
(2013) 06 MP CK 0044
In the Madhya Pradesh High Court
Case No : W.P. No. 2972/2008

Ankit Grah Nirman Sahakari Sanstha Maryadit	APPELLANT
Vs	
State of M.P. and Others	RESPONDENT

Date of Decision : 28-06-2013

Acts Referred:

Citation : (2013) 4 MPJR 55

Hon'ble Judges : Sheel Nagu, J;G.D. Saxena, J

Bench : Division Bench

Judgement

1. The petitioner has filed this petition that the proceedings initiated under the provisions of Urban Land (Ceiling and Regulation) Act, 1976 (herein after referred to as the Act of 1976") in regard to half share of land of Gulab Chand Sharma as mentioned in para 5.2 and 5.3 of the petition be declared as abated in view of Urban Land (Ceiling and Regulation) Repeal Act, 1999 (herein after referred to as the Repeal Act"). The petitioner is the society registered under the provisions of M.P. Cooperative Societies Act 1960. It purchased half share of land of survey Nos. 149, 151/2, 152, 150, 151/1, 1521/2, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 180, 181, 182, 185, 186, 187, 188, 189, 190, 192, 193, 194, 197/1, 197/2, 198, 295, 297, 320 and 337 total area 25,489 hectares from Gulab Chand Sharma vide registered sale deeds dt. 31.12.1999 and 6.2.2001. Copy of the sale deeds have been filed as Annexures P/2 and P/3.

2. A case under the provisions of the Act of 1976 was initiated against Gulab Chand Sharma vide case No. 97/88-89/C A.1 The competent authority vide order dt. 22.9.1989 declared that the land of 1,26,131 sq. mtr. is surplus land. Consequently, a draft statement was issued to this effect. The land was part and parcel of khasra Nos. 149 area 0.522 hect, 151/2 area 0.105 hect, 152 area 0.084 hect, 150 area 0.282 hect. 151/1 area.470 hect, 152/2 area, 888 hect, 153 area, 700 hect, 154 area, 031 hect... 155 area. 157 hect., 156 area, 105 hect., 157 area 1,055 hect., 158 area 1, 181 hect., 159 area 1,390 hect..., 160

area 0.679 hect... 161 area 0.408 hect..., 162 area.418 hect., 163 area 1.735 hect, 164 area 0.439 hect., 165 area.146 hect., 166 area.439 area hect., 167 area, 167 hect, 168 area.188 hect., 169 area, 073 hect., 170 area, 219 hect, 171 area, 219 hect., 171 area,031 hect., 172 area, 178 hect, 173 area,387 hect., 174 area,063 hect., 175 area, 354 hect., 176 area 1,379 hect, 177 area, 554 hect., 178 area, 125 hect, 180 area, 251 hect 181 area.094 hect., 182 area,366 hect, 185 area, 125 hect., 186 area, 125 hect., 187 area,094 hect., 188 area.596 hect, 189 area. 742 hect., 190 area,314 hect., 192 area 2,579 hect, 193 area,0261 hect., 194 area 0.334 hect., 197/1 area 1,620 hect, 197/2 area 0.105 hect., 198 area,219 hect, and 295 area,690 hect, 297 area, 073 hect, 320 area.763 hect. and 337 area 1,035, total area 25,489 hect, of village Mahalgaon. Against the aforesaid order, Gulabh Chand Sharma filed an appeal before the Additional Commissioner, Gwalior Division, It was registered as Appeal No. 357/89-90. The appellate authority vide order dt. 30.3.1994, set aside the order of the competent authority and remanded the case back to the competent authority. Thereafter, the competent authority again declared the total area of the land of 1,13,621 sq. mtr, as excess land vide order dt. 29.2.1996 (Annexure P/11). Against the aforesaid order, Gulab Chand Sharma filed an appeal. That appeal has been dismissed as infructuous in view of the adoption of Repeal Act by the State of Madhya Pradesh vide notification dt. 21.3.2000.

3. The contention of the petitioner in this petition is that although Gulab Chand Sharma was eligible to get benefit of Repeal Act but in revenue record, the name of the petitioner society has not been recorded as owner of the land, the society had purchased the land from Gulab Chand Sharma vide registered sale deeds. The petitioner further pleaded that possession of the land was never taken over by the government, hence, the proceedings under the Act of 1976 stands abated in view of Repeal Act.

4. The respondents in the return pleaded that the Government had taken possession of the land in the year 1997 and the possession receipt is Annexure P/13. Because the appeal was dismissed as infructuous, hence, the land, which was declared as surplus, has been vested in the government, Consequently, the petitioner is not entitled the benefit of Repeal Act.

5. Learned senior counsel for the petitioner has contended that the possession of the land was never taken over by the government, hence, the petitioner is not entitled the benefit of Repeal Act. It is further submitted that the provisions of Act of 1976 were not applicable to the land. In support of his contentions, learned senior counsel relied on the following judgment:--

(i) Ramprasad Vs. State of M.P., .

(ii) Deepak Joshi and others v. State of M.P. and Others -2007 (I) MPJR SN 19.

(iii) 2013 (I) MPJR 250 .

6. Contrary to this learned Govt. Advocate has submitted that the possession of

the land has been taken by the State Government, which was declared as surplus by the competent authority, hence, the petitioner is not entitled the benefit of Repeal act.

7. The question for consideration before this court is that whether the possession of the lands were taken over by the govt. in pursuance to the order passed by the competent authority declaring the land surplus. To substantiate the aforesaid claim, the respondents alongwith the return filed a copy of the notice (Annexure R/4) issued u/s 10(5) of the Act of 1976, By the aforesaid notice, Gulab Chand Sharma was directed to hand over the possession of the surplus land within a period of thirty days from the date of receipt of the notice. On the back side of the notice, it is mentioned that the notice was received by Mukesh Sharma. The petitioner has specifically stated that Gulab Chand Sharma has no relation with Mukesh Sharma. The petitioner also filled copy of the order sheets of ceiling case No. 94 (88-89), As per the order sheet dt. 4.11.1996, it is mentioned therein that a notice u/s 10(5) of the Act of 1976 was issued for the purpose of possession of the land and it was awaited. The petitioner also filed Annexure P/13, Which is a kabza receipt. It is mentioned in the aforesaid receipt the Gulab Chand Sharma was not present, hence, the possession was taken exparte.

8. Alongwith the petition, Copy of Khasra entries of the years 1971-72, 1972-73, 1973-74, 1974-75, 1975-76, 1998-99, 2001-02 and 2006-07 of lands have been filed. In the aforesaid Khasra entries, in coil No. 3 possession of Gulab Chand etc. have been mentioned.

9. From the afroresaid khasra entries, which are of the year 2006-07, it is clear that in the Khasra entries of 2006-07, the possession of Gulab Chand Sharma etc. is mentioned. If the possession was taken vide Annexure P/13. which is dt. 27.9.1977, then there was no reason to mention the possession of Gulab Chand Sharma in Khasra entries of the year 2006-07.

10. Hon''ble Supreme Court in the case of State of U.P. Vs. Hari Ram, has considered the provisions of Act of 1976 and the provisions of Repeal Act and further considered the expression "Deemed to have been acquired" and "deemed to have been vested absolutely" of Section 10(3) of the Act of 1976, Hon''ble Supreme Court further has held as under:--

31. The "Vesting" In sub-section(3) of Section 10, In our view, means vesting of title absolutely and not possession though nothing stands in the way of a person voluntarily surrendering or delivering possession, The Court in Maharaj Singh v. State of U.P. while Interpreting Section 117(1) of the U.P. Zamindari Abolition and Laud Reforms Act, 1950 held that "vesting" is a word of slippery import and has many meanings and the context controls the text and the put pose and scheme project the particular semantic shade or nuance of meaning. The Court in Rajendra Kumar v. Kalyan held as follows:

"28. ...We do find some contentious substance in the contextual facts, since vesting shall have to be a "vesting" certain. To "vest", generally means to give a

property in." (Per Brett, L.J. Coverdale v. Chalrto Stroud's Judicial Dictionary, 5th Edn., Vol. VI). Vesting in favour of the unborn person and in the contextual facts on the (sic) of a subsequent adoption after about 50 years without any authorisation cannot however but be termed to be a contingent event. To "vest", cannot be termed to be an executory devise. Be it noted however, that "vested" does not necessarily and always mean vest in possession" but includes "vest in interest" as well.

32. We are of the view that so far as the present case is concerned, the word "vesting" takes in every interest in the property including de jure possession and, not de facto but it is always open to a person to voluntarily surrender and deliver possession, u/s 10(3) of the Act.

33. Before we examine sub-section (5) and sub-section (6) of Section 10, let us examine the meaning of sub-section (4) of Section 10 of the Act. which says that during the period commencing on the date of publication under sub-section (1), ending with the day specified in the declaration made under sub-section (3), no person shall transfer by way of sale, mortgage, gift or otherwise, any excess vacant land, specified in the notification and any such transfer made in contravention of the Act shall be deemed to be null and void. Further, it also says that no person shall alter or cause to be altered the use of such excess vacant land. Therefore, from the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made in sub-section (3), there is no question of disturbing the possession of a person, the possession, therefore, continues to be with the holder of the land.

34. Sub-section (5) of Section 10, for the first time, speaks of "possession" which says that where any land is vested in the State Government under sub-section (3) of Section 10, the competent authority may, by notice in writing, order any person, who may be in possession of it to surrender or transfer possession to the State Government or to any other person, duly authorised by the State Government.

35. If de facto possession has already passed on to the State Government by the two deeming provisions under sub-section (3) of Section 10, there is no necessity of using the expression "where any land is vested" under sub-section (5) of Section 10. Surrendering or transfer of possession under sub-section (3) of Section 10 can be voluntary so that the person may get the compensation as provided u/s 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-section (5) of Section 10 to surrender or deliver possession. Sub-section (5) of Section 10 visualises a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession.

36. The Act provides for forceful dispossession but only when a person refuses or fails to comply with an order under sub-section (5) of Section 10. Sub-section

(6) of Section 10 again speaks of "possession" which says, if any person refuses or fails to comply with the order made under sub-section (5), the competent authority may take possession of the vacant land to be given to the State Government and for that purpose, force - as may be necessary can be used. Sub-section (6), therefore, contemplates a situation of a person refusing or fails to comply with the order under sub-section (5), in the event of which the competent authority may take possession by use of force. Forcible dispossession of the land, therefore, is being resorted to only in a situation which falls under sub-section (6) and not under sub-section (5) of Section 10. Sub-sections (5) and (6), therefore, take care of both the situations i.e. taking possession by giving notice, that is, "peaceful dispossession and on failure to surrender or give delivery of possession u/s 10(5), then "forceful dispossession" under sub-section (6) of Section 10.

37. The requirement of giving notice under sub-sections (5) and (6) of Section 10 is mandatory, Though the word "may" has been used therein, the word "may" in both the sub-sections has to be understood as "shall" because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of non-issue of notice under sub-section (5) or sub-section (6) of Section 11 is that it might result in the landholder being dispossessed without notice, therefore, the word "may" has to be read as "shall".

11. From the aforesaid judgment of the Hon"ble Supreme Court, it is clear that the requirement of giving notice u/s 10(5) & (6) of the Act of 1976 is mandatory. In the present case, from the return of the respondents, it is clear that no notice was issued to the holder of the land i.e. Gulab Chand Sharma.

12. Hon"ble Supreme Court in the aforesaid case, further in para 39 has held as under in regard to possession:

39. The abovementioned directives make it clear that sub-section (3) takes in only de jure possession and not de facto possession, therefore, if the landowner is not surrendering possession voluntarily under sub-section (3) of Section 10, or surrendering or delivering possession after notice, u/s 10(5) or dispossession by use of force, it cannot be said that the State Government has taken possession of the vacant land.

13. From the aforesaid judgment of the Hon"ble Supreme Court, it is clear that the Hon"ble Supreme Court has held that as per sub-section (3) of Section 10 of the Act of 1976 a de facto possession has to be taken.

14. In view of the judgment of the Hon"ble Supreme Court in the case of Hari Ram (supra) and the facts of the present case when there was no notice to the holder of the land u/s 10(5) of the Act of 1976 and when even in the khasra entries of 2006-07 in the column of possession the name of Gulab Chand Sharma etc. was recorded, it could not be held that the State Government had taken possession of the vacant land, which was declared surplus.

15. Hon''ble Supreme Court in the aforesaid case, further held as under in regard to effect of Repeal Act:

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. The State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (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 respondents is entitled to get the benefit of Section 4 of the Repeal Act.

16. From the aforesaid judgment of the Hon''ble Supreme Court in the case of Hari Ram (supra), the onus is on the State Government to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. In view of the khasra entries and the fact that no notice was issued to the holder of land i.e. Gulab Chand Sharma u/s 5 of the Act of 1976, it is clear that the State Government has failed to establish the fact that it had taken possession of the land in accordance with law as declared by the Hon''ble Supreme Court in the case of Hari Ram (supra). Hence, the petition of the petitioner is allowed. It is held that the proceedings of ceiling initiated under the provisions of Act of 1976 stands abated in regard to half share of the land as mentioned in para 5.2 and 5.3 of the petition and the petitioner is legally entitled to hold the land as owner in accordance with law. No order as to costs.