
(2013) 11 AHC CK 0176

In the Allahabad High Court

Case No : Writ Petition No's. 8410 (M/B) of 2008, 13075, 9006 (M/B) of 2011, 2336, 4044, 9000, 9001, 9177 (M/B) of 2012, 4581, 5130, 6236, 6487, 6505, 6923, 7066, 7088, 8204, 8501, 8644, 8651 and 10458 (M/B) of 2013

Babu Lal @ Babu Ram and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-11-2013

Acts Referred:

Citation : (2013) 11 ADJ 250 : (2014) 4 ALJ 94 : (2014) 102 ALR 137 : (2014) 122 RD 256

Hon'ble Judges : Vishnu Chandra Gupta, J;Devi Prasad Singh, J

Bench : Division Bench

Advocate : D.K. Mishra, for the Appellant;

Judgement

1. These bunch of writ petitions have been preferred by the petitioners under Article 226 of the Constitution of India with the grievances that inspite of repeal of Urban Land (Ceiling and Regulation) Act, 1976 (in short "Act"), the respondent-State and its authorities are interfering with the petitioners peaceful possession over urban land. Common ground in this bunch of writ petitions is that the petitioners are in possession of their land and physical possession has not been taken over by the State and its authorities in pursuance of the statutory provisions contained in the Act. Hence, after repealing of the Act, the State and its authorities have got no right to dispossess the petitioners from their land. Learned counsel for the petitioners has relied upon the Division Bench judgment of this Court in Ram Singh and Others Vs. State of U.P. and Others, and further relied upon the judgment of Hon'ble Supreme Court in State of U.P. Vs. Hari Ram, .

2. In some of the writ petitions of bunch cases, counter-affidavits have been filed claiming that the possession has been taken over by the State and its authorities.

3. While filing the counter-affidavit a reference has been made to order pass

order by the State authority with regard to take over the possession of the land in question. However, learned Standing Counsel has not invited the attention of this Court how and in what manner, the physical possession of the land in question has been taken over. Hence it appears that only on paper the physical possession has been taken over.

4. In contrast, learned counsel for the petitioners has vehemently argued that the possession has not been taken over by following the procedure contained in Section 10 of the Act.

5. Section 10 of the Act requires that a competent authority shall issue notice asking the tenure holders to surrender or deliver the possession of their land to the State Government or to any person duly authorised by the State Government in this regard within 30 days from the date of service of notice.

6. Learned counsel for the petitioners has vehemently argued that till date the petitioners had not surrendered their land in pursuance to Section 10(5) of the Act read with Section 2 of Urban Land (Ceiling and Regulation) Repeal Act, 1999 (in short "Repeal Act") which has been adopted by State of U.P. on 18.3.1999 whereby the State and its authorities have no right to take over physical possession of land in question. The State and its authorities cannot compel the petitioners to surrender their land in view of Repealing Act.

7. In the case of Ram Singh (*supra*), the Division Bench of this Court has discussed the statutory provisions in detailed and after considering the earlier judgment held that unless physical possession is taken over by way of surrender or otherwise in pursuance to statutory provisions, it shall be presume that physical possession has not been given to the State or its authorities in pursuance of the Act.

8. The Division Bench further held that the mere vesting of the land under sub-section (3) of Section 10 of the Act 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 on or before 18.3.1999. Burden shall be on the State Government to establish that there has been a voluntary surrender or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10 of the Act. In any event, on failure to establish any of those situations, the land owner or holder can claim the benefit of Section 3 of the Repeal Act (*supra*).

9. For convenience paragraphs 33, 34, 35, 36 and 37 of Ram Singh's case (*supra*) are reproduced as under:

33. The Court feels that after imposition of ceiling on agricultural land by the State Government and its success in getting the land and its distribution to the weaker class the demand for imposing of ceiling on urban properties was also felt with the growing population and for orderly development of the urban areas and also to take measures to regulate social control over the resources of urban land

besides other allied purposes. After lapse of reasonable time for various kind of pressures and we do not exactly know the object but primarily for the reasons stated in the Repeal Act the Urban Land (Ceiling and Regulation) Repeal Act, 1999 came into force.

34. It is to be observed that all the decided cases on the point have interpreted the possession as "actual physical possession" and not only paper/symbolic. There being no specific provision for taking over possession of the surplus land direction was issued named as U.P. Urban Land Ceiling (Taking of Possession, Payment of Amount and Allied Matters) Directions, 1983. For payment of compensation and procedure for taking possession of the vacant land and its manner has been dealt in great detail in the decision given by this Court in the case of Ram Chandra Pandey (Supra).

35. If we read the relevant provisions of the U.P. Urban Land (Ceiling and Regulation) Act, 1976 and U.P. Urban Land (Ceiling and Regulation) Repeal Act 1999 then it will be clear that mere vesting of the land declared surplus under the Act without taking de facto possession is of no consequence and land holder shall be entitled to the benefit of Repeal Act. The effect of the Repeal Act is further clear that if the land owner remains in physical possession then irrespective of his land being declared surplus and/or entry being made in favour of the State in Revenue Records, he will not be divested of his rights. Even if compensation is received that also that will not disentitle him to claim the benefit if compensation is refunded, provided he is in actual physical possession. Payment of compensation has no co-relation with the taking of actual physical possession as with the vesting of land compensation becomes payable which can be paid without taking actual physical possession.

36. It is not to be emphasised again and again that irrespective of vesting of land the State or the competent authority authorizes by the State is to establish taking of actual physical possession from the land-holders, after following due procedure and therefore, in all the cases there has to be a verification about continuance of actual physical possession as claimed by the landholder or its taking over as claimed by the State as provided in law and it is accordingly rights of the parties are to be governed.

37. In view of the aforesaid discussions and examination of various aspects in various judgments it is clear that if proceedings have started by sending notice against the dead person at any stage then that will not divest the landholder of his rights. There has to be proper service as provided u/s 10(5) of the Act. There has to be proper service u/s 10(6) of the Act. Required procedure has to be followed. Possession is to be taken by the competent authority. Possession has to be actual physical and not symbolic. Mere change in the entry is also not the enough proof of dispossession. The effect of the Repeal of the Principal Act is so clear and loud which permits the rights with the landholders if actual physical possession has not been taken over by the State or by any person duly authorized by the State Government in its behalf after due notice and service in

accordance with law.

10. After the aforesaid observations, the Division Bench further proceeded to observe in paragraphs 39 and 40 of Ram Singh's case (supra), which are as under:

39. Here we are to notice that in respect to the rights and possession over the property of others (if two sets are there) the person who may not have any right draws a skeleton and fill ups the colour and then presents the same till the last in a very powerful manner. It is then on defeat he leaves the property/possession. Here we are talking from the State side that notice u/s 10(5) of the Act to surrender and deliver the possession was given and everything went off so peacefully which no one can imagine. At various times the development authorities state about their possession. Certainly that has to flow from the State, therefore, first State has to demonstrate its lawful authority i.e. taking of actual physical possession in accordance with law and if that is not substantiated then everything has to fall. This being very basic thing in all the petitions, all the aspects were checked in presence of the State side, some from the record and some otherwise upon which a conclusion has been arrived at. As and when an individual case is to be there the tenure holder is to establish either of the situation as has been explained in series of the cases noted on the point and also the case in hand for getting the relief. If the factual premises do not support the petitioner then certainly State has to succeed.

40. In respect to the cases where after declaration of the land as surplus and deemed vesting, the landholder has transferred their land, the question of consideration of their existing rights has to be seen as on the date of transfer whether they have any right to be enforced or otherwise, and therefore, this class of cases will have to be kept separate for being dealt.

11. Learned Standing Counsel could not point out that in any of the cases under this bunch of writ petitions either the petitioners have surrendered their land in pursuance of provisions of sub-section (5) of Section 10 of the Act or forceful possession was taken in pursuance of sub-section (6) of Section 10 of the Act.

12. Attention of this Court has not been invited by learned Standing Counsel to any date and time that either petitioners have surrendered or forcibly they have been dispossessed from the property in question. Accordingly, inference may be drawn that petitioners are still in physical possession over the land in question.

13. Their lordships" of Hon"ble Supreme Court while upholding the judgment of this Court in the case of Hari Ram (supra) also observed that unless de facto possession is taken by the State or its authorities in pursuance to provisions of Section 10 of the Act, it shall not be open to draw any inference that State has taken over the possession of land under the Urban Ceiling Act (supra) merely in pursuance of notice issued thereon.

14. It has further been held by Hon"ble Supreme Court that there cannot be

deemed acquisition or possession of land. For convenience paragraph 20 of Hari Ram's case (supra) is reproduced as under:

20. Let us test the meaning of the expression "deemed to have been acquired" and "deemed to have been vested absolutely" in the above legal settings. The expression "acquired" and "vested" are not defined under the Act. Each word, phrase or sentence that we get in a statutory provision, if not defined in the Act, then is to be construed in the light of the general purpose of the Act. As held by this Court in *Organo Chemical Industries and Another Vs. Union of India (UOI) and Others*, , that a bare mechanical interpretation of the words and application of a legislative intent devoid of concept of purpose will reduce most of the remedial and beneficial legislation to futility. Reference may also be made to the Judgment of this Court in *Directorate of Enforcement Vs. Deepak Mahajan and another*, . Words and phrases, therefore, occurring in the statute are to be taken not in an isolated or detached manner, it is associated on the context but are read together and construed in the light of the purpose and object of the Act.

15. Further in the case of Hari Ram (Supra), Hon"ble Supreme Court interpreted the word "vesting" relying upon dictionary meaning and observed in paragraphs 24, 25 and 26, which are reproduced as under:

24. The word "vest" or "vesting" has different meaning. Legal Glossary, published by Official Language (Legislative) Commission 1970 Edition at Page 302:

Vest: 1. To give a person a legally fixed, immediate right or personal or future enjoyment of (an estate), to grant, endow, clothe with a particular authority, right of property, 2. To become legally vested; (T.P. Act.)

Vesting order: An order under statutory authority whereby property is transferred to and vested, without conveyance in some person or persons;

Black's Law Dictionary (Sixth Edition) 1990 at page 1563:

Vested: Fixed; accrued; settled; absolute; complete; Having the character or given the rights of absolute ownership; not contingent, not subject to be defeated by a condition precedent. Rights are "vested" when rights to enjoyment present or prospective has become property of some particular persons or persons as present interest; mere expectancy or future or contingent interest in property founded on anticipated continuance of existing laws does not continue "vested right" *Vaughan v. Nadel*; 228 Kan. 469, 618 2d 778, 783. See also *Accrue Vest* and specific typed of vested interest *infra*.

Webster's Third New International Dictionary, of the English Language unabridged, Volume III S to Z at page 2547 defines the word "vest" as follow:

"vest" vest.....To place or give into the possession or discretion of some person or authority (the regulation of the waterways to give to a person a legally fixed immediate right of present or future enjoyment of (as an estate) (a deed that vests a title estate in the grantee and a remainder in his children), b. to grant

endow, or clothe with a particular authority right or property to put (a person) in possession of land by the feudal ceremony of investiture to become legally vested (normally) title to real property vests in the holder of a property executed deed.)

25. Vest/vested, therefore, may or may not include "transfer of possession" the meaning of which depends on the context in which it has been placed and the interpretation of various other related provisions.

26. What is deemed "vesting absolutely" is that "what is deemed to have acquired". In our view, there must be express words of utmost clarity to persuade a Court to hold that the legislature intended to divest possession also, since the owners or holders of the vacant land is pitted against a statutory hypothesis. Possession, there is an adage "nine points of law" In *Beedall v. Maitland*, (1881) 17 Ch. D. 83, Sir Edward Fry, while speaking of a Statute which makes a forcible entry an indictable offence, stated as follows:

this statute creates one of the great differences which exist in our law between the being in possession and the being out of possession of land, and which gave rise to the old saying that possession is nine points of the law. The effect of the statute is this, that when a man is in possession, he may use force to keep out a trespasser; but if a trespasser has gained possession, the rightful owner cannot use force to put him out, but must appeal to the law for assistance.

16. Voluntary surrender, peaceful dispossession and forceful dispossession under the Act has also been dealt with by Hon''ble Supreme Court. It has been held by Hon''ble Supreme Court that vesting of land under sub-section (3) of Section 10 is vesting of title absolutely and not possession though nothing stands in the way of person voluntarily surrendering or delivering possession. Vesting means over 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. It has been further held by Hon''ble Supreme Court that if de facto possession has already passed on to the State Government by the two deeming provisions under sub-section (3) of Section 10 of the Act, there is no necessity of using the expression "where any land is vested" under sub-section (5) of Section 10 of the Act. Surrendering or transfer of possession under sub-section (3) of Section 10 of the Act can be voluntary so that the person may get the compensation as provided u/s 11 of the Act. 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.

17. Further Hon''ble Supreme Court held that forceful dispossession under sub-section (6) of Section 10 of the Act speaks of "possession" which says, if any person refuses or fails to comply with the order made under sub-section (5) of Section 10 of the Act, the competent authority may take possession of the vacant land to be given to the State Government and its authorities and for that

purpose, force, as may be necessary, can be used. Unless the condition provided u/s 10(5) or Section 10(6) are satisfied no inference may be drawn that possession of land under the Act has been taken over by the State.

18. In para 35 of the judgment of Hari Ram's case (supra), the entire Repeal Act has been reproduced by Hon"ble Supreme Court and thereafter conclusive finding has been recorded in paragraphs 38 and 39, which are reproduced as under:

38. Let us now examine the effect of Section 3 of the Repeal Act 15 of 1999 on sub-section (3) to Section 10 of the Act. The Repeal Act 1999 has expressly repealed the Act 33 of 1976. The Object and Reasons of the Repeal Act has already been referred to in the earlier part of this Judgment. Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute and the facts of the particular case.

39. 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. 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 land owner or holder can claim the benefit of Section 3 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 respondent is entitled to get the benefit of Section 3 of the Repeal Act.

19. Since learned Standing Counsel appearing for the State failed to invite attention of this Court to any material that petitioners have voluntarily or forcibly surrendered and they have been dispossessed from the land in dispute, there appears no reason to dispute the arguments advanced by learned counsel for the petitioners that they are still in possession of the land in question. However, since in some of the petitions counter-affidavits have not been filed, it shall be open to State or its authorities to look into the matter keeping in view the observations made hereinabove and to take decision with regard to possession of the land in dispute.

20. Keeping in view the judgments of this Court rendered in Ram Singh's case (supra) and of the Hon"ble Supreme Court in Hari Ram's case (supra) as well as the observations made hereinabove, we allow this bunch of writ petitions directing the State Government and its authorities not to interfere with the petitioners' peaceful possession of the land in question and make necessary entries in the revenue records accordingly forthwith in accordance with Rule. Let the action be taken by the revenue authorities in the light of the observations made hereinabove expeditiously, say within three months from the date of

production of a certified copy of this order.

No order as to costs.