

(2010) 10 AHC CK 0292

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 61777 of 2010

Hasan Jahan Khan and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-10-2010

Acts Referred:

General Clauses Act, 1897 — Section 6
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(3), 10(5), 10(6), 11, 12
Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 3, 4

Citation : (2010) 10 AHC CK 0292

Hon'ble Judges : Virendra Singh, J; Ashok Bhushan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. By this petition, Petitioners have prayed for quashing the order dated 12/7/2010, passed by the District Judge, Bareilly in Urban Ceiling Appeal No. 07 of 2008, Baboo Khan and Ors. v. State of U.P. through Collector District Bareilly. Mandamus has also been prayed commanding the Respondents not to interfere in the peaceful possession and use of the Petitioners over the Plot Nos. 257 and 338 measuring total area of 1464.33 Sq metres situate in Village Rahpura Choudhary and Mahlau District Bareilly declared surplus by the Respondent No. 3. It has further been prayed that mandamus be issued commanding the Respondents to delete the name of State Government from the revenue record and substitute the name of the Petitioners in respect of land in question.

2. Brief facts necessary for deciding the writ petition are: The Petitioners claim that Plot Nos. 257 and 338 were recorded in the name of Petitioners and their ancestors. In proceedings under the Urban Land (Ceiling and Regulation) Act, 1976. Statement was filed by Chotey Khan, father of Petitioner Nos. 1 to 3. Proposal for declaring 1464.63 sq metres as surplus was sent, to which no objections were filed. The Prescribed Authority vide its order dated 22/8/1983 declared an area of 1364.33 square metres as surplus in plot Nos. 257 and 338.

In accordance with Section 10(5) and 10(6) of the The Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter called the "Act 1976") the possession was claimed to be taken by the State of the surplus land on 14/3/1989. The Petitioners moved an application on 22/8/2003 praying for setting aside the order dated 22/8/1983. Another application was made on 10/9/2003 and 16/11/2003 stating that they are still in possession of the land in dispute. The Prescribed Authority/Additional District Magistrate (City) passed an order on 23/2/2008, rejecting the applications/representations of the Petitioners holding that after proceedings u/s 10(5) and 10(6) of the Act, 1976 the possession was taken on 14/3/1989 by the State Government and the name of the State Government has been recorded in the revenue records. The Petitioners filed appeal under the Urban Ceiling Appeal No. 07 of 2008 against the order dated 23/2/2008 of the Prescribed Authority. The said appeal has been dismissed by the learned District Judge vide order dated 12/7/2010. This writ petition has been filed challenging the said order. The appellate authority by the impugned order has held that actual and physical possession having been taken by the State Government, the competent authority had no jurisdiction to decide the application dated 23/8/2007.

3. Learned Standing Counsel appearing for the Respondents contended that in the present case the applications which were filed by the Petitioners before the Prescribed Authority were not maintainable. He submits that the Act, 1976 was rescinded by the Urban Ceiling and Repeal Act, 1999 (hereinafter called the Repeal Act, 1999) and at the time of repeal no proceedings being pending, there was no occasion for entertaining any application by the prescribed authority or entertaining an appeal by the appellate authority. Reliance has been placed by the learned Standing Counsel on the judgments of the Apex Court in *Munshi Lal (Dead) by Lrs. Vs. Distt. Judge, Aligarh and Another*, Division Bench judgment of this Court in *Ritesh Tiwari and Ors. v. State of U.P. and Ors.* 2009 (2) ADJ 97; *D. Ramkrishna Reddy and Ors. v. A.R.D. Officers and Ors.* (2007) 7 SCC 12 and *Sita Ram Bhandar Society, New Delhi Vs. Lt. Governor, Govt. of N.C.T. Delhi and Others*,

4. We have considered the submissions of the learned Counsel for the parties and have perused the record.

5. The Act, 1976 has been repealed by The Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter called the "Repeal Act, 1999"). Section 3 and 4 of the Repeal Act, 1999 are as follows:

3. Savings. (1) The repeal of the principal Act shall not affect-

(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 authorised 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 or any action taken thereunder, 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) of 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 authorised 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 legal proceedings.-According to Section 4 of the Repeal Act, 1999 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 and 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.

6. According to Section 4 of the Repeal Act, 1999 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.

7. From the facts as brought on record, no proceedings were pending on the date when the Repeal Act, 1999 was enforced. An application was filed by the Petitioners for the first time in the year 2003 on 10/9/2003, for exempting their land from ceiling and for recording the name of heirs of late Chotey Khan. The prescribed authority issued certain orders on the said application calling for inspection reports and also obtained legal opinion. The matter was referred to the State Government and the State Government vide its letter dated 24/11/2006, informed the prescribed authority that the land has already been vested in the State after proceedings under Sections 10(5) and 10(6) of the Act, 1976, there was no occasion for exempting the Petitioner's land from surplus. The prescribed authority thereafter rejected the applications of the Petitioners. The land having once vested in the State, there was no effect of the Repeal Act, 1999 on such vesting. The applications which were filed by the Petitioners for the first time in the year 2003 was not maintainable when the Act, 1976 having been repealed by the Repeal Act, 1999, and no proceedings being pending at the time of repeal. The Division Bench of this Court in Ritesh Kumar Tiwari's case (supra)

while considering the consequence of the Repeal Act, 1999 has laid down following in paragraph 17.

17. From a reading of Section 6 of the General Clauses Act, 1897, it would be apparently clear that the Repeal Act will not revive anything not in force or existing at the time at which the repeal takes effect nor will it effect the previous operation of the enactment or anything suffered thereunder. It logically follows that if the transfer of the surplus land by the recorded tenure holder is deemed null and void by operation of law as was existing on the date of transfer then the Repeal Act will not infuse life in the said non est deed and nor will it effect the operation of the enactment insofar as it declares the said sale deed to be null and void. Consequently we arrive at a conclusion that the Petitioner has no legal title over the land nor he can be permitted to question the order dated 30.3.1981 passed under the Act of 1976 against the recorded tenure holder after more than 25 years of the said order more so when he cannot represent the recorded tenure holder on the basis of a void sale deed.

8. Against the Division Bench judgment of this Court in Ritesh Kumar Tiwari's case (supra) Appeal No. 8178/2010, was filed in the Apex Court which has been dismissed by the Apex Court vide judgment and order dated 21/9/2010 affirming the judgment of the High Court. In Ritesh Kumar Tiwari's case (supra) writ of mandamus was prayed for commanding the Respondents not to interfere in the actual, physical possession of the Petitioners. The Apex Court took the view that such writ petition was not maintainable. Following was laid down in paragraphs 10 and 11.

10. The Appellants had not approached the High Court for quashing an order passed by the authority under the Act 1976. The relevant reliefs claimed by the Appellants writ Petitioners have been as under:

(i) to issue a suitable writ, order or direction in the nature of mandamus directing the Respondents not to interfere in the actual physical peaceful possession and construction of the Petitioners' multi storied building known as "Ganpat Green Apartment" situated at Khasra Plot No. 258, Village Kakraitha, Tehsil Sadar, District Agra.

(ii) To issue a suitable writ, order or direction in the nature of certiorari and to quash the directions contained in the letters dated 30th June, 2008 and 18th July, 2008 (Annexures 19 & 20 to the writ petition).

(iii) To issue suitable writ, order or direction constituting an enquiry committee to enquire into the role of and to fix responsibility on the erring Respondents for the illegal and undue harassment of the Petitioners in respect of the construction in question as also for the publication of the press reports dated 26.08.2008 (Annexure 21 to the writ petition) damaging irredeemably the business, reputation as well as goodwill of the Petitioners and to direct such authority found responsible for the said illegal acts to compensate the Petitioners for the aforesaid damage caused to their business, reputation and goodwill.

11. The letters referred to hereinabove are part of the record. The said letters are communications from the Deputy Collector (Sadar), Agra to Additional District Collector, (A), Prescribed Authority, Urban Land, Agra dated 30th June, 2008; and from Additional District Collector, (A), Prescribed Authority, Urban Land, Agra to Secretary, Agra Development Authority dated 18th July, 2008.

We fail to understand as to how the contents of such a communication between two officers of the departments of the government can be the subject matter of the writ petition. The Appellants could not have approached the High Court for the aforesaid relief sought by them. The writ petition was certainly not maintainable.

9. We are of the view that the Act, 1976 having been repealed, there was no occasion for filing the application before the Prescribed Authority and appeal before the District Judge. The District Judge, while deciding the appeal on merits has also taken the view that the proceedings initiated by the Petitioners by filing applications in the 2003 for the first time was not maintainable.

10. In view of the foregoing discussion, we are of the view that the Additional District Magistrate (City) has rightly rejected the representations of the Petitioners on merit taking the view that land has vested in the State after proceedings u/s 10(5) and 10(6) of the Act, 1976, hence the representations of the Petitioners could not be considered which view taken by the prescribed authority is correct. The applications filed by the Petitioners were misconceived since no proceedings were pending at the time of repeal of the Act nor any fresh proceedings could have been initiated after repeal of the Act by the Repeal Act, 1999. Petitioners are not entitled for the reliefs as prayed for in the writ petition.

11. The writ petition has no merit and is dismissed accordingly.