

Puranlal Sen Vs The State of M.P. and Another

Court: Madhya Pradesh High Court

Date of Decision: March 1, 2006

Acts Referred: Urban Land (Ceiling and Regulation) Act, 1976 " Section 1(3), 10(3), 10(3), 10(5), 11
Urban Land (Ceiling and Regulation) Repeal Act, 1999 " Section 3

Hon'ble Judges: Arun Mishra, J

Bench: Single Bench

Advocate: R.P. Kannojiya, for the Appellant; G.P. Singh, Dy. GA, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Arun Mishra, J.

I. In this petition, petitioner has assailed an Order (P.1) dated 10.10.2005 passed by Collector as competent authority Urban Land Ceiling Act,

Jabalpur in which the application filed by petitioner for abatement of the proceeding under Urban Land Ceiling Act has been considered and

decided pursuant to the directions issued by this Court in previous writ petition No. 5182/2001 decided on 11.4.05.

2. Land of petitioner was declared as surplus in Ceiling Case No. 112/ A-90/B-9/81-82, the proceedings concluded and attained finality and after

the gazette notification was made u/s 10(3) of Urban Land Ceiling Act, land stood vests in the State Govt. Thereafter notice u/s 10(5) was sent for

taking of possession to the holder on 30.8.93. In the proceedings dated 29.11.93 of the aforesaid case, it was recorded that the holder was not

present on the date fixed, hence, proceeding was taken ex parte and possession of the land which was declared surplus was taken. Correction of

the record was ordered, thereafter name of State of M.P. was recorded. Proceeding was signed by Santlal Kotwar and in revenue papers name of

State of M.P. was recorded, possession receipt was also on record which was signed by Shri Santlal Kotwar and patwari of the circle. Tahsildar

has also certified the factum of taking possession in the receipt of possession. Hence, competent authority has held that possession was taken over

in the aforesaid proceedings after declaration of the land.

3. The Collector, i.e., competent authority after the case was remitted in the previous writ petition has come to the conclusion that possession was

taken over by the State in the year 1993, thereafter in the revenue papers entry of the State was made which has continued till today. Thus, repeal

of the Urban Land Ceiling Act. as per Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short ""Repeal Act, 1999"") has no effect as the

possession was taken over after the land vested in the State under Sub-section (3) of Section 10

4. Shri R.P. Kannojiyar learned ; counsel appearing for petitioner has submitted that provision of Section 10(5) of Urban Land Ceiling Act was not

complied with, notice was not issued, endorsement of refusal which was made was incorrect as such the proceedings of Section 10(5) were illegal

as such taking of ex parte possession was not in accordance with law, thus, the possession of petitioner has continued, it has not been taken in

accordance with law, hence, provision of Repeal Act, 1999 comes to the rescue of petitioner and it be held that proceedings which were

undertaken declaring the land as surplus stood abated on coming into force of Repeal Act, 1999. He has referred to the various decisions to be

referred later on.

5. Shri G.P. Singh, Dy. GA appearing for respondents has submitted that there is absolutely nothing to doubt the correctness of the proceedings in

the ceiling case, after gazette notification was made u/s 10(3) of the Urban Land Ceiling Act, proceedings were taken for taking over possession,

notice was issued u/s 10(5) of the Act, thereafter on refusal to accept the notice possession was taken, .possession receipt was recorded,

Tahsildar had noted the fact that possession was taken. Apart from that taking over of the possession was also reflected in the revenue papers.

There is entry of State Govt. till today from the date of taking over of the possession, the provisions of Repeal Act, 1999 cannot be misused to

revive the proceedings which stood concluded way back in the year 1993.

6. Section 10(3) of Urban Land (Ceiling and Regulation) Act, 1976 is quoted below :

10 Acquisition of vacant land in excess of ceiling limit : (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 free from all encumbrances with effect from the date so specified.

7. It is not in dispute that proceedings u/s 10(3) were taken by the State. Section 3 of the Repeal Act, 1999 is also quoted below :

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 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.

8. It is apparent from reading of Section 3 that the repeal, of the principal Act shall not effect vesting of any land under Sub-section (3) of Section

1 possession of which has been taken over by the State Govt. only those proceedings abate as per Section 4 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. Saving is also provided Section 4 shall not apply to the proceeding 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. It is clear that no proceeding was

pending as on the date on which Repeal Act, 1999 came into force. Possession was taken over by the State way back in the year 1993. There is

absolutely nothing to doubt the proceeding dated 29.11.93 referred to in the order of competent authority that possession was taken. Notice was

also issued u/s 10(5), thus, there was due compliance of provisions of Section 10(5) for taking possession. There is nothing to doubt the receipt of

possession which was signed by the witnesses and endorsed by Tahsildar. There is statutory presumption of correctness of entries indicated u/s

117 of MPLRC, after taking of the possession name of the holder was deleted and name of State of M. P was recorded as owner which name has

continued since then. Thus, it is clear that proceedings stood concluded and now petitioner wanted to take the advantage of the Repeal Act, 1999

by asserting his own possession. Once possession was taken proceedings were concluded and land had vested in State of M.P., in the Considered

opinion of this Court proceedings could not be reopened taking the gulf of Repeal Act, 1999. Matter stood settled long back. For the first time

petition was preferred in this Court in the year 2005, thereafter matter has been, examined by competent authority and it has been rightly found that

possession was taken, over by the State Government in the year 1993.

9. The Apex Court in Tamil Nadu Housing Board Vs. A. Viswam (Dead) by Lrs., has held that recording of memorandum or panchnama in

presence of witnesses signed by them would constitute taking of possession of land. The Apex Court has held thus :

9. It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a

memorandum or Panchnama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land

as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested

person may not cooperate. In taking possession of the land.

10. In M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, mode of taking of possession of land was also considered. It was held that

recording of memorandum or panchnama in presence of witnesses signed by them was enough. The possession of the Company was recorded in

revenue papers. It was held that possession was handed over to the Company panchnama was supported by revenue entries, it was not open to

the High Court to convert itself into a revenue Court and to hold that in spite of panchnama and revenue record, actual physical possession of the

acquired land had not been handed over to the acquiring body, that is the Company. The Apex Court has held thus :

13. It was not disputed that in the revenue records it was L&T Ltd. who was shown in possession of the land. Affidavits of the panchas filed in the

High Court which contained statements contrary to what was recorded in Panchnama and against the revenue entries quite meaningless and in our

opinion the High Court. unnecessarily put undue reliance on the same. The High Court could not convert itself into a revenue court and hold that in

spite of the panchnama and the revenue records actual physical possession of the acquired land had not been handed over to the acquiring body.

The High Court, in our opinion, has not correctly analysed the two judgments of this Court in Balmokand Khatri Educational and Industrial Trust,

Amritsar Vs. State of Punjab and others, and Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others, to come to the conclusion that actual

physical possession of the land was not taken over by the State.

11. In Balmokand Khatri Educational and Industrial Trust, Amritsar v. state of Punjab and Ors. (1996) 4 SCC 2121 it was held that the normal

mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the

accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful

possession. The Apex Court has held thus :

4. It is seen that entire gamut of the acquisition proceedings stood completed by 17.4.1976 by which date possession of the land had been taken;

No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well settled legal position that it is difficult to take

physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchnama in the Presence of

panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, ,

the retention of possession would tantamount only to illegal or unlawful possession.

12. In Gokul Prasad v. State of M.P. and Anr. 2003 (2) MPLJ 271 this Court has held that when the land is vested in the State and possession

was taken, repeal of the principal Act did not affect the land so vested in the State as no proceeding was pending.

13. Petitioner's counsel has placed reliance on a decision of this Court in WP No. 5182/2001 decided on. 11.4.05 by esteemed brother Dipak

Misra, J. The competent authority was directed in the aforesaid order to cause an enquiry whether possession had been taken over before the

Repeal Act, 1999. The mode of taking over of the possession was directed to be scrutinized. In this case after direction issued by this Court the

order has been passed by Competent authority giving a finding of possession that it was taken over way back in the year 1993 and entries were

made in the revenue papers, correctness of which cannot be doubted and matter cannot be reopened now at this stage. Petitioner's counsel has

further relied upon a decision of Apex Court in Kishan Lal v. State of M.P. and Ors. AIR 2005 SCW 1165 in which the Apex Court has

remanded the matter to the High Court to examine the question whether the possession was taken over or not. In the instant case, possession was

taken over is the finding recorded after direction was issued by this Court by the competent authority, thus, decision in Kishan Lal (supra) is of no

help to the petitioner.

14. Learned Counsel has also relied upon decision of this Court in Ramprasad and Ors. v. State of M.P. and Ors. (MP No. 3558/91 decided on

30.4.2002) in which this Court had set aside the orders declaring the land as surplus. Consequently, it was held that taking over of the possession

was of no consequence and case was not remanded back for further enquiry. The ratio of the aforesaid decision is not at all attracted to the instant

case. Reliance has also been placed on a decision of this Court in Balram Nayak Vs. Janpad Panchayat and Others, in which it could not be

shown that possession was taken over, hence, it was held after Repeal Act, 1999 that possession could not be taken by the State. The ratio has no

application as possession was taken over in the Instant case way back in the year 1993.

15. In view of aforesaid discussion, I find no hesitation in affirming the order passed by competent authority. I find no merit in this writ petition.

Same is hereby dismissed.