

(2015) 3 MPJR 171

Madhya Pradesh High Court

Case No: Writ Petition No. 407 of 2014

Thamman Chand
Koshta

APPELLANT

Vs

The State of Madhya
Pradesh

RESPONDENT

Date of Decision: April 7, 2015

Acts Referred:

- Constitution of India, 1950 - Article 226
- Urban Land (Ceiling and Regulation) Act, 1976 - Section 10, 10 (5), 10(1), 10(3), 10(5)
- Urban Land (Ceiling and Regulation) Repeal Act, 1999 - Section 2, 3(1)(a)

Citation: (2015) 3 MPJR 171

Hon'ble Judges: J.K. Maheshwari, J

Bench: Single Bench

Advocate: Abhijeet A. Awasthi, for the Appellant; A.A. Barnad, Government Advocate,
Advocates for the Respondent

Final Decision: Allowed

Judgement

J.K. Maheshwari, J

This petition under Article 226 of the Constitution of India has been filed seeking following reliefs:-

(i) To hold that the respondents did not comply with the procedure laid down under Section 10 of the Act of 1979.

(ii) To set aside the impugned order dated 27-12-2013 (Annexure P/10).

(iii) To direct the respondents to restore name of present petitioner in the revenue records.

(iv) To grant any other relief deemed just and proper in the facts circumstances of the case.

(v) cost may be awarded.

2. As per the facts pleaded, it is not in dispute that the petitioner was the holder of the land of Khasra Nos. 9, 10, 13/2 and 14 situated in village Garha, Dist. Jabalpur. The grievance of the petitioner is that the proceedings as drawn under Section 10 (5) of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter it shall be called as "the Act") to take over the possession is not in accordance with law. However, the petitioner remained in possession of the land on the date of commencement of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, (hereinafter it be referred as "the Repeal Act"). In such circumstances, ceiling proceedings shall be deemed to abate and his name may be directed to record in revenue papers. But ignoring the same, the application filed by him to record his name has been rejected by an order dated 27/12/2013 (Annexure P/10), however, quashing the same, this petition may be allowed.

3. Learned counsel appearing on behalf of the petitioner has strenuously urged that looking to the documents Annexures P/2, P/3 and P/4, the possession has not been taken as per the procedure prescribed, however, his possession would be deemed to be continuous on the date of commencement of the Repeal Act. It is submitted that as per Section 10(5) of the Act minimum 30 days notice is required to be served to holder for delivery of possession, thereafter, possession may be taken by respondents in the light of the judgment of Division Bench of this Court in the case of Ram Kumar Pathak & ors. vs. State of M.P. passed in W.A. No. 734/08 decided on 18-07-2012, otherwise the proceeding shall stand abate on account of non-compliance of the mandatory provisions. Against the said judgment, Special Leave Petition No. 28344/2013 and S.L.P. No. 28345/2013 were preferred which were dismissed by Hon"ble the Supreme Court. The reliance has also been placed on the judgments of the apex court in the cases of [Vinayak Kashinath Shilkar Vs. Dy. Collector and Competent Authority and Others](#), (2012) 4 SCC 718 and [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 . In view of the aforesaid, it is urged that if possession has not been taken following the mandatory provisions of the Act then possession of the petitioner should be deemed to be continued on the date of commencement of the Repeal Act and rejection of his application to record his name in the revenue papers by order dated 27/12/2013 (Annexure P/10) is illegal, and liable to be quashed.

4. The respondents by filing the return has not disputed the documents Annexures P/2, P/3 and P/4. It is merely contended that as per order passed by the competent authority the notice to take over the possession was issued on 28-06-1989 fixing the date 15-07-1989 to take the possession. On the said date the respondents were not present to deliver the possession, however proceeding ex parte against them, possession was taken. As the intimation to take over the possession was not given to competent authority,

however another notice Annexure P/3 was issued on 24.2.1992 and possession was taken on 03-03-1992 vide Annexure P/4. In view of the aforesaid, it is urged that on taking possession on land by the State Government in the year 1989, however, challenge to it in the year of 2014 is belated and also against public interest therefore, the petition filed by the petitioner may be dismissed.

5. After hearing learned counsel for both the parties and looking to the relief(s), as prayed for in this petition, the core issue arises for determination is that on vesting of excess vacant land as per section 10(3) if possession is not taken as contemplated under section 10(5) and 10(6), the proceedings would abate as per section 3(1)(a) of the Urban Land (Ceiling and Regulation) Repeal Act, 1999. To advert the aforesaid question language of sections 10(5) and 10(6) of the Act is relevant. However, it is reproduced as under:--

"10(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 authorized 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 authorized by such State Government in this behalf and may for that purpose use such force as may be necessary."

6. On perusal of the aforesaid, it is apparent that on passing the order of vesting of the land in the State Government under Sub-Section 3 of Section 10; the competent authority by serving the notice in writing to the person to deliver the possession within 30 days. If the said person refuses or fails to deliver the possession then order under sub-Section (5) is required to be passed in this regard. Thereafter, the competent authority or the person duly authorized may take possession of the vacant land by use of such force, as may be necessary.

7. The Urban Land (Ceiling and Regulation) Repeal Act, 1999, has come into force w.e.f. 18.3.1999. As per section 2 of the said Act it is clear that the Urban Land (Ceiling and Regulation) Act, 1976, which shall be called as "the Principal Act" is hereby repealed. Section 3 thereof provides and specify for saving from the repeal of the Principal Act which is relevant. However, it is reproduced as under:--

"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 authorized 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 authorized 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. A bare reading of the aforesaid it is clear that where the possession of the vacant land has not been taken over by the State Government or by any person duly authorized by the State Government in this behalf or by the competent authority, the proceeding under the Repeal Act would not survive.

9. That, the apex court has considered the issue of vesting of land as per section 10(3) of the Principal Act and not taking over of possession in the case of [Ritesh Tewari and Another Vs. State of U.P. and Others](#), AIR 2010 SC 3823 : (2011) 111 CLT 137 : (2010) 10 JT 1 : (2010) 10 SCALE 38 : (2010) 10 SCC 677 . In para 14 and 15 the Court has observed as under:--

"14. Shri Jayant Bhushan, learned Senior Counsel appearing for the appellants has submitted that as the State Government had not taken possession of the land in exercise of its powers under section 10(6) of the 1976 Act, on coming of the 1999 Act into force, the proceedings stood abated and the respondents have no business to interfere with the peaceful possession and enjoyment of the property.

15. We find full force in the submissions so made by Shri Jayant Bhushan to a certain extent, and hold that all proceedings pending before any court/authority under the 1976 Act, stood abated automatically on coming of the 1999 Act into force, provided the possession of the land involved in a particular case had not been taken by the State. Such a view is in consonance with the law laid down by this Court in [Pt. Madan Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and Others](#), AIR 2000 SC 3415 : (2000) 3 JT 391 : (2000) 6 SCC 325 : (2000) AIRSCW 1882 : (2000) 5 Supreme 155 ; [Mukarram Ali Khan Vs. State of U.P. and Others](#), (2007) 11 SCC 90 and [Smt. Sulochana Chandrakant Galande Vs. Pune Municipal Transport and Others](#), AIR 2010 SC 2962 : (2011) 111 CLT 213 : (2010) 8 JT 298 : (2010) 7 SCALE 571 : (2010) 8 SCC 467 : (2010) 9 SCR 476 : (2010) 8 UJ 3854 : (2010) AIRSCW 4784 ."

10. Thereafter, in the case of [Vinayak Kashinath Shilkar Vs. Dy. Collector and Competent Authority and Others](#), (2012) 4 SCC 718 , the Apex Court relying upon the judgment of Ritesh Tewari (supra) held as under:-

"12. In view of the legal position enunciated by this Court in Ritesh Tewari and the factual situation that the possession of the subject land has not been taken by the Government of Maharashtra, we are satisfied that the appellant was entitled to the relief in terms of para 9 (b) in the Writ Petition and the High Court ought to have declared that the proceedings under the Act in relation to the subject property stood abated. Now it is declared accordingly."

11. Recently, hon"ble the Apex Court in the case of [Hardeep Singh Vs. State of Punjab and Others etc. etc.](#), (2013) 3 RCR(Criminal) 158 , held that mere vesting of excess land under section 10(3) after issuance of notification under section 10(1) of the Principal Act and by issuing a notice under section 10(5) directing the land owners to hand over the possession of the surplus land would not amount to deemed vesting of title in the State Govt. merely by issuance of notice under section 10(5), without taking/handing over of defacto/factual possession of the surplus land to the State Government. The Court held that if the factual possession of the surplus land is not taken then ceiling proceeding would abate in all cases after coming into force of the Repeal Act of 1999. It has further been held that any such pending or incomplete ceiling proceeding would not be saved by section 3 of the Repeal Act.

12. This Court relying upon the judgment of Vinayak Kashinath Shilkar (supra) has considered the similar issue in the case of Rajkumar Pathak and another Vs. State of M.P. in W.A. No. 734/2008 decided on 18.7.2012 and held as under:--

"Aforesaid provision specifically provides that a notice of minimum 30 days was required to be served on the holder, but as is apparent from the perusal of the order-sheet that on 29.2.1992, the notice was issued and the date of delivery of possession was fixed as 3.3.1992. It appears that only 4 days notice was issued to the holder and the order-sheet was written for taking over the possession. It is also apparent that notice under Section 10(5) of the Act was not served upon the holder. When the notice was served by affixture also does not find place in the notice. Even the person who had affixed the notice did not care to call two independent witnesses to witness affixture of notice at the house of the holder. The notice is also silent that on which date and at what time, the affixture was made. The possession was not taken from the holder. Though the Kotwar had signed the document but why two independent witnesses were not called. Though two names are appearing in the notice but without any particulars. Why the holder was not called for handing over the possession?, nothing is available on record. Apart from this, no proper Panchnama was drawn for taking possession of the land. These facts show that in fact possession of the land was not taken on 3.3.1992 as stated in the reply by the respondents. When possession of the land was not taken after issuance of due notice under Section 10(5) of the Act, in accordance with law, the proceedings shall be deemed

to be pending as on the date when the Urban Land (Ceiling and Regulation) Repeal Act, 1999 came into force. When the proceedings were pending as on 22.3.1999, then in view of the Repeal Act of 1999, the proceedings shall be deemed to be abated.

8. Now the question remains whether on coming into force of Repeal Act, 1999, whether the proceedings were pending? In this case, no notice under Section 10(5) of the Act was served upon the appellants while it was the mandatory requirement of the law to serve this notice. Even for the sake of arguments, if it is assumed that the notice dated 29.2.1992 was issued to the appellants, even then 30 days" notice was the mandatory requirement of the law and until and unless a notice of 30 days could have been issued, the provision shall be deemed to be not complied with. Factually, neither notice under Section 10(5) was served upon the appellants nor any notice before handing over possession was given to the appellants. Neither the notice under Section 10(5) of the Act nor the warrant of possession bears the signature of the appellants. Apart from this, the possession which was stated to be taken on 3.3.1992 was not in the presence of witnesses. Even if it is assumed that the two names which are appearing in the notice were witnesses, but no particulars of the witnesses are on record. No specific Panchnama was prepared on the spot that in the presence of these witnesses, the possession was taken. When, at what time and in whose presence, the possession was taken, letter of possession is silent. In view of non-compliance of mandatory provision as contained under Section 10(5) of the Act or the suspicious circumstances in taking possession, it is apparent that the factual possession on the spot was not taken. Apart from this, the appellants/petitioners from the very inception were claiming their possession on the land and had come forward with the plea that the appellants were dispossessed after interim order in this appeal. The fact which has been established is that no factual possession was taken from the appellants and they continued to be in possession till filing of the appeal which was filed 24.6.2002 after coming into force of Repeal Act, 1999. In aforesaid circumstances, the appellants were in possession of the land, as on the date, on which the Repeal Act, 1999 came into force. In such circumstances, it can very well be said that the proceedings were pending on the date when the Repeal Act came into force. If the appellants remained in possession of the land and their possession was not disturbed, then they were entitled to retain the land and the proceedings shall be deemed to have been abated [See: [Vinayak Kashinath Shilkar Vs. Dy. Collector and Competent Authority and Others](#), (2012) 4 SCC 718 .

9. Now the question remains whether there were any laches on the part of the appellants in filing the writ petition? So far as the contention of respondents that the possession was already taken on 3.3.1992 and the petition was filed belatedly, is concerned, we have already recorded the finding that no notice under Section 10(5) of the Act was served upon the appellants and in fact the appellants were in possession of the land, then there were no laches on the part of the appellants in filing the writ petition. The learned Single Judge has dismissed the writ petition without considering the merits of the case merely on the ground of laches which order cannot be affirmed. In aforesaid circumstances, we find

that the proceedings were pending as on the date when the Repeal Act had come into force. The appellants were in possession of the land on the date when this appeal was filed. So the appellants are entitled for the benefit of the Repeal Act, 1999."

13. Against the said judgment Special Leave Petition No. 28344/2013 and S.L.P. No. 28345/2013 were filed which were dismissed on 26.8.2013 by Hon"ble the Apex Court.

14. In view of the provisions contained under the statute as well as the law laid down by Hon"ble the Apex court as well as by this Court in various pronouncements the factual aspect of this case requires consideration.

15. On consideration of the facts of the present case it is not disputed that after _____ of the land of Khasra No. 9, 10, 13/2 and 14 of Village Garha, District Jabalpur under section 10(3) of the Principal Act, notice under Section 10(5) of the Act was ordered to be issued on 28-06-1989 fixing a date for delivery of possession on 15-07-1989. Nothing has been brought on record that the said notice was served, however, possession was required to deliver the possession within 30 days from the date of service of notice.

16. On perusal of the document, annexure P/2, which is the order dated 28.6.1989 passed by the Tahsildar, Nazul, it is apparent that notice was required to be issued to the holder for delivery of possession of the land of Khasra No. 9, 10, 13/2 and 14. They were called to deliver possession and the Patwari was directed to produce the record fixing the date as 15.7.1989. Thereafter, on 15.7.1989 the Tahsildar, Nazul, written an order showing presence of one Moolchand and stated that he has refused to sign. However, proceeded ex-parte against him and possession was taken. It is further being observed that Tahsildar, Nazul, shall correct the Khasra. Then order was passed intimating the action taken by the Tahsildar to the competent Authority. Surprisingly, vide annexure P/3 again a warrant of possession has been issued with respect to all the Khasra Nos. mentioning the fact that possession of Khasra No. 9 and 10/2 has been taken in 1989-90. The said possession warrant is undated which is received by the Revenue Inspector on 24.2.1992. It is relevant to note that notice prior to issuance of the warrant of possession is not on record and the possession was taken by the Tahsildar, Nazul on 3.3.1992 of Khasra Nos. 9, 10, 13/2 and 14. Thereafter, the matter was sent to the Tahsildar, Nazul.

17. The petitioner by submitting an application to the competent authority made a request to record their names in the revenue papers inter alia contending all the aforesaid facts. It was said that possession was not taken as per the law but the said proceeding remained pending. However, the petitioner approached this Court by filing W.P. No. 8669/2007 which was disposed of on 16.7.2007 in the light of the order passed by this Court in the case of Khuman Singh and others Vs. State of M.P. and others decided on 17.1.2002, Sudhir Agarwal and others Vs. State of M.P. and others, (2003) 4 MPHT 16 NOC and W.P. No. 4394/2005 (Suresh Chandra, s/o. Shyamlal Choubey Vs. State of M.P. and another) decided on 30.6.2005. However, direction was issued to the competent authority to decide the objection of the petitioner in accordance with law. It was further directed that

the petitioner may raise all the contention including his objection regarding validity of the previous proceeding and taking over of possession before the competent authority. On filing the said application as per annexure P/8, it was decided vide annexure P/10 on 27.12.2013 rejecting the application filed by the petitioner.

18. In the return filed by the State Government, the explanation with respect to the documents, Ex. P/2 and P/3, as that of the proceeding of 1989 and subsequent proceeding of the year 1992 vide Ex. P/3 is that the intimation of earlier proceeding was not given by the Tahsildar, Nazul, to the competent Authority, however, subsequent proceeding for taking over of possession were initiated vide annexures P/3 and P/4. In the said sequel of facts, the compliance of the provisions as contemplated under section 10(5) and 10(6) and the order passed to take over of the possession under section 10(6) in the light of various judgments of Hon"ble the Apex court is required to be examined. As per section 10(5) of the principal Act after vesting of the land under sub-Section (3) of section 10, the competent Authority by serving a notice in writing to a person who may be in possession of the land has to direct for surrender or delivery of possession of such land to the State Government or to any person duly authorized by the State Government in this behalf within thirty days.

19. In the present case, the notice issued by the competent authority is not available on record. In the order annexure P/2, reference of vesting of the land by the competent authority is there and the Tahsildar, Nazul, has called upon the holder to deliver the possession. In absence of the notice by the competent authority for delivery of possession within 30 days, the document annexure P/2 is of no consequence in absence of service of the notice. It is further to be noted here that a possession letter is available but the date of signature is not clear. Thereafter, subsequent proceedings were started in the year 1992 with respect to the same land vide annexure P/3 though in the said notice it was mentioned that possession of Khasra No. 9 and 10/2 is taken in the year 1989-90; but the order of taking over of possession, annexure P/4 was passed on 3.3.1992 by the Tahsildar with respect to all four Khasra Nos. 9, 10, 13/2 and 14. Thus, it is apparent that if possession was taken in the year 1989 with respect to the surplus land as per document, annexure P/2, then again the proceeding to take over possession were not required to be initiated as per section 10(5) and 10(6) again in the year 1992. Thus, it is clear that the proceeding of 1989 attached to annexure P/2 to take over possession of the land has not been accepted by the State Government, however, decided afresh to take over possession. In the said context if documents, annexure P/3 and P/4 is visualized then it is clear that the competent authority has authorized the Tahsildar, Nazul, to take over possession as per section 10(5) of the Act. This is not an authority as per section 10(6) of the Act. However, under the said authority, annexure P/3, notice of 30 days which is a mandatory requirement under section 10(5) ought to be served and if the possession has not been delivered within 30 days then proceeding under section 10(6) may be drawn. Nothing is available on record to show that after annexure P/3 notice was served to take over the possession as per section 10(5) and thereafter drawing the

proceeding under section 10(6), the possession has been taken over following the procedure as prescribed under section 10(5) and 10(6) of the Principal Act. As per the judgment of this Court in the case of Babu Lal Tiwari Vs. State of M.P. and others., 2003 (1) MPJR SN 63 and in the case of Sudhir Agrawal and Anr. Vs. State of M.P. & Ors., 2004 (1) MPJR SN 42, it is apparent that if possession is not taken over as per the procedure prescribed under the law, the proceeding drawn for taking over of the possession is no proceeding under the law. However, considering the aforesaid fact and on taking note of the documents, annexures P/2 to P/4, it is apparent that 30 days clear notice for delivery of possession after its service is not available on record either in the year 1989 or in the year 1992. No order has been passed regarding service of such notice, however, the proceedings under section 10(6) were required to be drawn. It is not on record that the competent authority has authorized the Tahsildar, Nazul, to take over the possession as per section 10(6). Thus, the orders passed by the Tahsildar, Nazul, for taking over of possession as per annexures P/2 and P/3 are without having any authority under the law as implied in the language of sections 10(5) and 10(6) of the Act.

20. In the said sequel of facts, on perusal of the provisions of section 3 of the Repeal Act, it can safely be held that if possession is not taken by the competent authority in accordance with law, however, mere vesting of the surplus land would not affect the right of the holder who is in possession of the excess land and the said proceedings would abate automatically as per section 4 of the Repeal Act.

21. Now the question remains whether there were any laches on the part of the petitioner in filing the writ petition? So far as the contention of respondents that the possession was already taken on 3.3.1992 and the petition was filed belatedly is concerned, we have already recorded a finding that no notice under section 10(5) of the Act was served upon the petitioner and in fact the petitioner was in possession of the land, then there were no laches on the part of the petitioner in filing the writ petition. In the aforesaid circumstances, we find that the proceedings were pending as on the date when the Repeal Act had come into force. The petitioner was in possession of the land on the date when the Repeal Act had come into force. So the petitioner is entitled for the benefit of the Repeal Act, 1999.

22. In view of the foregoing discussion, the writ petition filed by the petitioner is hereby allowed. The proceedings against the petitioner stand abated. The petitioner shall continue to be the owner of the land which has been vested as per section 10(3) without taking over of the possession by the State Government as contemplated under section 10(5) and 10(6) of the Act as described hereinabove. The respondents are directed to record the name of the petitioner on the land of Khasra No. 9, 10, 13/2 and 14 of village Garha, District Jabalpur, within a period of three months from the date of production of certified copy of this order. In the facts and circumstances of the case, parties are directed to bear their own costs.