessary consequence, we have no option but to allow this writ appeal. Accordingly, the appeal is allowed, writ petition is also allowed and the orders Annexures P-1, P-2 and P-3 are set aside. In the facts and circumstances of the case it is directed that parties shall bear their own costs.