
(2012) 10 AHC CK 0135
In the Allahabad High Court
Case No : Writ Case No. 391 17 of 2011

Chhabbu Lal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-10-2012

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(5), 10(6), 8(4)

Citation : (2012) 10 AHC CK 0135

Hon'ble Judges : Ashok Bhushan, J and Abhinava Upadhyaya, J

Final Decision : Allowed

Judgement

Abhinava Upadhyaya, J.—Heard learned counsel for the petitioner and learned Standing Counsel.

2. Although learned Standing Counsel was allowed time to file counter affidavit on various occasions but no counter affidavit has been filed. However, as per our earlier order original records pertaining to the petitioner's case has been produced by the learned Standing Counsel which has been perused by us.

3. By consent of learned counsel for the parties, the petition is finally decided.

4. By this writ petition, the petitioner has prayed for following reliefs:

1. Issue a writ, order or direction in the nature of mandamus directing the respondent not to take possession from petitioner in pursuance of Government order dated 8.5.2009,

2. Issue a writ, order or direction in the nature of mandamus directing the respondents abate the proceeding in case No.2453/1976 (State Versus Jagdev), under Repeal Act, 1999.

3. Issue a writ, order or direction in the nature of mandamus directing the respondents correct the revenue records in name of the petitioner.

4. Issue a suitable writ, order or direction in the nature of writ as this Hon'ble

Court may deem fit and proper.

5. Award the cost of the writ petition in favour of petitioner.

5. The petitioner's case in the writ petition is that the proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 were initiated against the petitioner's father in which an order was passed on 5.1.1983 under section 8(4) declaring surplus land at the hands of the petitioner's father and thereafter notice under section 10(5) was prepared which was never served. However, the name of the petitioner's father was expunged.

6. The petitioner's case is that he is in actual physical possession of the land in dispute and in view of the provisions of Urban Land (Ceiling and Regulation) Repeal Act, 1999, the petitioner is entitled to continue in possession and the name of the State from the revenue records deserves to be expunged.

7. A perusal of the original record does indicate that the notice dated 31.5.1986 was prepared in the name of the petitioner's father but there is no material on record to indicate that notice was ever served. There is no material to indicate that the possession was surrendered or any proceedings under section 10(6) of the Act was taken by the State Government. On the original record also, there is no possession memo evidencing taking of possession by the State in any manner.

8. Learned counsel for the petitioner has rightly placed reliance on a Division Bench decision rendered on 8.10.2012 in WritC24378 of 2011Mahaveer Vs. State of U.P. and others in which case the Division Bench on identical facts of case has held that there being no material to prove that actual physical possession was taken by the State in accordance with the procedure prescribed under the Act, the petitioner was held entitled for relief.

9. The aforesaid judgment fully supports the submissions made by the learned counsel for the petitioner.

10. In view of the foregoing discussion, the writ petition is allowed.

11. We further direct the respondents to correct the revenue records accordingly.