

(2009) 07 OHC CK 0022
In the Orissa High Court
Case No : RVWPET No. 112 of 2005

Fakircharan Singh

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 3, 4

Citation : (2010) 1 ILR (Ori) 1

Hon'ble Judges : I.M. Quddusi, Acting C.J.; S.R. Singharavelu, J

Bench : Division Bench

Final Decision : Allowed

Judgement

I.M. Quddusi, A.C.J.

1. This review petition has been filed against the order passed by this Court on 29.6.2005 in O.J.C. No. 7386 of 1999 with a further prayer to direct the opposite party No. 1 to pass appropriate order restoring possession of the property to the Petitioner, his mother and brothers.

2. It appears that against the order passed by the Special Officer cum Competent Authority, Urban Agglomeration, Cuttack in U.L.C. Case Nos. 4/83, 5/83, 11/84, 12/84, 13/84 and 14/84, the Petitioner preferred an appeal registered as U.L.C. Appeal No. 2 of 1998 before the Revenue Divisional Commissioner, Central Division, Cuttack, which was dismissed on 5.5.1999. Against the order dated 5.5.1999 passed by the RDC, Central Division, Cuttack, the writ petition (O.J.C. No. 7386 of 1999) was filed on 23.6.1999.

3. The returns were duly filed by the mother of the Petitioner Lovabini Dei and four brothers namely Ashok Kumar Singh, Rabindra Kumar Singh, Saroj Kumar Singh and Ajad Kumar Singh which were registered as Ceiling Case No. 5/83, 11/84, 12/84, 13/84 and 14/84 respectively. The Petitioner took the plea that the area covered by tank and houses existing on the plot in question should be excluded from total land as those are not vacant land and appurtenant and

additional appurtenant to the buildings constructed prior to the Act came into force have not been allowed as per building regulation etc. Out of the total land held by the returnee measuring Ac. 29,200 decimals as on 17.2.96, an area of Ac. 9,688 decimals has been excluded and the balance vacant land of AC. 19.532 decimals was found to be surplus. Though a symbolic possession was taken over on 6.5.1999 but the fact remains that this Court did not restrict the opposite parties to take over possession of the land but on 24.12.2003, it was ordered that distribution of case land in question shall remain stayed. However, the Urban Land (Ceiling and Regulation) Repeal Act, 1999 came into force with effect from 22.3.1999. Sections 3 and 4 of the said Act is reproduced as under:

3.(1) The repeal of the principal Act shall not effect

(a) the vesting of any vacant land under Sub-section (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under Sub-section (1) of Section 20 of any action taken there under, notwithstanding any judgment of any court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under Sub-section (1) Section 20.

(2) Where

(a) any land is deemed to have vested in the State Government under Sub-section (3) of Section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land. Then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

4. Abatement of the legal proceedings

All proceedings relating to any other 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 Section 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority.

4. The repealing Act, 1999 was adopted by the State Government on 5.4.2002 vide resolution passed in the State Legislature published in the Orissa Gazette

Extraordinary No. 574 dated 27.4.2002. In the said resolution, it was mentioned by the State Government that no compensation should be paid for the land possession of which had not been taken over by the State Government after vesting u/s (10)3 of the U.L.C. and legal proceedings initiated under the said Act will also be closed.

5. In view of the above mentioned facts, as the writ petition was disposed of on 29.6.2005 with the direction to the State Government in Urban Development Department to consider the application u/s 20 and pass appropriate orders in consonance with repealing Act, 1999, the instant review petition has been filed in which it has been specifically stated that neither possession was taken over nor any compensation was paid to the Petitioner and in appropriate cases where possession has neither been taken over nor compensation has been paid, the State Government still holds the power to grant exemption as prescribed u/s 20.

6. In view of the fact that when in the Central Act adopted by the State Government it has been specifically provided that no compensation should be paid for the land possession of which has not been taken, in the instant matter, it was mentioned by the Petitioner that the Government being conscious of such provision, on 30.5.2003 directed the competent authority as under:

Though Tahasildar was directed on 6.5.1999 for taking over possession, eventually actual physical possession having not yet been taken over, he may further be directed to take steps for taking over possession and evict....

7. In view of the above, we think that it is a fit case for rehearing of the writ petition out of which this review arises. Accordingly, the order dated 29.6.2005 passed in O.J.C. No. 7386 of 1999 is set aside and the review petition is allowed.

Registry is directed to list O.J.C. No. 7386 of 1999 in the next month for fresh hearing along with W.P.(C) No. 13313 of 2005 and the connected contempt case. However, counter affidavit may be filed by the parties, if they so desire.