

(2012) 01 AHC CK 0374
In the Allahabad High Court
Case No : Misc. Bench No. 90 of 2012

Dr. Ramchandra Mishra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-01-2012

Acts Referred:

Constitution of India, 1950 — Article 252(2)

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

Citation : (2012) 01 AHC CK 0374

Hon'ble Judges : S.C. Chaurasia, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for parties and perused the record.
2. Without entering into the merits of the controversy, we proceed to decide the writ petition finally.
3. The land in dispute falls within the domain of Urban Land (Ceiling and Regulation) Act, 1976. It was repealed by Urban Land (Ceiling and Regulation) Repeal Act, 1999. According to the petitioner's counsel, after repeal of the Act, the proceedings initiated in pursuance to the Repeal Act became nonest and the petitioner is entitled to retain the possession of land in question with hereditary right. Attention of this Court has been invited to the judgment of Hon'ble Supreme Court in the case reported in Mukarram Ali Khan Vs. State of U.P. and Others, and others and other judgment reported in 2011 (3) SCCD 1382 (SC) Ritesh Tewari and another versus State of U.P. & others.
4. In the case of Mukkarram Ali Khan (supra), their Lordships of Hon'ble Supreme Court ruled that in view of repeal of 1976 Act (supra) and being adopted by the State of U.P by a resolution as required under Art. 252(2) of the Constitution and the repealing Act having come into force in the State of U.P with effect from 18.3.1999, all pending proceedings under 1976 Act shall be treated

to have abated. The operation portion of the judgment from Mukarram Ali Khan (supra) is reproduced as under:

2. Though many points were urged in support of the appeal, the primary point urged was that possession has not been taken pursuant to orders passed by the authorities under the Act. An affidavit has been filed indicating that the possession of the land has not been taken and the land in question continues to be in possession of the appellant and his sons.

3. Learned Counsel for the respondent-State and its functionaries on the other hand contended that the point regarding earlier adjudication was not urged before the High Court and therefore the High Court has rightly decided that in the absence of any specific plea a new plea cannot be taken before it.

4. It is to be noted that the Act has been replaced under the Urban Land (Ceiling and Regulation) Act, 1999 (in short the "Repeal Act"). Admittedly the State of Uttar Pradesh has since adopted the provisions of the Repeal Act by a resolution as required under Article 252(2) of the Constitution of India, 1950 (in short the "Constitution"). Repealing Act has since come into force in the State of Uttar Pradesh with effect from 18.3.1999.

5. Section 4 of the Repeal Act reads as follows:

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 insofar 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.

6. In view of the affidavit filed by the appellant to which no objection has been filed, undisputed position is that the State has not taken the possession over the surplus land. Therefore, the proceedings have to be treated to have abated u/s 4 of the Repeal Act.

7. That being so, the appeal deserves to be allowed which we direct." In the case of Ritesh Tewari (supra), again their Lordships of Hon"ble Supreme Court have considered the question with regard to the affect of the repeal Act. Their Lordships held that the communication between the officers of the department shall not be a ground to affect the rights of the parties. With regard to Repeal Act in the case of Ritesh Tewari (supra), Hon"ble Supreme Court has considered earlier judgment and held that all pending proceedings under 1973 Act shall be abated automatically on the commencement of Repealing Act, 1999 provided the possession of the land involved in a particular case has not been taken by the State. To quote relevant portion:

13. We find full force in the submissions so made by Shri Jayant Bhushan to a certain extent, and hold that all proceedings pending before any court/authority under the Act, 1976, stood abated automatically on commencement of the Act 1999 in force, provided the possession of the land involved in a particular case had not been taken by the State. Such a view is in consonance with the law laid down by this Court in Pt. Madan Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and Others, Ghasitey Lal Sahu and another vs. Competent Authority, (2004) 13 SCC 452: Mukarram Ali Khan Vs. State of U.P. and Others, and Smt. Sulochana Chandrakant Galande vs. Pune Municipal Transport and others, JT 2010 SC 298.

5. In view of above, we dispose of the writ petition finally directing the revenue authorities/respondents to abide by the judgment of Hon''ble Supreme Court (supra) and not to interfere with the petitioner''s peaceful possession of the land in question in case in view of the provisions contained in 1976 Act (supra), the State had not taken possession of the land in dispute.

6. The writ petition is disposed of accordingly. No order as to costs.