
(2009) 01 AHC CK 0127

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 47277 of 2008

Dr.(Smt.) Raj Kumari Mehrotra

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 19-01-2009

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(3), 10(5), 10(6), 10(9), 11(8)

Citation : (2009) 01 AHC CK 0127

Hon'ble Judges : S.K.Singh, J and A.P.Sahi, J

Final Decision : Dismissed

Judgement

1. The petitioner is the wife of Dr. Prem Chand Mehrotra who died on 24.6.2005. Dr. P.C. Mehrotra was lessee of Bungalow No. 10, Elgin Road, Allahabad who obtained two separate lease deeds in respect of the land in question and copies of the said lease deeds have been filed as Annexures 2 and 3 to the writ petition. The petitioner applied for free hold after the death of her husband which was not being considered as a result whereof she filed Writ Petition No. 40945 of 2008 in which the following orders were passed on 11.8.2008 :

1. "Heard Mr. Ashwani Kumar Misra in support of this petition, Sri Chandra Shekhar Singh, learned Standing Counsel for State of U.P. appears for the respondents.

2. The petitioner wants to deposit the conversion charges for converting the concerned land into free hold.

3. The respondents will receive the amount, if so deposited today during the course of the day. The deposit and receipt will be both without prejudice.

4. The matter may be listed on 1st September, 2008

Sd. H.L.Gokhale, C.J.

Sd. Vineet Saran, J."

2. It is during these proceedings that the petitioner's application for free hold has not been processed on the ground that the land in question has been declared surplus under the Urban Land (Ceiling and Regulation) Act, 1976. Accordingly, the present petition has been preferred by the petitioner seeking an appropriate writ or direction for restraining the respondents from interfering with the right, title and possession of the petitioner in respect of the land in question and for a declaration that the ceiling proceedings as relied upon by the respondents be declared to have abated and lapsed by virtue of the provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999. The petition was entertained and a counter affidavit was called for which has been filed on behalf of the State through Devendra Singh, Assistant Engineer, Urban Land. Ceiling, Allahabad. A rejoinder affidavit to the said counter affidavit has also been filed on behalf of the petitioner.

3. We have heard learned counsel for the petitioner and the learned Standing Counsel for the respondents.

4. In order to appreciate the controversy, the minimum necessary facts may be stated. The proceedings under the Urban Ceiling Act were initiated against late Dr. P.C. Mehrotra the husband of the petitioner in the year 1982 and after a response was filed by him, an order was passed on 26.3.1984 declaring an area of 3203.76 sq. m. as excess vacant land under the said Act. The said order was an exparte order which on an application, was set aside and the matter was rest order on 16.10.84. Again an exparte order was passed on 22.6.1987. These facts are borne out from the records which have been produced by the learned Standing Counsel and had been retained by us for delivery of judgment. It appears that thereafter a publication was made under Section 10(3) of the Urban Ceiling Act on 31.5.1997 followed by an alleged proceeding of taking possession on paper under Section 10(5) of the Urban Ceiling Act the document whereof is dated 22.6.1997. This appears to have been followed by a notice under Section 11 (8) of the said Act on 28.7.1998 calling upon the assessee/occupant to receive compensation. When this notice appears to have been served on the petitioner's late husband, a detailed objection was filed on 30.11.1998 which is also borne out from the records produced by the learned Standing Counsel.

5. The aforesaid objection clearly stated that the proceedings were exparte and neither any information was tendered with regard to the aforesaid facts nor possession was taken from the land holder. It was further requested that the matter be restored and an appropriate order be passed on merits. On this objection, the counsel for the State/Urban Land Ceiling Authority Sri R.B. Vidhyarthi endorsed a no objection on 18.3.1999 with a request that the matter be restored and it be heard on merits. The endorsement is available on the records. Thereafter, an application was filed by the same Standing Counsel Sri R.B. Vidhyarthi on 15.4.1999 narrating the aforesaid facts and admitting on behalf of the land ceiling authority that no possession had been taken by the Department and, therefore, the land holder be given the benefit of the 1999

Repeal Act treating the proceedings to have abated as nothing could be done further.

6. From the counter affidavit it further appears that the said land according to the State Government, after the notice under Section 10(5) was handed over to the Development Authority and the Development Authority wrote a letter to the District Magistrate informing him that a decision had been taken to auction the property referred to in the said letter dated 25.3.2000, after publication in the newspaper and which refers to the property of the petitioner in question also along with the other properties. The counter affidavit indicates nothing further as to what happened after the said auction notice nor is there any indication of the settlement of the property with any third party nor in any records produced by the learned Standing Counsel.

7. The petitioner thereafter appears to have continued to approach the District Magistrate for the renewal of the lease which was pending and its execution upon which the District Magistrate, Allahabad wrote a letter to the State Govt. on 15.7.2004 recommending the renewal of the lease in favour of the land holder with a clear recital to the effect that even though proceedings had been undertaken under the Urban Land Ceiling Act, yet no physical possession of the land had been taken and the lease holder/occupant continued to hold possession of the property. There is a further recital in the said letter that the claim of the petitioner is also covered under the provisions of the Repeal Act, 1999.

8. The petitioner thereafter appears to have applied for free hold as well, in respect whereof the petitioner approached this Court by filing Writ Petition No. 40945 of 2008 and the order passed therein has already been indicated herein above. The UpNagar Adhikari of the Nagar Nigam, Allahabad wrote a letter to the Prescribed Authority, Urban Ceiling Land on 23.8.2008 seeking information with regard to the current status of the property as it was shown to have been declared surplus under the Land Ceiling Act. This document is Annexure 14 to the writ petition. The petitioner thereafter preferred this writ petition questioning the said incorrect status of the property and praying for the relief's as indicated above.

9. It is to be noted that there is another order dated 29.8.2008 which is contained in the records produced by the learned Standing Counsel and which we have discovered and perused. This order is under Section 11 (9) of the Urban Land Ceiling Act, 1976 purporting to reject the objection filed by the petitioner's husband on 30.11.1998. The said order appears to have neither been brought to the notice of the petitioner nor does any such recital appear in the counter affidavit filed on behalf of the State. In such a situation, we have no option but to proceed on the basis of the records placed before us.

10. Having heard learned counsel for the parties and having perused the original records ourselves, the question that arises for consideration in the present writ petition is as to, whether the petitioner is entitled to the benefit of the Urban

Land (Ceiling and Regulation) Repeal Act, 1999 in respect of the property in question or not. The said question is to be answered after assessing the respective contentions on the issue of possession of the land in question. Learned counsel for the petitioner, relying on the decision in the case of Bal govind and another v. State of U.P. and others W.P. No. 44676 of 2005 decided on 15.3.2007 which in turn follows two other Division Bench decisions of this Court, has urged that since the actual physical possession had not been taken and the provision of Section 10(6) of the 1976 Act had not been complied with, therefore, the claim of the respondents, that possession had already been taken prior to the commencement of the Repeal. Act, is without foundation. As noticed above, the petitioner filed an objection against the exparte order of the Prescribed Authority on 30.11.1998. A no objection for restoration was endorsed by the counsel for the Urban Ceiling Authority upon which the matter proceeded and an application was moved by the counsel for the authority stating therein that no possession had been taken as yet. This endorsement is there in the application dated 15.4.99 which is contained in the original records and which has been filed along with writ petition as Annexure 12. The aforesaid fact admitting the possession of the petitioner and possession having not been taken by the authority has been termed as an advice by a counsel to his client in paras 15 and 16 of the counter affidavit. It has been further stated in the counter affidavit that thereafter the property was put to auction as it had been handed over by the Department to the Development Authority.

11. From the records that have been produced before us, we do not find any transaction between the authority and the Allahabad Development Authority of taking over possession. There is nothing on record to indicate, that after the land holder filed his objection on 30.11.1998 clearly denying taking over possession or action having ever been taken under Section 10(6) of the Act 1976, the possession was taken by the authorities. Apart from this the fact that the physical possession had not been taken over, stood fully corroborated by the admission of the District Magistrate in the letter dated 15.7.2004 Annexure 13 to the writ petition. The admission of the District Magistrate in the aforesaid letter about the possession being retained by the land holder has not been successfully denied in the counter affidavit. The only denial is that the said letter was sent by the Addl. District Magistrate and not by the competent authority, Urban Ceiling Land. Such an explanation cannot deny the factum of the possession being retained by the tenure holder, inasmuch as the said letter dated 15.7.04 admits that possession was not taken over by the competent authority in no uncertain terms. It is trite law that admission is the best piece of evidence.

12. In our opinion the counter affidavit is, therefore, against the records in so far as the possession of the land is concerned. The aforesaid facts clearly demonstrate that actual physical possession was not taken over and no proceedings under Section 10(6) had been undertaken. The land holder filed his objection on 30.11.1998 and had denied any transfer of possession. Once the land holder had denied handing over possession then the only recourse open to

the authority was to undertake proceedings under Section 10(6) of the 1976 Act. There is nothing either in the counter affidavit or in the records produced by the learned Standing Counsel that would even remotely suggest the taking over the possession under the provisions of Section 10(6) of the 1976 Act. In view of this, we have no option but to hold that the possession continued to be retained by the land holder, i.e. the petitioner's late husband on the date when the Repeal Act came into force in the year 1999. In view of this, the proceedings under Urban Land Ceiling Act as against the land holder stood abated and there arose no occasion for the competent authority to pass the order on 29.8.2008 under Section 11 (9) of the 1976 Act. The exercise so undertaken by the competent authority was therefore without jurisdiction as the petitioner was entitled to the benefit of the Repeal Act.

13. The petitioner has also brought on record receipts of payment of ground rent and municipal taxes as indicated in paras 5 and 6 of the writ petition to further substantiate her stand of continuing to hold possession.

14. We may further record that the aforesaid facts which are on the records of the State Govt. itself have not even been noticed, much less discussed in the order dated 29.8.08. For the aforesaid reasons as well the order dated 29.8.2008 cannot in any way deprive the petitioner's right to retain possession over the property. The order confirming the earlier notice under Section 11 (8) is, therefore, a nullity.

15. Having recorded our findings above and also supported in our views by the judgments relied upon by the learned counsel for the petitioner, we are unable to accept any of the submissions of the learned Standing Counsel which have been made on the strength of the counter affidavit filed on behalf of the State. The writ petition, is therefore, allowed holding that the proceedings in respect of the property in dispute under Land Ceiling Act 1976 stood abated by the virtue of the provisions of the Repeal Act, 1999 and that the petitioner's right, title and possession cannot be interfered with in any manner whatsoever on the strength of such proceedings which stood lapsed or even under the order dated 29.8.2008 which is a nullity.

16. The respondents shall effect compliance accordingly.

17. The original records which have been retained by us for delivery of judgment are hereby handed over to the learned Standing Counsel today.