
(2011) 06 UK CK 0078

In the Uttarakhand High Court

Case No : Writ Petition No. 596 of 2010 (M/S)

Prem Singh

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Constitution of India, 1950 — Article 252(2)
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(2), 10(3), 10(5), 11, 12
Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 4

Citation : (2011) 06 UK CK 0078

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Judgement

B.S. Verma, J.—Heard learned Counsel for the parties and perused the record.

2. By means of this petition, the Petitioner has sought a writ in the nature of certiorari quashing the impugned order dated 15-9-1984 and the order dated 18-6-1992 (Annexure Nos. 1 and 4 to the writ petition passed by the Competent Authority, Urban Land Ceiling, Dehradun.

3. From a perusal of record, it appears that initially Sri Khajan Singh filed his statement of properties held by him u/s 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976, hereinafter referred to as the Act and the case was registered as Case No. 34/84 State v. Khajan Singh. It appears that the land holder Khajan Singh had died on 2-4-1980 and objections were filed by the legal heirs of Khajan Singh namely Prem Singh, Petitioner herein and Mangal Singh sons of late Laxmi Singh against the draft statement issued u/s 8(3) of the Act.

4. The Competent Authority after completing necessary formalities and inquiry has held that deceased Khajan Singh was unmarried and Khajan Singh and Laxmi Singh, who are real brothers, and each of them possesses vacant land to the tune of 7161.42 sq.mt. and has declared 5161.42 sq.mt. of land in possession of Khajan Singh as surplus land and also directed to issue notice to Laxmi Singh, father of the Petitioner herein u/s 6(2) of the Act by his order dated

15-9-1984.

5. A perusal of the record further reveals that one Dr. V.K. Goyal son of Sri Madan Lal Goyal filed his objection u/s 6(2) of the Act which was registered as Case No. 34/1904 State v. Khajan Singh u/s 10(2) of the Act. In that case, the Competent Authority in his order dated 28-4-1988 has held that the proceedings initiated against Khajan Singh under the Act are null and void and the surplus land as declared under the earlier order dated 15-9-1984 is not tenable. Consequently, the order dated 28-4-1988 was set aside.

6. It appears that the matter was taken up by the State Government u/s 34 of the Act for deciding on the point whether the order dated 28-4-1988 passed by the Competent Authority is legal and proper or not. The State Government by order dated 18-6-1992 has ultimately upheld the order dated 15-9-1984 and set aside the subsequent order dated 28-4-1988, which gave rise to the present writ petition.

7. The main ground of challenge raised in this writ petition is that the Petitioner has been in physical possession of the land in dispute and that possession of land has not been taken by the State u/s 10(3) of the Act.

8. Counter affidavit has been filed on behalf of the Respondent No. 2. Along with the counter affidavit, the Respondent No. 2 has annexed the alleged possession certificate as Annexure-4 to the counter affidavit.

9. It is pertinent to mention that in the counter affidavit it has been admitted in paragraph No. 8 that a notice u/s 10(5) of the Act was issued to Sri Khajan Singh on 22-1-1987. It has also been stated that possession over surplus land was taken on 12-3-1987. In the counter affidavit the averment made by the Petitioner that Khajan Singh died on 2-4-1980 has not been denied at all.

10. I have perused the memo of possession (Annexure-CA-4 to the counter affidavit). This possession certificate does not contain the signature of the tenure holder from whom the possession of land has been alleged to be taken. Moreover, the Respondents have not filed any document showing that declaration has been published u/s 10(3) of the principal Act.

11. The Act Urban Land (Ceiling and Regulation) Act, 1976 (Act No. 33 of 1976) was repealed by the Central Act No. 15 of 1999. The Legislature of State of U.P. has since adopted the provisions of the Urban Land (Ceiling and Regulation) Act 1999, by a resolution as required by Article 252(2) of the Constitution, which has come into force in Uttar Pradesh on 18-03-1999 and the same are also applicable in the State of Uttarakhand.

12. Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 provides as under:

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 11, 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. For the reasons and discussion above, it cannot be said that declaration u/s 10(3) of the Principal Act has been published in the case at hand, therefore, the present proceedings have to be abated and are hereby abated u/s 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999.

14. The facts of the case at hand are squarely covered by the judgment of the Apex Court in the case of Pt. Madan Swaroop Shrotriya Public Charitable Trust v. State of U.P. and Ors. 2000 AIR SCW 1882

15. In view of the above, the proceedings before the Competent Authority stand abated.

16. With the above observation, the Writ Petition is finally disposed of. Ordered accordingly.