
(2018) 04 MP CK 0049
In the Madhya Pradesh High Court
Case No : WRIT PETITION NO. 1992 OF 2008

Kishanlal	Vs	APPELLANT
State Of Madhya Pradesh And Others		RESPONDENT

Date of Decision : 10-04-2018

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 3, 6, 9, 33, 35(2)
Urban Land (Ceiling and Regulation) Act, 1976 — Section 2(d), 10(5), 10(6)
Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 4

Citation : (2018) 04 MP CK 0049

Hon'ble Judges : VANDANA KASREKAR, J

Bench : Single Bench

Advocate : Rajas Pohankar, J. Pandit

Final Decision : Dismissed

Judgement

The petitioner has filed the present petition challenging the order dated 30.04.2007 passed by respondent No. 3.

2. Brief facts of the case are that the petitioner is the owner of land bearing Khasra No. 9/1 admeasuring to 1.618 hectares situated at Village

Madhotal, Tehsil and District Jabalpur. The said land is an agricultural land and is undiverted land. The petitioner was, thereafter, received an

information that the land is being taken by the State Government under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as

the 'Act'). The petitioner was required to submit a statement before the Competent Authority i.e. respondent No. 3. The petitioner submitted his

return under Section 6 of the Act mentioning the particulars of the land and specifying that it is an undiverted land. After submission of the return

under Section 6 of the Act, the petitioner was waiting for further proceedings, but no action has been taken under Section 9 of the Act. Thereafter, an

order was passed on 15.07.1983 declaring the land of the petitioner as surplus. Thereafter, a notice under Section 10(5) of the Act was published

directing the petitioner to surrender the possession and if he fails to do so, then the authorities will proceed to take the possession under Section 10(6)

of the Act. The petitioner, thereafter, raised an objection against the exparte order dated 15.07.1983, as no intimation or notice was given to the

petitioner before passing the order nor the statement as required under Section 9 of the Act was passed. Being aggrieved by the order dated

15.07.1983, the petitioner has preferred an application under Section 33 of the Act on 26.02.1997 along with an application for condonation of delay.

The same was dismissed vide order dated 21.10.1998 on the ground of delay. Against the order dated 21.10.1998, the petitioner has preferred a Writ

Petition No. 2604/1999. The said writ petition was dismissed vide order dated 23.06.1999. Against the order dated 23.06.1999, the petitioner preferred

a SLP before the Supreme Court. The Apex Court vide order dated 06.12.1999 has passed an order of status quo in favour of the petitioner. The said

civil appeal was disposed of by the Apex Court vide order dated 22.02.2005 and remanded the matter back to the High Court for a decision in

accordance with law after giving proper opportunity to the parties for placing their respective cases before the High Court.

Further it has been observed in the said order that the Court is not expressed any opinion on the question as to whether Sub Section 4 of Section 3 will

apply to the fact of the case in view of the fact that this appeal was pending before the Apex Court when the repeal Act came into force.

3. After remanding of the case, the High Court was pleased to pass an order dated 16.08.2005 directing that in similar matter, the Court has remanded

the cases before the competent authority to find out whether the possession has been taken over as provided under Section 10 of the Act and if the

possession has not been taken over, the Section 4 of the repeal Act of 1999 would come into play and the entire proceedings will stands abated.

Before the competent authority, the petitioner has point out that the provisions of Section 10(5) of the Act rest on other proceeding for the purpose of

land acquisition, therefore, they ought to have been considered while acquiring the land. While deciding the matter, the competent authority is required

to see whether a notice under Section 10(5) of the Act was duly served on the land owner. After the direction issued by this Court, as the respondents

have failed to comply with the same, the petitioner, therefore, filed a Contempt Petition No. 1307/2006 before this Court. In the said contempt petition,

the respondents have filed a report stating that the possession of the land in question has already been taken. Thus, on the basis of this report

submitted by the respondents, the contempt proceeding was dropped giving liberty to the petitioner to assail the order of competent authority in

accordance with law. Being aggrieved by the said report i.e. Annexure-P/8, the petitioner has filed the present petition.

4. The respondents have filed their return and in the said return, the respondents have stated that the petitioner has submitted a statement under

Section 6 of the Act. On 15.07.1983, the draft statement was prepared by the competent authority and notice under Section 8(3) of the Act was

served on the petitioner. However, the petitioner failed to submit his objection within a period of 30 days as per the said provision, therefore, the

objection dated 08.09.1983 was rejected by the competent authority as barred by limitation. The order dated 08.09.1983 was never challenged by the

petitioner before any authority and as such, it attained the finality. The final statement under Section 9 of the Act was duly served on the petitioner.

Pursuant thereto, the petitioner has submitted the objection against the final statement under Section 9 of the Act. Thereafter, a notice under Section

10(5) of the Act was duly issued to the petitioner in pursuant to the order dated 18.07.1986 of the competent authority. The said notice was served on

the son of the petitioner which is duly endorsed by the Chainman, Tilak Singh on 04.10.1986 and on the date of service of notice, the son of the

petitioner was major, therefore, the notice is not required to be served on the holder but any person in possession of the land. When the petitioner has

failed to deliver the possession within a period of 30 days as stipulated in the notice. As per Section 10(6) of the Act, the proceedings were forwarded

to the Tehsildar for taking possession of the land vide order dated 10.11.1986. On 20.11.1986, the Tehsildar directed to issue notice to the petitioner

for hearing on 07.02.1987. The said notice was served on the petitioner himself. However, despite service of notice, the petitioner failed to appear

before the Tehsildar on 07.02.1987. On 07.02.1987, again the Tehsildar has directed the petitioner to appear before him on 18.08.1987 which was duly

served on the petitioner on 29.08.1987. However, on 31.08.1987 only the mother of the petitioner was found on the spot and her thumb impression

was obtained on the order sheets. Yet another notice was issued to the petitioner to take possession on 11.11.1987 which was duly served on him on

07.11.1987. On 11.11.1987, the petitioner appeared before the Tehsildar and submitted an application seeking some time till his review is decided.

5. Thereafter, on 13.01.1987, the Tehsildar again passed an order to take possession. Pursuant thereto, on 16.08.1988, a notice was issued to the

petitioner to remain present on the land for possession. The notice was sought to be served on the petitioner on 17.08.1988, but he was out of station

hence, the notice was pasted in presence of the Kotwar. On 18.08.1988, the Tehsildar proceeded exparte against the petitioner under Section 35(2) of

the M.P. Land Revenue Code, 1959 and directed to take possession of the land of the petitioner and finally, the possession was taken by the Tehsildar

on 18.08.1988. Thus, in view of the submissions made hereinabove and the material available on record, the respondents have stated that the petitioner

was not only aware of each and every stage of proceedings under the Act, he even participated in the said proceedings through his Advocate. The

respondents have further stated that after repeal of the Act of 1976 w.e.f. 17.02.2000, as per the settled position of law as physical possession of the

land has already been taken by the respondents, therefore, the land stands vested in the Government.

6. The petitioner has filed rejoinder and in the said rejoinder, the petitioner has stated that it is evident from the proceedings that the proceedings have

not been initiated as contemplated under Section 10(5) and 10(6) of the 1976 Act. The petitioner has submitted that the Additional Collector on

18.06.1986 directed for issuance of notice to the petitioner under Section 10(5) of 1976 Act with a further direction to the Tehsildar Nazul to initiate

proceedings for taking over the possession if, the owner does not surrender the possession within 30 days. However, the notice dated 02.08.1986,

alleged to have been issued by the competent authority is not issued by the competent authority, but has been issued by some Sahayak Bhoo

Mapadhikari under his own seal and signature. Admittedly, the Sahayak Bhoo Mapadhikari is not competent authority under 1976 Act to issue notice

under Section 10(5) of the Act. The petitioner has further submitted that even if it is assume that the notice have been issued by the competent

authority, mere issuance of notice under Section 10(5) does not in law mean that the possession of the land have been taken, unless there is voluntarily

surrender of possession by the petitioner under his signature or the competent authority himself takes over the possession of land forcefully by

exercising the powers under Section 10(6) of the Act by preparing a panchnama. None of the requirement or statutory duty as contemplated under

Section 10(5) and 10(6) of the Act have been discharged by the competent authority in the present case and, therefore, upon coming into force of

1999 repeal Act the said proceedings are not saved and stands abated as per Section 3(2)(a) of the repeal Act of 1999. So far as, the delay and

latches is concerned, the petitioner has submitted that there is no delay and latches in filing the present writ petition as the SLP was pending before the

Supreme Court. 7. Learned counsel for the petitioner argues that the entire proceedings conducted by the respondents under the Urban Land (Ceiling

and Regulation) Act, 1976 are illegal and arbitrary. He submits that the notice as required under Section 10(5) and 10(6) of 1976 Act has not been

followed by the competent authority. The petitioner has raised specific ground in this writ petition, however, there is no reply to the said averments by

the respondents. The notice under Section 10(5) and 10(6) of the Act is mandatory. He further submits that the notice under Section 10(5) of the Act

was not issued by the competent authority. He further submits that as per Section 2(d) of the Act, the competent authority means any person

authorized by the State Government by notification in the Official Gazette to perform function of the competent authority. The copy of the notification

dated 05.10.1976 filed by the petitioner along with I.A. No. No. 15575/2016 for taking additional documents on record shows that the competent

authority in this case is the Additional Collector, Jabalpur. He further submits that the State Government has filed a document along with their written

submissions stating that the Nazul Tehsildar was appointed as the competent authority by the State Government under the Act is not in accordance

with Section 2(d) of the Act because the same has not been published in the Official Gazette. He further submits that as per order dated 16.08.2005

passed in earlier round of litigation, this Court has directed the competent authority to decide as to whether the possession as per law has been taken

over in accordance with law with a further observation that if, the possession has not been taken in accordance with law, the whole proceedings

would abate.

In compliance of the directions issued by this Court, the Additional Collector being the competent authority has decided the claim of the petitioner and had rejected the same vide its order dated 30.04.2007. This also goes to show that the competent authority is the Additional Collector and not Tehsildar Nazul as submitted by the State Government. He further submits that as per Section 10(6) of the Act, the forceful possession can only be taken by the competent authority and cause it to be given to any person authorized by the State Government. As per the order dated 30.04.2007, the petitioner was served with a notice dated 20.01.1987 for surrendering the possession of the land in favour of the State Government by appearing on spot.

8. From perusal of the notice dated 20.01.1987, it is clear that the same has been issued by the Court of Tehsildar and not by the competent authority and secondly the said notice has not been issued under Section 10(5) of the Act for handing over the possession. The panchnama has not been prepared by the authority under Section 10(6) for taking over ex-parte possession. The so called panchnama referred to by the State by Annexure-R/7 does not bear the sign of person who has received the possession and in place of person surrendering the possession the signature of the petitioner are not present on the contrary the name of some Ganesh Prasad Kotwar is written who is not the land owner. Learned counsel for the petitioner further relied on the judgement passed by the Apex Court in the case of Hari Ram Vs. State of UP and Others, 2013 (4) SCC 280, the judgement passed by this Court in the case of Ram Kumar Pathak and Others Vs. State of M.P. and Another, passed in Writ Appeal No. 734/2008, the judgement passed by the Apex Court in the case of Velaxan Kumar Vs. Union of India and Others, (2015) 4 SCC 325, the judgement passed by this Court in the case of Gayatri Devi and Others Vs. State of M.P. and Another, 2016 (4) MPLJ 460 and the judgement passed by this Court in the case of Thamman Chand Koshta Vs. State of M.P. and Others, 2016 (2) MPLJ 623.

9. On the other hand, the respondents/State has stated that the notice under Section 10(5) of the Act was issued on 04.10.1986 which was duly served on the petitioner's son which is deemed as due service of the notice. The petitioner himself has admitted the receipt of notice. This implies that he was in possession of the notice and the same has been duly served on him. Learned

Government Advocate further argues that the notice was issued under the order of competent authority. She submits that the order sheets dated 18.06.1986 shows that the competent authority itself had directed for issuance of notice and, therefore, it cannot be said that the notice was not issued by the competent authority. As the petitioner failed to surrender the possession, the possession was forcefully taken from the petitioner in accordance with Section 10(6) of the Act. The respondents have further submits that the Tehsildar is competent to take possession of the land and he has been duly authorized under Section 10(5) of the Act to take possession of the land. The possession has been taken under Section 10(6) of the Act which was duly witnessed by two witnesses. During the pendency of the said writ petition, the land was proposed to be allotted to the M.P.K.V.V. Co. Ltd. and the petitioner is not impleaded M.P.K.V.V as party to the said writ petition and accordingly, the petition is deserves to be dismissed on the ground of non joinder of party. She further relied on the judgement passed by this Court in the case of Manohar Kumari Daga and Others Vs. State of M.P. and Others, 2012 (3) MPLJ 75.Â Â

10. Heard learned counsel for the parties and perused the record.

11. The petitioner is the owner of the land bearing Khasra No. 9/1 admeasuring to 1.618 hectares situated at Village Madhotal, Tehsil and District Jabalpur. He submitted his return/statement before the authorities under the Act. Thereafter, the land admeasuring to 14687.38 square feet was declared as surplus and stood vested in the State Government vide order dated 15.07.1983. Being aggrieved by this, the petitioner has filed an appeal under Section 33 of the Act to the competent authority along with an application for condonation of delay. The appellate authority vide order dated 21.10.1998 dismissed the appeal on the ground of delay. Against which, the petitioner has filed a Writ Petition No. 2604/1999, which was also dismissed by this Court vide order dated 23.06.1999. Against the said order, the petitioner has preferred a SLP before the Apex Court and the Apex Court remanded the matter back to the High Court to consider the question whether the possession of the land has been taken over by the State Government, as during the pendency of SLP, the Urban Land (Ceiling and Regulation) Repeal Act, 1999 had came into force and was adopted by the State Government w.e.f. 17.02.2000.Â After remand of the matter, this Court has

remanded the matter to the competent authority to find out whether the possession has been taken over. As the order was not complied with, therefore, contempt petition was filed and the same was dropped in view of the order passed by the authority. The competent authority vide order dated 30.04.2007 has held that the possession of the land has been taken over and the land now stands vested in the State Government. Being aggrieved by that order, the present writ petition has been filed.

12. The said order was challenged by the petitioner on three grounds:-

- (i) The possession of the land in question has not been taken over in accordance with the procedure established by law,
 - (ii) The notice was not issued by the competent authority and,
 - (iii) The possession has not been taken by the competent authority.
13. So far as first ground is concerned, the learned counsel for the petitioner

submits that the procedure as prescribed under Section 10(5) and 10(6) of the Act has not been followed by the competent authority. As per the

respondents, the notice was duly served on the petitioner under Section 10(5) of the Act, however, as he failed to surrender the possession, therefore,

an action has been taken under Section 10(6) of the Act. The proceedings which has been taken by the competent authority under Section 10(5) and

10(6) of the Act has been reproduced as under:-

14. Thus, from the above proceedings, it is clear that the Additional Collector on 18.06.1986 directed for issuance of notice to the petitioner under

Section 10(5) of the Act with further direction to Tehsildar Nazul to initiate proceedings for taking over possession if the owner does not surrender the

possession within 30 days. The notice issued under Section 10(5) of the Act was not issued by the competent authority. From perusal of the

proceedings, it is also found that after issuance of notice under Section 10(5) of the Act, no notice as required under Section 10(6) of the Act has been

issued. The Apex Court in the case of Hari Ram (supra) in para 36 and 37 has held that a notice under Section 10(5) and 10(6) of the Act is

mandatory. Thus, from perusal of the aforesaid proceedings as well as the judgement passed by the Apex Court, it is clear that a notice under Section

10(6) of the Act is mandatory. However, as no notice has been issued by the respondents under Section 10(6) of the Act, therefore, the entire

proceedings are illegal.

15. So far as, second ground which is raised by learned counsel for the petitioner, regarding the notice was not issued by the competent authority is concerned, the Section 2(d) of the Urban Land (Ceiling and Regulation) Act, 1976 has defined the 'competent authority'. The said Section reads as

under:-

2(d) "competent authority" means any person or authority authorised by the State Government, by notification in the Official Gazette, to perform

the functions of the competent authority under this Act for such area as may be specified in the notification and different persons or authorities may

be authorised to perform different functions.

As per the said definition, the competent authority means any person authorised by the State Government by notification in the Official Gazette to

perform function of the competent authority.

16. The petitioner has filed an I.A. No. 15575/2016 for taking additional documents on record. Along with the said application, the petitioner has filed a

copy of the Gazette Notification dated 05.10.1976 by which the Additional Collector, Jabalpur was declared as competent authority under the Urban

land (Ceiling and Regulation) Act. The State has also filed along with their written submission a copy of the order dated 12.02.1979 passed by the

State Government thereby authorising the Tehsildar Nazul to take possession under Section 10(5) of the Act.

17. As per Section 2(d) of the Act, a competent authority means any person authorised by the State Government by notification in the Official

Gazette. In the present case, a notification was issued by the State Government on 05.10.1976 thereby authorising the Additional Collector, Jabalpur

as a competent authority under the Act. So far as, the order dated 12.02.1979 which is relied on by the Government Advocate, it is not an order issued

by the State Government in the Official Gazette, therefore, the Tehsildar Nazul cannot act as competent authority under Section 10(5) and 10(6) of the

Act for taking over the possession of the land of the petitioner. Thus, the notice issued by the Tehsildar Nazul is without any authority of law.

18. Third ground regarding the possession has not been taken by the competent authority is concerned, as per Section 10(6) of the Act, the forceful

possession can only be taken by the competent authority and cause it to be given to any person authorized by the State Government.

In the present case, a notice was served on 20.01.1987 for surrendering the land in favour of the State Government by appearing on spot. The said

notice has been issued by the Tehsildar and not by the competent authority and notice under Section 10(5) of the Act has not been issued for handing

over possession but has been issued for hearing of the case at 11.00 am. From perusal of the panchnama also, it is clear that ex-parte possession was

taken over and does not bear the sign of the person who has received the possession and in place of person surrendering the possession the signature

of the petitioner are not present on the contrary the name of some Ganesh Prasad Kotwar is written who is not the land owner.

19. This Court in the case of Ram Kumar Pathak (supra) in para 3, 6, 7 and 9 has held that forceful possession has to be taken by a proper

panchnama that too in the presence of land owner and two independent witnesses with full particulars and mere mentioning of two independent

witness without their particulars in the presence of the land owner would not constitute taking over of possession.

20. The Apex Court in the case of Velaxn Kumar (supra) in para 14 has reiterated that the due procedure has to be followed for taking over

possession by way of preparing proper panchnama in the presence of land owner and independent witness. The above decision has been followed by

the learned Single Judge of this Court in the case of Gayatri Devi (supra). The said judgement was upheld by the Division Bench of this Court in writ

appeal and, thereafter by the Apex Court also.

21. This Court in the case of Thamman Chand Koshta (supra) has again held that notice under Section 10(5) and 10(6) has to be issued by the

competent authority and the delegation of power under Section 10 (5) of the Act to Tehsildar Nazul is against the legislative intent. The para 14 of the

said judgement reads as under:-

14. In view of the aforesaid, issuance of notice, Annexure P/2, and the authorisation vide Annexure P/3 is contrary to the statute, however, it

cannot carry out the compliance of section 10(5) and 10(6) of the Principal Act. More so, the stand of the State Govt. regarding service of notice,

Annexures P/2, P/3 and P/4 treating it to be a notice under section 10(5) is not acceptable because in none of the notice 30 days time for delivery of

possession has been given to the holder. Thus, it is to be held that either as per

the stand taken by the State Govt. or looking to the documents, neither the compliance of section 10(5) nor the compliance of section 10(6) is available on record. It can safely be held further that if possession has not been delivered within the time so specified in the notice under section 10(5), then only the proceedings under section 10(6) would commence and in absence of compliance of section 10(5) which is mandatory, taking recourse of section 10(6) is not permissible. Thus, it can safely be held that in absence of following the procedure as specified in the Principal Act taking over of the possession, as per stand of the State Government is unsustainable.

22. The language of Section 10 (6) provides that the competent authority may take possession of the vacant land or take the possession and give it to State Government or hand it over to any person duly authorised by the State Government. It is the person authorised by the State Government who can receive the possession on behalf of the State Government once forceful possession has been taken by the competent authority, but the person so authorised cannot step in the shoes of the competent authority who has been notified in the Official Gazette as competent authority charges with the duty to take up proceedings under Section 10(5) and 10(6) of the Act.

23. So far as, order sheet dated 18.06.1986 is concerned, it only mentions that notice be issued to the petitioner, but if the consequential notice dated 02.08.1986 is seen, the same has been issued by Sahayak Bhoo Mapadhikari under his own seal and signature and not on behalf of the competent authority. On the contrary if the order sheet dated 20.11.1986 is seen, the same has been prepared by Tehsildar directing issuance of notice to the petitioner further sub delegating his duty to Nazul Sandharan Adhikari to remain present on his behalf to take possession of land in compliance of which notice dated 16.08.1988 was issued by the Tehsildar Nazul for hearing the matter on 18.08.1988 and on that date ex-parte forceful possession was shown to have been taken. Thus, the Tehsildar Nazul or Nayab Tehsildar has no authority to issue notice for taking possession.

24. Thus, in view of the aforesaid, as no proper notice was issued to the petitioner before taking action under the Act of 1976, this writ petition is allowed. The order dated 30.04.2007 (Annexure-P/8) is hereby quashed and it is declared that the proceedings under taken against the petitioner under the Urban Land (Ceiling and Regulation) Act, 1976 by the competent

authority is declared as abated and the respondents are directed to release the land of the petitioner.

25. No order as to costs.