
(2015) 10 AHC CK 0087
In the Allahabad High Court
Case No : Writ - C. No. 39146 of 2006

Lalu Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-10-2015

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 1, 10, 10(1), 10(3), 10(5)
Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 3, 4

Citation : (2015) 9 ADJ 683

Hon'ble Judges : Krishna Murari and Amar Singh Chauhan, JJ.

Bench : Division Bench

Advocate : Mansoor Ahmad, for the Appellant; P.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

Krishna Murari, J.—Heard Sri Mansoor Ahmad, learned counsel for the petitioner and the learned Standing Counsel representing the State-respondents.

2. This writ petition arises out of proceedings under Urban Land (Ceiling and Regulation) Act, 1976 (herein after referred to as Act 1976).

3. Undisputed facts, as they cull out from the pleadings, are that plot No. 52 area 1.62 acres, plots No. 22 and 143 situated in village Mau, Tehsil and District Moradabad and plot No. 44 area 0.85 acres situate in village Harthala, Tehsil and District Moradabad was originally recorded in the name of Ghasi Ram son of Behari (predecessor-in-interest of the present petitioners No. 1 to 5) and one Buddha son of Behari.

4. In the first set of proceedings under the Act of 1976 which was registered as Ceiling Case No. 2054/3810, State Vs. Ghasi Ram an area ad-measuring 1588.98 Sq. meters of land out of plot No. 52-A was declared surplus in the hands of Ghasi Ram whereas in another Ceiling Case No. 2066/3778, State Vs. Buddha total an area ad-measuring 3308.93 Sq. meters of land out of plot No. 52-A, 52-B and 22 was declared surplus in the hands of co-tenure holder Buddha. The land

was declared surplus in the hands of both the recorded tenure holders vide common order dated 15.06.1979 passed by the Competent Authority, Urban Land Ceiling, Moradabad. In pursuance of the aforesaid order dated 15.06.1979 consequential proceedings under Section 10(1), 10(3) and 10(5) of the Act, 1976 were separately undertaken against both the recorded tenure holders Ghasi Ram and Buddha. The actual physical possession of the land declared surplus was taken from Ghasi Ram on 07.06.1983 whereas possession from Buddha was taken 24.02.1990. A major portion of the land declared surplus, possession of which was taken by the State was allotted in favour of the Irrigation Department on 02.12.1986 and they have constructed Godown over the same.

5. Thereafter, second set of proceedings under the Act of 1976 were drawn against the present petitioners No. 1 to 5 vide Ceiling Case No. 2971/6691, State Vs. Lallu, Ceiling Case No. 2970/6692, State Vs. Bahoran Singh and Ceiling Case No. 2972/6693, State Vs. Karam Singh. Karam Singh after his death is represented by respondents No. 3 to 5 in this writ petition. The aforesaid cases were decided by the Competent Authority, Urban Land Ceiling, Moradabad vide common order dated 09.03.1998 and the following area of the plot numbers held by the petitioners was declared surplus:

6. The dispute in the present writ petition is confined to the aforesaid area of the plots as is also clear from the prayer made in the writ petition. There is no dispute in respect of the area of the plots which was declared surplus in the earlier ceiling proceedings initiated against the predecessor-in-interest of the petitioners, admittedly, the possession whereof was taken by the State.

7. In respect of the plots in dispute involved in the present writ petition, a categorical averment has been made in paragraph 8 of the writ petition that no proceedings under Section 10(1), 10(3) and 10(5) of the Act 1976 was ever taken after passing of the order dated 09.03.1998 by the Competent Authority, Urban Land Ceiling, Moradabad and thus after the enforcement of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (herein-after referred to as the Repeal Act, 1999) with effect from 18th March, 1999 all the proceedings stand abated as no physical possession of the land declared surplus was ever taken by the State. From a perusal of the counter affidavit, we find that there is no specific denial of the averment made in the writ petition that proceedings under Section 10(1), 10(3) and 10(5) of the Act 1976 were never taken. No document has been filed along with the affidavit to substantiate that proceedings under Section 10(1), 10(3) and 10(5) of the Act 1976 was taken. Only bald allegations have been made in the counter affidavit that after the proceedings were concluded against the petitioners vide order dated 09.03.1998, possession of the surplus land was taken over and transferred to Moradabad Development Authority on 29.11.2001.

8. After the matter was heard by us on 18.08.2015, following order was passed:

"During the course of argument, it transpired that a specific averment has been

in paragraph 8 of the writ petition that no further proceeding under Section 10(1), 10(3) & 10(5) of the Urban Land (Ceiling and Regulation) Act, 1976 has ever been taken after passing of the order dated 09.03.1998 under Section 8(4) of the Act. Reply to the averments made in paragraph 8 of the writ petition is contained in paragraph 8 of the counter affidavit filed on behalf of the State. It reads as under:

"8. That the contents of paragraph No. 8 of the writ petition are incorrect, misconceived hence vehemently denied. In reply thereto it is submitted that as in the above mentioned case under Section 10(5) Tehsildar, Moradabad has taken the possession of surplus land."

Thus there is no denial of the specific averments made in writ petition that no notification or notice under Section 10(3) of the Act was issued or published. Unless notification under Section 10(3) is published the land declared surplus cannot vest in the State and the State cannot proceed further in the matter much less take over possession.

Sri Vishnu Pratap, learned Standing Counsel, on the basis of photocopy of the original record made available by the Ceiling Authorities, states that the same does not contain any notification under Section 10(3) or any notice or 10(5) of the Act.

However, in order to verify the veracity, it is necessary to peruse the original record.

Put up on 25 August, 2015 in the list of additional cause list, on which date learned Standing Counsel shall produce the original record pertaining to Ceiling proceedings in respect of the petitioners."

9. In compliance of the aforesaid order, original record was placed before us when the matter was finally heard on 10.09.2015. From a perusal of the original record, we find that there is no document to establish that any notification under Section 10(1) of the Act 1976 was issued and published. Similarly, there is nothing on record to establish that notification under Section 10(3) of the Act 1976 was issued and published in the official Gazette. Section 10(1) and 10(3) of the Act 1976 reads as under:

"10. Acquisition of vacant land in excess of ceiling limit. (1) As soon as may be after the service of the statement under section 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that-

(I) such vacant land is to be acquired by the concerned State Government; and

(II) the claims of all person interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land,

to be published for the information of the general public in the Official Gazette of

the State concerned and in such other manner as may be prescribed (3) At any time after the publication of the notification under sub-section (1) the competent authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to in the notification published under sub-section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified."

10. A perusal of the aforesaid provision and the scheme of the Act go to show that after service of final statement prepared under Section 9 of the Act, 1976 a notice under Section 10(1) is required to be published giving details of the vacant land held by the tenure holders in excess of the ceiling limit notifying that the said vacant land is to be acquired by the State and any person interested in the said land may make their claim by filing objection. The notification is required to be published in the official Gazette for information of the general public and in such other manner as may be prescribed. The scheme of the Act further goes to show that after deciding the claim/objection, if any, made in respect of such land which is notified under Section 10(1), the Competent Authority shall again issue a notification under Section 10(3) of the Act 1976 containing a declaration that excess vacant land referred to in the notification shall be deemed to have been acquired by the State Government with effect from the date specified in the declaration and upon publication of such declaration in the official Gazette, the land shall be deemed to have been vested absolutely in the State Government free from all encumbrances. Thereafter, the competent authority is required to issue notice under Section 10(5) of the Act 1976 to the tenure holders to surrender the possession of the land declared surplus to the State Government or to any person duly authorized by the State Government in this behalf and on refusal of the tenure holder to comply the same forcibly possession can be taken under Section 10(6) of the Act 1976. The Scheme of the Act further goes to show that possession of the land declared surplus can only be taken after it vests in the State on publication of notification in the official Gazette under Section 10(3) of the Act 1976. Unless absolute vesting takes place, the State cannot proceed to take possession of the land declared surplus.

11. Thus, it is clear that it is only upon publication of notification under Section 10(3) of the Act 1976 in the official Gazette, the land declared surplus stand vested in the State Government free from all encumbrances. The Act of 1976 came to be repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 which was enforced in the State of U.P. on 18th March, 1999.

12. For better appreciation of controversy, the relevant provisions 2, 3 and 4 of the Act 1999 are reproduced herein below:

"2. Repeal of Act 33 of 1976. - The Urban Land (Ceiling and Regulation) Act,

1976 (herein after referred to as the Principal Act) is hereby repealed.

3. Saving. - (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 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 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 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 legal proceedings. - 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 1, 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."

13. A perusal of the aforesaid provisions of the Repeal Act 1999 goes to show that all proceedings relating to any order made or purported to be made prior to the commencement of the Repeal Act 1999 before any Court, Tribunal or Authority shall abate. Section 3 of the Repeal Act 1999, however, saved the vesting of such land the possession of which has already been taken over by the State Government or any person duly authorized by the State Government in this behalf or by competent authority from the tenure holder. A conjoint reading of Section 3 and 4 of the Repeal Act 1999 go to show that in all such cases where possession has not been taken after vesting by virtue of notification under Section 10(3) of the Act, 1976, the proceedings shall abate. In the present case, from a perusal of original record produced before us, we do not find that any proceedings under Section 10(3) of the Act 1976 was taken. Thus, in the absence of publication of notification in the official Gazette under Section 10(3)

of the Act 1976, the land declared surplus in the hand of the petitioners did not vest in the State Government. Once the vesting was not there, the proceedings shall be deemed to be pending and liable to be abated under Section 4 of the Repeal Act 1999.

14. In view of the above facts and discussions, the petitioners are entitled to be extended the benefit of the Repeal Act 1999 and the writ petition deserves to be allowed and is allowed. A writ of mandamus is issued commanding the respondents not to interfere with the physical possession of the petitioners over the area of the plots in dispute, details whereof have been mentioned in the chart of the judgment. A further mandamus is issued commanding the respondents to mutate the names of the petitioners over the said area of the plots in dispute. However, in the facts and circumstances, there shall be no order as to costs.