
(2011) 04 MP CK 0070

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3053 of 2000

Prabhudayal and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 05-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

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, 3(2), 4

Citation : AIR 2011 MP 199

Hon'ble Judges : Alok Aradhe, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Alok Aradhe, J.—In this writ petition under Article 226/227 of the Constitution of India, the petitioners seek a direction for quashment of the orders contained in Annexures P/I, P/5, P/11, P/12, P/14 and P/15 as well a direction restraining the respondents from taking possession of the land belonging to the petitioners bearing Khasra Nos. 35/1 and 92/ 2 situate at village Gohalpur, District Jabalpur on the ground that the same has been declared surplus under the provisions of Urban Land (Ceiling and Regulation) Act, 1976.

2. Facts giving rise to filing of the writ petition briefly stated are that father of petitioner Nos. 1 and 2 late Sarmanlal was the owner of certain lands situate at Village Gohalpur, Jabalpur. Pursuant to the partition effected amongst the members of the family, the land held by late Sarmanlal was allotted to him as well as the petitioners. A proceeding u/s 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the 1976 Act) was initiated against the petitioners as well as their father namely late Sarmanlal. On receipt of notice, the petitioners as well as their father submitted a return on 4-8-1980 before the competent authority. The competent authority on receipt of the return filed on behalf of the petitioners as well as their father, called for the report of

the revenue officer in respect of lands in question. Thereafter, the competent authority by order dated 29-9-1997 passed a final order u/s 8(9) of the 1976 Act by which land admeasuring. 995 hectares was declared surplus. While passing the aforesaid order, the competent authority also took into account land bearing Khasra No. 39/2 situate at village Gohalpur and declared the same to be surplus.

3. The petitioners immediately on receipt of the order dated 29-9-1997 filed an application u/s 45 of the 1976 Act on 25-11-1997 for correction of clerical error. It was pointed out in the application that land bearing Khasra No. 39/2 situate at village Gohalpur, Distt. Jabalpur was already acquired by the Jabalpur Development Authority in the year 1968 and the compensation has already been paid to the petitioners. However, the aforesaid land has inadvertently been taken into account while computing the entitlement of the petitioners to hold the land. However, the aforesaid application was not decided. Thereafter, by a notice issued u/s 10(5) of the 1976 Act dated 31-5-1999 Annexure P/5 by the competent authority, Urban Land Ceiling, Jabalpur, the petitioners were informed that they should handover the possession of land admeasuring 9950 Sq. metre within a period of 30 days to the Tahsildar, Nazul. The Tahsildar, Nazul was directed that in case the petitioners do not handover the possession of the lands, he should take requisite action to take possession. Thereupon, the petitioners again submitted a reply Annexure P/6 and pointed out that the clerical error which has crept in with regard to land bearing Khasra No. 39/2 be corrected, as the aforesaid land has already been acquired by the Jabalpur Development Authority and is not in possession of the petitioners.

4. The Naib Tahsildar, Nazul issued a notice Annexure P/7 by which the petitioners were asked to appear on 19-7-1999. The petitioners again submitted a reply to the aforesaid notice in which similar objection was taken. Thereafter, by order dated 9-3-2000, the Tahsildar directed the Naib Tahsildar, Nazul to immediately take possession of the land and to submit an explanation forthwith to the competent authority, Urban Land Ceiling, as to why there was delay in taking over the possession. However, on 10-3-2000, the Naib Tahsildar, Nazul recorded an order sheet that he had authorized the Patwari to take possession and the Patwari has already taken possession on 10-2-2000. Accordingly, the records were directed to be corrected. On 24-4-2000, the records were corrected and the proceedings were closed. It is the case of the petitioners that in fact the possession of the lands in question has not been taken from the petitioners and they continue to be in physical possession and, therefore, by virtue of Section 3 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, they have become owners of the suit lands. However, on the assumption that respondents have taken possession of the lands in question, on 10-2-2000 they are trying to interfere with the possession of the lands in question of the petitioners. In the obtaining factual matrix, the petitioners have approached this Court for redressal of their grievance.

5. The respondents have filed a return in which inter-alia it is submitted that

Naib Tahsildar, Nazul issued notices to the petitioners for handing over the possession of the surplus lands. On receipt of the notice the petitioners submitted an objection. Thereafter, the Naib Tahsildar, Nazul has taken possession of the lands. It has further been submitted that the petitioners have filed an appeal against the order by which possession was taken. It has further been averred in the return that since the possession was taken from the petitioners prior to commencement of Repeal Act of 1976 i.e. on 17-2-2000, therefore the lands in question has vested with the State Government and petitioners have no right in respect of the lands in question. The writ petition deserves to be dismissed as abated.

6. Shri D. K. Dixit, learned counsel for the petitioners submitted that in fact the petitioners did not hold the land in excess of the ceiling limit. However, the competent authority has wrongly taken into account land bearing Khasra No. 39/2 which was acquired long back by the Jabalpur Development Authority in the year 1968 while computing the entitlement of the petitioners to hold the land. However, if Khasra No. 39/2 is excluded from consideration, it is apparent that petitioners hold the land with the ceiling limit. The possession of the lands in question has not been taken in accordance with law and the petitioners continue to be in possession of the lands in question and have become owners in view of Section 3 of the Repeal Act, 1999. In support of his submission, learned counsel for the petitioners has placed reliance on decisions reported in 2011 (1) MPJR 152 , as well as decision of the Supreme Court in Pt. Madan Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and Others, On the other hand, learned Government Advocate submitted that possession of the lands in question was taken from the petitioners on 10-2-2000 i.e. prior to commencement of the Repeal Act, and therefore, the lands have vested with the State Government. The writ petition is liable to be dismissed as abated. In support of his submissions, learned Government Advocate has placed reliance on decision of this Court in Bharat Lal and another v. State of M. P. and Another (2004) 5 MPHT 372 and Smt. Sunderbai and Others Vs. State of M.P. and Another,

7. I have considered the submissions made on both sides. Section 10(5) of the 1976 Act provides that where any vacant land is vested in the State Government u/s 10(3) of the 1976 Act, the competent authority may by notice in writing order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorized by the State Government in this behalf within 30 days of service of notice. Sub-section (6) of Section 10 of the 1976 Act provides that if the concerned person refuses or fails to comply with an order u/s 10(5) of the Act, the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorized by such State Government in this behalf and may for the purpose, use such force as may be necessary.

8. The provisions of the 1976 Act were repealed by the Urban Land (Ceiling and

Regulation) Repeal Act, 1999 (hereinafter referred to as the Repeal Act, 1999). Section 3(2)(a) of the Repeal Act, 1999 provides that where any land is vested with the State Government u/s 10(3) of the Act, the 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 if any amount has been paid by way of compensation to the land holder, then such land shall not be restored unless the amount paid, if any, has been refunded to the State Government. Section 4 of the 1999 Act provides that all proceedings relating to any order made or purported to be made under the Principal Act pending immediately before the commencement of the Act, before any Court, Tribunal or other authority shall abate, except the proceedings under Sections 11, 12, 13 and 14 of the 1976 Act. Admittedly, the provisions of the Repeal Act, 1999 have come into force in the State of Madhya Pradesh with effect from 17-2-2000.

9. In *Metalcraft Industries Vs. State of M.P. and Others*, it has been held that if the possession of the land has not been taken from the land holder and the compensation has not been paid, the proceedings relating to land acquisition shall stand abated in view of Section 4 of the Repeal Act, 1999. In *Sudhir Agrawal and Another v. The State of M. P. and Others* 2004 (3) MPHT 16 (NOC), it has been held that if the possession of the land which has been declared surplus is not taken over in accordance with statutory provisions, the entire proceedings abate and the respondents cannot take any action for taking over possession of the land in question. Similar view has been taken in *Chhidi v. State of M.P.* 2005 (4) MPLJ 14.

10. In the backdrop of aforesaid well settled legal position, facts of the case may be seen. I have carefully gone through the original record which was produced by the learned Government Advocate for perusal of the Court. The records shows that the final order was passed on 29-9-1997 u/s 8(9) of the 1976 Act declaring the land admeasuring. 995 hectares as surplus. Thereafter, the proceedings for taking possession of the land were initiated by the Naib Tahsildar, Nazul on 1-7-1999 and the notice was issued to the petitioners. The petitioners appeared in the said proceedings on 19-7-1999 and filed reply. The case was thereafter adjourned to 26-7-1999. On 26-7-1999, it was adjourned to 6-8-1999, as the presiding officer was busy with election duty. Thereafter, on 6-8-1999 the case was adjourned to 26-8-1999 as the presiding officer was busy with administrative duties. On 15-12-1999, the Naib Tahsildar, Nazul by a communication required the competent authority to furnish particulars of the land which have been declared surplus so that possession of the land can be taken and the proceedings in the case were fixed for 3-1-2000. On 3-1-2000 since the requisition information was not supplied by the competent authority accordingly, the case was fixed for 9-2-2000. On 9-2-2000, the Naib Tahsildar, Nazul directed the Patwari to contact the Revenue Inspector and to take possession. However, the record shows that on 9-3-2000 the proceedings were requisitioned by Tahsildar in view of the displeasure shown by the Collector contained in his D. O. letter dated 10-2-2000 that there has been delay in taking

possession of the land in question. Accordingly, the Naib Tahsildar was immediately directed to take possession of the land in question and to furnish an explanation to the Tahsildar with regard to the delay caused in taking possession of the land in question. However, the very next day i.e. on 10-3-2000, the Naib Tahsildar wrote an order sheet that the Patwari has already taken possession of the lands in question on 10-2-2000. Thereafter, on 10-4-2000, an order sheet was recorded that possession of lands bearing Khasra Nos. 35/1, 39/2 and 92/2 situate at village Gohalpur, District Jabalpur admeasuring 0.010 hectares, 870 hectares and. 024 hectares was taken by the Patwari on 10-2-2000 and, therefore, the record be corrected accordingly and the proceedings were closed on 24-4-2000.

11. At the cost of repetition at this stage, it is relevant to notice that provisions of the Repeal Act, 1999 became applicable to the State of Madhya Pradesh on 17-2-2000. Section 10(5) of the Act requires that the competent authority may by notice order the person to be in possession of the land which has been declared surplus to surrender or deliver possession to the State Government or to any person duly authorized by the State Government in this behalf within a period of 30 days of the service of notice. Section 10(6) of the, Act requires that if the person fails to deliver the possession, the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorized by such State Government in this behalf. Thus, from perusal of the record, the following facts emerge which irresistibly lead to the conclusion that in fact, the possession of the land was never taken from the petitioners:

i) That land bearing Khasra No. 39/2 admeasuring 2.74 acres was acquired by the Jabalpur Development Authority and compensation was already paid to the petitioners as is apparent from the communication dated 19-9-1997 (Annexure-P-3) sent by the Chief Executive Officer, Jabalpur Development Authority to the competent authority Urban Land (Ceiling and Regulation) Act. Thus, land bearing Khasra No. 39/2 admeasuring 2.74 acres was not in possession of the petitioner when an order declaring the land as surplus bearing Khasra No. 39/2 was passed by the competent authority on 29-9-1997.

ii) That the competent authority by notice dated 31-5-1999 (Annexure P/5) had authorized the Tahsildar Nazul to take possession of the excess land.

iii) The Naib Tahsildar, Nazul had initiated proceedings for recovery of the possession from the petitioners.

iv) On 9-3-2000 an explanation was sought from the Naib Tahsildar, Nazul by the Tahsildar in view of the letter of the Collector dated 10-2-2000 as to why there is a delay in taking possession of the land in question and he was asked to immediate take possession. However, thereafter on the next day, the Naib Tahsildar wrote an order sheet that possession has been taken by the Patwari on. 10-2-2000.

v) By order dated 15-12-1999, the Naib Tahsildar, Nazul had himself requested the competent authority to furnish particulars of land which was declared surplus so that possession could be taken and proceedings were fixed for 3-1-2000. On 3-1-2000 since requisite information was not available, therefore, the proceedings were adjourned to 9-2-2000. There is nothing on record to show that particulars of land were furnished by competent authority either to Naib Tahsildar, Nazul or to Patwari. Therefore, in the absence of particulars of the lands in question, Patwari could not have taken possession of lands in question on 10-2-2000.

vi) If the possession was taken by the Patwari on 10-2-2000, there was no occasion to write the order sheet dated 9-3-2000.

vii) That Patwari was not authorized by the competent authority under the Act to taken possession of the land in question.

viii) That Panchnama which has been placed on record as Annedure P/14, does not bear the signature of any of the petitioners and shows that even the possession of the land bearing Khasra No. 39/2 has been taken which was vested in Jabalpur Development Authority on 31-5-1968 and the possession of which was already taken long back by the Jabalpur Development Authority. Thus, the memorandum shows taking over of the possession of the land which was already in possession of the Jabalpur Development Authority since long. This renders the Panchnama suspicious.

ix) As per the version putforth by the respondents, the Patwari had taken possession on 9-2-2000 then in such a case, there was no occasion to the Collector to seek explanation from the Naib Tahsildar to furnish explanation with regard to delay in taking possession vide letter dated 10-4-2000 An-nexure P/12. The aforesaid letter clearly states that possession of the land in question has not been taken.

x) That in the return in para 2, the respondents have taken a stand that Naib Tahsildar, Nazul has taken possession of the land whereas, the record reveals that allegedly the Patwari has taken possession on 9-2-2000. Thus, there is a contradiction in the stand of respondents with regard to delivery of possession in the return as well as in the record which has been produced by the respondents for perusal of this Court.

xi) That even if it is assumed that the Patwari has taken possession on 9-2-2000, then also it cannot be said that possession of the land has been taken from the petitioners in accordance with law as the Patwari was never authorized by the competent authority to take possession. The competent authority had authorized the Tahsildar, Nazul to take possession of the land in question. The record reveals that Tahsildar, Nazul has not taken possession of the land in question prior to 17-2-2000 i.e. prior to commencement of the Repeal Act, 1999.

12. Thus, for the aforementioned reasons, the inevitable conclusion is that the

possession has not been taken from the petitioners in accordance with law prior to commencement of the Repeal Act, 1999 and therefore, the proceedings under the 1976 Act have abated in view of Section 4 of the Act.

13. In the result, the writ petition succeeds. The orders contained in Annexure P/1 dated 21-9-1997 as well as notice Annexure P/5 dated 31-5-1999, the Panchnama contained in Annexure P/14 are quashed and the proceedings initiated vide Annexure P/15 u/s 26 of the Act, 1976 are held to have abated in view of Section 4 of the Repeal Act. It is further held that in view of the provisions of Repeal Act, 1999, the respondents cannot take possession of the land in question from the petitioners. Accordingly, the writ petition is allowed.