
(2011) 05 AHC CK 0353
In the Allahabad High Court
Case No : Writ C. No. 7012 of 2011

Amrit Lal and Others

APPELLANT

Vs

State Of U.P. and Others

RESPONDENT

Date of Decision : 19-05-2011

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 10(1), 10(3), 10(5), 10(6)

Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 3, 4

Citation : (2011) 05 AHC CK 0353

Hon'ble Judges : Sunil Ambwani, J; Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. We have heard Shri Raj Karan Yadav, learned Counsel for the Petitioners. Learned Standing Counsel appears for the Respondents. The pleadings have been exchanged.

2. The Petitioners filed a return u/s 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (in short the Act) in respect of the land held by them in village Lekhrajpur, District Allahabad in Case No. 72/1976 (State v. Amrit Lal). After a survey a notice u/s 8(3), with a statement on prescribed form, was sent on 22.3.1982, which is stated to be received by Shri Amrit Lal on 25.3.1982. The Prescribed Authority passed an order u/s 8(4) on 3.9.1982 recording land of Lekhrajpur situated in Arazi No. 52/, 57/2, 78/2 total area 4147.70 square meters as surplus. It is stated by the Petitioners that the proceedings were taken ex-parte and that the possession has not been taken from the Petitioners.

3. In paragraphs 7 and 8 of the counter affidavit of Shri Devendra Singh, Assistant Engineer, Urban Land Ceiling Department, District Allahabad, it is stated as follows:

7. That the contents of paragraph-8 of the writ petition are not admitted. In reply

it is submitted that the tenure holder, Petitioner filed a return u/s 6(1) filed by jointly Amrit Lal, Ram Prasad and Shiv Prasad in Case No. P-72/76 (State v. Amrit Lal) and after survey u/s 8(3) a statement dated 22.3.1982 which is duly received by the Amrit Lal on 25.3.1982 and thereafter neither the Petitioner appeared before the authority concerned nor he has filed objection thereafter. The prescribed authority u/s 8(4) passed an order on 3.9.1982 regarding land of Lekhrajpur situated at Arazi No. 51/,57/2, 78/2 total area 4147.70 square meter declared as surplus. Thereafter u/s 9 last statement was prepared and the original tenure holder Amrit Lal received Section 9 notice on 17.9.1984. Thereafter Section 10(1) and 10(3) notice was published in the gazette on 30.11.1985 and 17.2.1986. Thereafter the declared surplus land vested in the State Government. u/s 10(5) of Act the declaratory notice issued on 12.1.1998 thereafter all proceedings under the Ceiling Act has been done before the Repeal act came into force.

8. That the contents of paragraphs 9 to 12 of the writ petition are wrong and denied. It is further submitted that u/s 8(4) order was passed on 3.9.1982 and u/s 10(3) publication has been made on 17.2.1996 and proceedings u/s 10(5) has been made on 12.1.1998 and the possession has been taken and the State Government has been recorded in the Revenue record in the Khatauni of 1402-1407 Fasali year. A photostate copy of Khatauni is being filed herewith and marked as Annexure CA-1 to this affidavit.

4. It is submitted by Shri Raj Karan Yadav, that u/s 3 of the Repeal Act the vesting of the vacant land is not sufficient. Under Sub-section (3) of Section 10 of the Act the possession of the land must be taken by the State or any person authorised by the State Government failing which the entire proceeding would abate under the Repeal Act, 1999. Section 3 and 4 of the Repeal Act, 1999 are quoted as below:

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 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.

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 other 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.

5. Learned Counsel for the Petitioner has relied upon judgments of the Supreme Court and the High Courts in Pt. Madan Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and Others, Kailash and Anr. v. State of UP and Ors. 2005 (61) ALR 383; State of UP v. Devendra Nath and Anr. Civil Misc. Writ petition No. 76070 of 2005 decided on 15.12.2005; Babu Ram and Ors. v. State of UP and Ors. 2009 (75) ALR 873; Ram Chandra Pandey v. State of UP and Ors. 2010 (82) ALR 136 and M/s Star Paper Mills Ltd. v. State of UP and Ors. 2011 (1) CRC 93. In all these cases, it was held following leading judgment in Pt. Madan Swaroop Shrotiya Public Charitable Trust (supra), that unless actual physical possession was taken for which proceedings are provided u/s 10(5) and 10(6) of the Act, and there is proof of taking over possession, the proceedings will abate u/s 3 of the Repeal Act, 1999.

6. Learned Standing Counsel on the other hand submits that once the land has vested in the State and that the proceeding for taking over possession were initiated, with a notice u/s 10(5) of the Act, there will be a presumption of official acts of taking over possession. She has relied upon judgments in Smt. Sulochana Chandrakant Galande v. Pune Municipal Transport and Ors. Civil Appeal No. 492 of 2007 decided on August 3, 2010 in which the Supreme Court held in paras 31, 32, 33, 34 as follows:

31. Undoubtedly, the Act, 1976, stood repealed by the Act 1999. However, it has no bearing on this case for the reason that proceeding pending in any Court relating to the Act, 1976, stood abated, provided the possession of the land had not been taken from the owner. Therefore, in a case, where the possession has been taken, the repeal of the Act would not confer any benefit on the owner of the land. (Vide Pt. Madan Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and Others, Ghasitey Lal Sahu v. Competent Authority (2004) 13 SCC 452), and Mukarram Ali Khan Vs. State of U.P. and Others,

32. From the above, the following factual situation emerges:

(I) The land was declared surplus under the Act, 1976, and acquired in 1979.

(II) Possession of the land was taken in 1979 by the State of Maharashtra and it was handed over to PMT for construction of the residential quarters for the staff.

(III) Appellant has not stated anywhere in the pleadings as to whether any amount/compensation as provided under the Act, 1976, had been received/accepted by her.

(IV) Appellant, for the reason best known to her, did not file appeal before the Land Tribunal, though Act, 1976 provides for two appeals.

(V) Appellant woke up from deep-sleep only after five years of the judgment of this Court in *Atia Mohammadi Begum* (supra) and filed revision u/s 34 of the Act, 1976, in 1998.

(VI) The State Government allowed the revision without taking into consideration the point of delay; rather it relied upon its own circulars.

(VII) The State Government did not consider the consequences and particularly the issue of dispossession of the Appellant from the land in dispute in 1978 itself.

(VIII) The judgment in *Atia Mohammadi Begum* (supra) has been over-ruled by this Court in *N. Audikesava Reddy* (supra).

33. Therefore, the law, as exists today, is that the land in dispute could be subjected to the provisions of the Act, 1976, with effect from 17.5.1976, i.e. the date on which the suit land came within the limits of the Municipal Corporation. The Act stood repealed in 1999, but the proceedings pending in any court would stand abated provided the tenure-holder was in possession of the land on the date of the commencement of the Act 1999. The High Court has taken note of the fact that the Appellant's revision had been entertained only on the basis of the judgment of this Court in *Atia Mohammadi Begum* (supra), which stood over-ruled by the subsequent judgment in *N. Audikesava Reddy* (supra).

7. Learned Standing Counsel has also relied upon a judgment of this Court in *Mangal Sen v. State of U.P. and Ors.* 2011 (2) ALJ 752 in which it was held that once the possession has been taken and *Dakhlanama* (possession memo), was signed by a witness and authorised officer concerned, the proceeding of taking over possession will come to an end, after which the Repeal Act will not benefit the Petitioner.

8. In all the aforesaid cases, the Courts have held that after final orders are passed u/s 8(4) and a declaration is issued u/s 10(3) vesting the surplus land in the State, the Repeal Act will not apply, if the possession of the land is taken over in his behalf or by a competent authority. In order to prove taking over possession prior to 18.3.1999, it is incumbent upon the State to establish in the Court that the possession was taken in accordance with the law, namely, that the person, in whose hand the land is declared surplus, has handed over possession in response to the notice u/s 10(5) of the Act or where the possession was not

handed over, a Dakhalnama (possession memo) has been prepared, signed by a witness and authorised officer concerned in proceedings u/s 10(6) of the Act.

9. The possession of the land is taken in proceedings under Sub-sections (5) and (6) of Section 10 of the Act of which the entries are made in a register in Form No. U.L.C.-III, and possession in column-9 of Form No. U.L.C.-I. The competent authority is required in token of the verification of the entries, to put signatures in column-2 of Form No. U.L.C.-I and column-10 of Form- U.L.C.-III.

10. In Smt. Sulochana Chandrakant Galande(supra) the Supreme Court, after considering Pt. Madan Swaroop Shrotriya Public Charitable Trust (supra); Ghasitey Lal Sahu and anr v. Competent Authority (2004) 13 SCC 452 ; and Mukarram Ali Khan Vs. State of U.P. and Others, held in para-32 as quoted above, that in the facts of that case, the land was declared as surplus in 1976, and acquired in 1979, the Appellant had not stated anywhere in the pleadings as to whether any amount/compensation was received or accepted by her and whether any appeal was filed. The Supreme Court held that the land in dispute will be subjected to the provisions of the Urban Ceiling Act w.e.f. 17.5.1976, i.e. the date on which the suit land had come within the limits of Municipal Corporation. The proceedings did not abate as the High Court had taken note of the fact, that the Appellant's revision had been entertained only on the basis of the judgment in Atia Mohammadi Begum, which had stood over-ruled by the subsequent judgment in N. Audikesava Reddy's case. The Supreme Court observed that in that case the possession of the land was taken and handed over to Pune Municipal Corporation, for establishing a bus depot in the year 1988. The bus depot was constructed on the part of the suit land. However, the Appellant preferred a revision u/s 34 of the Act on 06.4.1998 contending that the land ought not to have been acquired under the Act, 1976, on the ground that the suit land was not within the urban area. It was held that the suit land had fallen into urban area. There was no question of dispute regarding taking over possession inasmuch as the land was admittedly taken in possession by the State and handed over to Pune Municipal Corporation in the years 1978-1979.

11. In Mangal Sen (supra) a Division Bench of this Court recorded

finding in para-25 regarding possession as follows:

25. From a perusal of the record it appears that after due Notification u/s 10(1) dated 6.4.1985 and declaration u/s 10(3) on 6.11.1985 a notice for possession u/s 10(5) of the Act was issued on 20.2.1986 and an authorization to the Tehsildar by the competent authority was also given in this regard on 17.7.1985 itself. So the procedure prescribed u/s 10 of the Principal Act has been fully complied with. The possession has been taken without any resistance by the Petitioner, obviously under the cover of Dakhalnama (possession memo) signed by a witness and authorized officer concerned on 30.1.1990.

12. In this case as found above from the pleadings there is no assertion by the State, that the possession was actually handed over by Petitioners in pursuance

to the notice u/s 10(5) of the Act, or that any proceedings were taken u/s 10(6) of the Act for taking over possession. There are no pleadings of service of the notice u/s 10(5); preparation of Dakhalnama (possession memo) and the entries in Form No. C.L.C. III (Register for land of which possession has been taken u/s 10(5) or 10(6)), in proof of taking over physical possession of the surplus land.

13. In absence of any pleadings or assertion by the State that the possession of the land was given in response to Section 10(5) of the Act, or that proceedings u/s 10(6) was taken and any Dakhalnama (possession memo) was prepared and entries were made in Form No. U.L.C. III, we find that the Petitioner is still in possession of the land.

14. In the facts of the case, we are of the view that on the enforcement of Urban Land (Ceiling and Regulation) Repeal Act, 1999, the proceedings undertaken under Urban Land (Ceiling and Regulation) Act, 1976 in respect of declaration of surplus land in the hands of Petitioners have abated under the Repeal Act, 1999.

15. The writ petition is allowed. A writ of mandamus is issued directing the Respondents not to take possession of the disputed land in respect of surplus land in Case No. 72/1976 (State v. Amrit Lal). The revenue record will be corrected accordingly treating the proceedings under Urban Land (Ceiling and Regulation) Act, 1976 initiated against late Shri Amril Lal and others, to have abated under the Urban Land (Ceiling and Regulation) Repeal Act, 1999.