
(2011) 10 UK CK 0027

In the Uttarakhand High Court

Case No : Writ Petition No. 549 of 2009 (M/S)

Hardev Singh

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:

Constitution of India, 1950 — Article 252(2)
Urban Land (Ceiling and Regulation) Act, 1976 — Section 11, 12, 13, 14, 8(4)
Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 4

Citation : (2011) 10 UK CK 0027

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble B.S. Verma, J.—By means of the present writ petition, the petitioner has prayed for issue a writ of certiorari quashing the impugned order dated 22-10-2008 (Annexure No. 6 to the writ petition) and the order dated 16-9-2009 (Annexure No. 7 to the writ petition) passed by the respondent no. 2. The petitioner has further sought a writ in the nature of mandamus commanding the respondents not to give effect to order dated 29-7-1984 passed by the respondent no. 2, as the same stands abated.

2. Relevant facts giving rise to the present writ petition are that proceedings u/s 8(4) Urban Land (Ceiling and Regulation) Act, 1976 (for short the Act) were initiated against the petitioner and another on the basis of draft statement no. 3870 submitted by the petitioner in respect of properties held by him. After necessary enquiry and on completion of all formalities, the learned Prescribed Authority by his order dated 27-9-1984 declared land measuring 6919.44 Sq. mt. of the petitioner as surplus land in possession of the petitioner and directed that the possession of the surplus land be taken of the entire plot no. 165 measuring 1.48 Acre and for the remaining surplus land possession of plot no. 375 of village Dhoran be taken and proceeding u/s 9 be initiated.

3. In this writ petition, the petitioner has contended that since the possession of plot no. 165 situate at village Dharampur had not been taken by the State, therefore, in view of the provisions of Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, therefore, there is no question of vesting the land in the State or taking over possession of it so far as the land of plot no. 165 is concerned.

4. The learned counsel for the petitioner has contended that in the possession certificate prepared by the authorities concerned, it is clearly mentioned that possession of plot no. 165 could not be taken by the State as the land is not identifiable. The petitioner has annexed copy of possession certificate dated 5-7-1987 as Annexure No.3 to the writ petition.

5. In the counter affidavit filed on behalf of the respondent, this fact has not been denied that the possession of plot no. 165 had not been taken by the State.

6. I have heard learned counsel for the parties and perused the entire material placed before this Court.

7. By a perusal of the original record, which has been produced by the learned Brief Holder appearing for the respondents-State, it reveals that no possession of plot no. 165 was ever taken by the State.

8. The Act Urban Land (Ceiling and Regulation) Act, 1976 (Act No. 33 of 1976) was repealed by the Central Act No. 15 of 1999. The Legislature of State of U.P. has since adopted the provisions of the Urban Land (Ceiling and Regulation) Act 1999, by a resolution as required by Article 252(2) of the Constitution, which has come into force in Uttar Pradesh on 18-03-1999 and the same are also applicable in the State of Uttaranchal.

9. Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 provides as under:

4. Abatement of legal proceedings. - All proceedings relation 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 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 authorised by the State Government in this behalf or by the competent authority.

10. In view of aforesaid legal position, there is no need to enter into the merits. In the case at hand, it is ample clear that possession of plot no. 165 of village Dharampur had not been taken by the State in pursuance to the order dated 27-9-1984 passed by the Prescribed Authority. The effect of the repealing Act on present case is that where for land in dispute, there is no question of vesting the

land in the State. The present proceedings have to be abated in respect of land of plot no. 165 of village Dharampur (Dehradun) and are hereby abated u/s 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999.

11. The facts of the case are squarely covered by the judgment of the Apex Court in the case of "Pt. Madan Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and others" (AIR 2000 SCW 1882).

12. In view of the above, the Writ Petition is allowed. The proceedings before the Competent Authority are hereby abated in so far as it relates to the land of plot no. 165 of village Dharampur. Costs easy.

13. All applications stand disposed of.