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**(2015) 02 RAJ CK 0295**

**In the Rajasthan High Court**

**Case No :** Civil Special Appeal (Writ) No. 201 of 2015

Chhotu Ram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

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**Date of Decision :** 27-02-2015

**Acts Referred:**

Constitution of India, 1950 — Article 226

Jaipur Development Authority Act, 1982 — Section 72

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

**Citation :** (2015) 4 CDR 2146 : (2015) 4 RLW 3160 : (2015) 3 RLW 2257

**Hon'ble Judges :** Sunil Ambwani, Actg. C.J. and Prakash Gupta, J.

**Bench :** Division Bench

**Advocate :** R.K. Agarwal, Senior Advocate assisted by Pradeep Choudhary, Advocate, for the Appellant; Rajendra Prasad, Addl. Advocate General and Ashish Sharma, Advocate, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Sunil Ambwani, Actg. C.J.

1. We have heard learned counsel appearing for the parties. This Special Appeal arises out of the judgment of learned Single Judge dated 25.2.2015, by which the S.B. Civil Writ Petition No. 12656/2014 was dismissed, on the grounds that the question of taking over possession of the land, which was declared surplus, under the Urban Land (Ceiling & Regulation) Act, 1976 (for short, "the ULC Act"), and of which, the possession was taken on 06.12.1986, is not open to be considered, after the writ petition, filed in the year 1991, the appeal arising therefrom, were dismissed, and that, the Supreme Court had also dismissed the Special Leave Petition, as withdrawn.

2. The writ petition was filed, with the following prayers:--

"A. By an appropriate writ, order or direction, the respondents may kindly be directed to regularize the land of the petitioners bearing Khasra No. 193,

193/248 situated in Village Beed Khatipura, Jaipur in compliance of the order dated 10.4.2002 (Annex. 1) passed by the State Level Committee;

B. By an appropriate writ, order or direction, the respondents may kindly be directed not to take possession of the land of the petitioners in Khasra No. 193, 193/248 situated in Village Beed Khatipura, Jaipur;

C. By an appropriate writ, order or direction the respondents may kindly be directed not to deprive the petitioners of their legitimate right of enjoyment of property;

C-1. By an appropriate writ, order or direction the notices dated 20.11.2014 (Annexure-14, 15, 17 & 18) issued by the respondent No. 2 under section 72 of the JDA Act, 1982 to the petitioners may kindly be quashed and set aside and further all the notices u/s. 72 of JDA Act, 1982 dated 14.11.2014 issued regarding the shops situated on khasra No. 193 and 193/248 be also quashed and set aside and all subsequent action taken in furtherance thereof also be quashed and set aside.

C-2. By an appropriate writ, order or direction the orders dated 17.11.2014 (Annexure-9 & Annexure-11) passed by the respondent No. 1 and orders dated 20.11.2014 (Annexure-8 & Annexure-10) passed by the respondent No. 2 may be quashed and set aside.

C-3. By an appropriate writ, order or direction all the notices dated 11.11.2014 issued under section 34(A) of the Act of 1982 be also quashed and set aside.

C-4. By an appropriate writ, order or direction it may be held that the subject land of khasra No. 193 & 193/248 situated at Beed Khatipura, Jaipur is not government property and the petitioners are having legal and valid title & rights the said land.

D. Any other order or direction which this Hon"ble Court may deem fit and proper in the facts and circumstances of the case and in favour of the petitioners may also be passed.

E. Cost of the writ petition may kindly be awarded in favour of the petitioners."

3. Brief facts giving rise to this Special Appeal are that Khasra No. 193 measuring 25 bighas & 2 biswas and khasra No. 193/248 measuring 12 bighas & 5 biswas, were declared as surplus, in proceedings under the ULC Act. An appeal against the determination of surplus land was dismissed by the Divisional Commissioner on 29.03.1993. The possession of the lands was taken, after using necessary force, on 06.12.1986. The memo-"fard" was also prepared. The lands were recorded, after mutation was carried out in the name of the Jaipur Development Authority, on 17.8.1991. With the dismissal of the appeal against the declaration of surplus land, the proceedings under the ULC Act attained finality.

4. The ULC Act was repealed on 7.10.1999. By that date, since the lands were

already taken in possession by the State Government, and had vested in the State Government, and that, the cheques for compensation were also issued to the petitioners, nothing was pending to abate the proceedings.

5. In the year 2001, Section 83A was added in the Jaipur Development Authority Act, 1982, under which a Settlement Committee was constituted. The appellants approached the Settlement Committee for regularization of their possession. The Settlement Committee vide its order dated 10.4.2002, after discussing the facts of the case, and finding that the lands were already possessed and vested in the State Government, found that since it had already passed orders with regard to regularization of the lands of Arvind Grah Nirman Sahakari Samiti, which is in front of the lands of the applicants, and that, the applicants have not accepted the compensation for the lands, and further that, the proceedings arising out of the ULC Act are still pending in the Supreme Court, which has held up the entire development of the area; in which the Jaipur Development Authority has not gained any monetary advantage, and further that, about 200 bighas of land of the applicants' family, has been acquired, there was justification to regularize the possession of lands with the applicants, in accordance with the policy of the State Government, and the circular dated 26.05.2000, on payment of 25% of the reserved price of the concerned area or Chitrakoot Yojana, which is Rs. 1650/- per square metre. The order however, will be operative, only after all the cases pending in the Court, filed by the petitioners, are withdrawn.

6. In the operative portion of its order dated 10.4.2002, the Settlement Committee directed that the applicants will present the proof of the withdrawal of all the cases, which are pending, after which, within three weeks, a demand letter will be issued by the Jaipur Development Authority, on which the applicants will deposit the entire amount within next three weeks. On such deposit, the applicants may file the plans of the Scheme for approval, which will be approved by the Jaipur Development Authority within 30 days. On 18.5.2002, a demand letter for deposit of Rs. 3 crores 80 lacs was issued, against which the applicants have deposited only Rs. 1,45,05,000/-, in installments, beyond the period given in the order, which was also extended by the Jaipur Development Authority. The extended period expired on 30.6.2002. The amount in part deposited between 26.5.2002 to 30.7.2002.

7. The writ petition, giving rise to this appeal, was filed in the year 2014 for implementation of the decision of the Settlement Committee.

8. A Public Interest Litigation was filed on 21.4.2003, in which a statement was given by learned Advocate General that the Jaipur Development Authority has not implemented the decisions of the Settlement Committee. The Settlement Committee was ultimately dissolved in the year 2004, on which the writ petition was filed in public interest, become infructuous, and was dismissed.

9. In the year 2007, an application was filed by the appellants before the Jaipur Development Authority to deposit the remaining amount, and for implementation

of the decision taken by the Settlement Committee. The Jaipur Development Authority found that the period, within which the amount was required to be deposited, has long expired, and thus, the matter could only be considered by the State Government. The State Government had issued a letter, under the signatures of the Deputy Secretary, Urban Development & Housing Department, Government of Rajasthan, on 21.8.2007 to the Secretary, Jaipur Development Authority, Jaipur, with reference to his letter dated 23.5.2007, that since according to the Department, no litigation is pending in any Court, steps may be taken for approval of the lands in the Scheme, in pursuance to the settlement made by Settlement Committee, and that, the entire balance amount may be accepted, with interest.

10. On 16.11.2007, the Special Secretary, Minister of State, Urban Development & Housing Department and Local Self Department, Government of Rajasthan, wrote a letter to the Secretary, Jaipur Development Authority, Jaipur that the land, subject matter of consideration, was acquired, for which vide circular dated 16.10.2007 & 02.11.2007, detailed instructions have been given for regularization of the agricultural land, acquired by the State Government, and that, the concerned matter falls in the same category. Accordingly, it was directed that the proceedings, in pursuance to the letter of the Deputy Secretary, Urban Development & Housing Department dated 21.8.2007 be stayed, and that, the matter may be examined, in view of the latest directions, for which the original records will be submitted alongwith the note sheet, in the office of the Minister of State, Urban Development & Housing Department and Local Self Department.

11. In the background detailed as above, the writ petition was filed after twelve years, for implementing the decision of the Settlement Committee.

12. During the course of hearing of the writ petition, the effect of repealing of the ULC Act, was also argued. Learned Single Judge relying on the judgment of the Supreme Court in State of Assam vs. Bhaskar Jyoti Sarma & Ors. (Civil Appeal No. 10565 of 2014) decided on 27.11.2014, held, in such matters, that the question of taking over possession, even if it was taken over forcibly, without issuing notice under Section 10(5) of the ULC Act for taking physical possession of the land, has lost its significance. The observations of Hon'ble Supreme Court, in which it distinguished its earlier judgment in State of U.P. Vs. Hari Ram, , are quoted as below:--

"11.....But assuming that any such determination is possible even in proceedings under Article 226 of the Constitution, what needs examination is whether the failure of the Government or the authorized officer or the competent authority to issue a notice to the land owners in terms of Section 10(5) would by itself mean that such dispossession is no dispossession in the eye of law and hence insufficient to attract Section 3 of the Repeal Act. Our answer to that question is in the negative. We say so because in the ordinary course actual physical possession can be taken from the person in occupation only after notice under

Section 10(5) is issued to him to surrender such possession to the State Government, or the authorized officer or the competent authority. There is enough good sense in that procedure inasmuch as the need for using force to dispossess a person in possession should ordinarily arise only if the person concerned refuses to cooperate and surrender to deliver possession of the lands in question. That is the rationale behind Section 10(5) and 10(6) of the Act. But what would be the position if for any reason the competent authority or the Government or the authorized officer resorts to forcible dispossession of the erstwhile owner even without exploring the possibility of a voluntary surrender or delivery of such dispossession on demand. Could such use of force vitiate the dispossession itself or would it only amount to an irregularity that would give rise to a cause of action for the aggrieved owner or the person in possession to seek restoration only to be dispossessed again after issuing a notice to him. It is this aspect that has to an extent bothered us. The High Court has held that the alleged dispossession was not preceded by any notice under Section 10(5) of the Act. Assuming that to be the case all that it would mean is that on 7th December, 1991 when the erstwhile owner was dispossessed from the land in question, he could have made a grievance based on Section 10(5) and even sought restoration of possession to him no matter he would upon such restoration once again be liable to be evicted under Sections 10(5) and 10(6) of the Act upon his failure to deliver or surrender such possession. In reality therefore unless there was something that was inherently wrong so as to affect the very process of taking over such as the identity of the land or the boundaries thereof or any other circumstance of a similar nature going to the root of the matter hence requiring an adjudication, a person who had lost his land by reason of the same being declared surplus under Section 10(3) would not consider it worthwhile to agitate the violation of Section 10(5) for he can well understand that even when the Court may uphold his contention that the procedure ought to be followed as prescribed, it may still be not enough for him to retain the land for the authorities could the very next day dispossess him from the same by simply serving a notice under Section 10(5) . It would, in that view, be an academic exercise for any owner or person in possession to find fault with his dispossession on the ground that no notice under Section 10(5) had been served upon him.

12. The issue can be viewed from another angle also. Assuming that person in possession could make a grievance, no matter without much gain in the ultimate analysis, the question is whether such grievance could be made long after the alleged violation of Section 10(5) . If actual physical possession was taken over from the erstwhile land owner on 7th December, 1991 as is alleged in the present case any grievance based on Section 10(5) ought to have been made with a reasonable time of such dispossession. If the owner did not do so, forcible taking over of possession would require legitimacy by sheer lapse of time. In any such situation the owner or the person in possession must be deemed to have waived his right under Section 10(5) of the Act. Any other view would, in our

opinion, give a licence to a litigant to make a grievance not because he has suffered any real prejudice that needs to be redressed but only because the fortuitous circumstance of a Repeal Act tempted him to raise the issue regarding his dispossession being in violation of the prescribed procedure.

13. Reliance was placed by the respondents upon the decision of this Court in Hari Ram's case (supra). That decision does not, in our view, lend much assistance to the respondents. We say so, because this Court was in Hari Ram's case (supra) considering whether the word "may" appearing in Section 10(5) gave to the competent authority the discretion to issue or not to issue a notice before taking physical possession of the land in question under Section 10(6). The question whether breach of Section 10(5) and possible dispossession without notice would vitiate the act of dispossession itself or render it non est in the eye of law did not fall for consideration in that case. In our opinion, what Section 10(5) prescribes is an ordinary and logical course of action that ought to be followed before the authorities decided to use force to dispossess the occupant under Section 10(6). In the case at hand if the appellant's version regarding dispossession of the erstwhile owner in December 1991 is correct, the fact that such dispossession was without a notice under Section 10(5) will be of no consequence and would not vitiate or obliterate the act of taking possession for the purposes of Section 3 of the Repeal Act. That is because Bhabadeb Sarma-erstwhile owner had not made any grievance based on breach of Section 10(5) at any stage during his lifetime implying thereby that he had waived his right to do so.

14. Mr. Goswamy drew our attention to a decision of this Court in State of Gujarat and Another Vs. Gyanaba Dilavarsinh Jadega, to argue that a Writ Court also examine the question of dispossession as was the position in that case which too arose out of a proceeding under the Urban Land (Ceiling and Regulation) Act. This Court in that case remanded the matter back to the High Court to determine the question whether possession of the land had been taken over before Repeal Act came into force....."

13. Learned Single Judge did not accept the submission that the applicant had sufficient cause for not depositing the remaining amount, as per directions of the Settlement Committee. The delay was sought to be explained on the ground of pendency of a writ petition filed in public interest, in which a statement was given by learned Advocate General that the State Government will not implement the awards of the Settlement Committee. Learned Single Judge recorded the findings that the writ petition was filed, in public interest, on 21.4.2003, much after the time period, for depositing the remaining amount, was expired. The writ petition was dismissed, as infructuous, on the dissolution of the Settlement Committee was dissolved in the year 2004. Even if the decision of the Settlement Committee is taken to be valid, after it was dissolved, since the time bound directions issued by the Settlement Committee were not complied with, the decision could not be implemented, by a writ of mandamus, after a period of 12

years.

14. Learned Single Judge also considered the conduct of the appellants, in which they had, after forcibly re-occupying the lands, which vested in the State Government after proceedings under ULC Act, 1976 had become final and the possession was taken on 06.12.1986, compensation determined and deposited, and the JDA was recorded as owner in revenue records, constructed 55 shops and are running 07 marriage gardens. She found that a large number of unauthorized constructions made on the public land, used for commercial purposes, without waiting for culmination of the litigation, has disentitled the applicants for any relief from the Court.

15. Learned counsel appearing for the appellants submits that the findings that the forcible possession on 06.12.1986 without any notice under Section 10(5) of the ULC Act, 1976, was contrary to the Scheme of the ULC Act. The decision therefore, cannot be accepted, inasmuch as the applicants always remained in possession of the lands, and after repealing of the ULC Act, they have a right to continue with the possession. We cannot accept the argument at this stage, after the writ petition against the proceedings under the ULC Act, filed in the year 1991, was dismissed; the appeal filed before the Division Bench was also dismissed, after ULC Act was repealed, and in which no objection was taken, nor any argument was raised that the respondents were still in legal possession. The Special Leave Petition against the judgment of Division Bench was withdrawn, after which the appellants cannot be allowed to challenge the proceedings under the ULC Act. Learned Single Judge has rightly observed that the matters with regard to the ULC Act had attained finality, after the Special Leave Petition before the Supreme Court was withdrawn, and further, that no prayers have been made in the writ petition, giving rise to this Special Appeal, on the validity of possession, even after repeal of the ULC Act.

16. Learned counsel appearing for the appellants submits that the matter remained pending with the State Government, for implementation of the decision of the Settlement Committee, and that, at one stage in the year 2007, when the Jaipur Development Authority had referred the matter to the State Government, a decision was taken to sanction the Scheme, after depositing the balance amount, with interest. The Special Secretary in the Office of the Minister of State, Urban Development & Housing Department and Local Self Department, Government of Rajasthan, had no authority to stay the decision, and to direct the Deputy Secretary, to take a decision, in accordance with the extant policy, as it was a case of implementation of the decision of the Settlement Committee.

17. We do not find any force in the submissions, inasmuch, as the appellants had not complied with the terms and conditions, under which the Settlement Committee had settled the matter. Without going into the jurisdiction of the Settlement Committee, or validity of its orders, it is sufficient to state that since the appellants failed to comply with the conditions imposed by the Settlement Committee for regularizing their possession over the lands, the settlement could

not be implemented after about 12 years.

18. A writ of mandamus, for implementation of the decision of the Settlement Committee, can be issued only if the petitioners had complied with the terms and conditions of settlement and the conduct was not such, which disentitled them for consideration for grant of discretionary relief by the Court, and approached the Court within a reasonable time.

19. In the present case, the petitioners did not comply with the orders passed by the Settlement Committee. They did not deposit the balance amount of the demand raised by the Jaipur Development Authority, in pursuance to the decision of the Settlement Committee. An amount of Rs. 1,45,05,000/- was deposited in parts, as against the amount determined of Rs. 3 crores and 80 lacs, beyond the period given by the Settlement Committee. The explanation for delay was not justified at all. They did not care to even seek extension of time for depositing the amount, from the Settlement Committee. The reasons given by the applicants, for not depositing the amount, cannot be accepted, inasmuch as, the writ petition challenging Section 83A, providing for Settlement Committee, was filed on 21.4.2003, and was dismissed as infructuous in the year 2004, after the settlement Committee was dissolved.

20. The writ petition was filed for implementation of the order of the Settlement Committee, and for consequential reliefs, such as quashing the notice under Section 72 of the JDA Act, on the grounds that the appellants were entitled to regularization of their possession. Learned Single Judge did not commit any error in law, in holding that there was no question of title, to be decided, as the title of the land had already vested in the State Government, after concluding the proceedings under the ULC Act, and the taking over of possession on 06.12.1986, and in any case, on the culmination of the proceedings against declaration of surplus land, on the withdrawal of the Special Leave Petition before the Supreme Court on 08.05.2002.

21. We entirely agree with the reasoning given by learned Single Judge that the appellants are not entitled to any discretionary relief, as the writ petition was barred by gross unexplained laches, and that, during the pendency of the proceedings, referred to above, they have unauthorizedly constructed 55 shops, and were using the land for running 07 marriage gardens, through third parties. With the illegal and unauthorized commercial activity carried out over the land, without any permission or approval of JDA, the applicants lost any right for regularization, which could only be given to the persons, who were using the land for agricultural purposes, subject to certain conditions, under the policy of the State Government.

22. We do not find any error in the order of learned Single Judge, dismissing the writ petition. The appellants may apply for return of the part of amount deposited between 26th May to 30th July, 2002, subject to the penalties, which the JDA may impose for wrongfully occupying the lands and of its unauthorized



commercial user. The determination of penalties for illegal use and occupation will not delay the demolitions and taking over of possession of the lands by JDA. This Special Appeal is dismissed in limine with costs.