

(2014) 10 AHC CK 0151

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 64061 of 2013

Panna Lal

APPELLANT

Vs

Collector

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Citation : (2014) 10 ADJ 516 : (2015) 108 ALR 1 : (2015) 126 RD 570

Hon'ble Judges : Tarun Agarwala, J; Narayan Shukla, J

Bench : Division Bench

Advocate : Harish K. Yadav, Advocate for the Appellant; S.P. Srivastava and S.P. Singh, Advocate for the Respondent

Judgement

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1. Baladeen was the original tenure holder of Gata No. 139 having an area 4872.94 sq. meter situate in village Dadanpur, Tehsil Chail District Allahabad. Under the Urban Land (Ceiling and Regulation) Act, 1976, the competent authority declared 3372.94 sq. meter as surplus land. The petitioners are the children and grand children of late Baladeen who have filed the present writ petition alleging that they are still in possession of the land in question and that the order of the District Magistrate dated 22.5.2013 rejecting their application should be set aside and the name of State of U.P. should be deleted from the revenue records and their names should be incorporated in view of the fact that all the proceedings under the Urban Land (Ceiling and Regulation) Act, stood repealed by virtue of the Urban Land (Ceiling and Regulation) Repeal Act, 1999. This Court under the earlier ground of litigation had directed the petitioner to make a representation which has been rejected by an order dated 15.5.2013. The petitioner in paragraph 10 of the writ petition has made a categorical statement that they are in actual and physical possession. This fact has not been denied by the respondents in paragraph 6 of the counter-affidavit.

From a perusal of the order of the District Magistrate, the Court finds that the

possession was alleged to have been taken by the delegate of the District Magistrate on 18.9.1984 pursuant to the order dated 18th September, 1984 declaring the land as surplus. The order of District Magistrate aforesaid further indicates that the land was transferred to Allahabad Development Authority on 10.1.1990 and possession of such transfer was recorded in the notice under Section 10(5) of the Act. Nothing has been indicated in the impugned order that voluntary possession was given by the original tenure holder or children or by the grand children under Section 10(5) of the Act nor anything has been indicated that upon failure to give voluntary possession under Section 10(5) by the original tenure holder or by his heirs, actual and physical possession was taken pursuant to the proceedings initiated under Section 10(6) of the Act.

2. From the impugned order, it is apparently clear that no proceeding was initiated under Section 10(6) of the Act and consequently, the alleged possession taken on paper and thereafter transferring the same to Allahabad Development Authority appears to be wholly illegal and without any justification.

3. In State of U.P. Vs. Hari Ram, , the Supreme Court has held that actual physical possession is required to be taken by the State under Section 19(5) and 10(6) of the Act otherwise the benefit of the Repeal Act would have to be given to the tenure holder. Similar view was held by this Court in the case of Yasin Vs. State of U.P., . We also find that inspite of time being granted no counter-affidavit has been filed by the Allahabad Development Authority nor the counsel is present before the Court In the light of the aforesaid the impugned order of the District Magistrate cannot be sustained and is quashed. Writ petition is allowed. A writ of mandamus is issued directing the respondents not to interfere in the possession of the petitioners over the land in dispute. Further a writ of mandamus is issued commanding the State of U.P. to remove the name of the State of U.P. and/or remove the name of the Allahabad Development Authority from the revenue record and record the names of the petitioners on the land in question.