

(2003) 02 MP CK 0005

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2842 of 1998

Rajendra Prasad Shrivastava and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 05-02-2003

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(1)

Citation : (2003) 4 MPLJ 511

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : D.K. Dixit, for the Appellant; Smt. Seema Agarwal, Panel Lawyer for for Respondents No. 1 to 4 and Manindar Bhatti, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

Petitioners in this writ petition are challenging the action initiated by the respondents as per notice P/2 published by the Nazul Officer, Jabalpur to the effect that M.P. Housing Board has required the land mentioned in the notice. Objections were invited, petitioners submit that they are the owners of survey numbers mentioned in para 5.2 of the writ petition. Under Urban Land (Ceiling and Regulation) Act, 1976 proceedings were held, petitioners were served with the notice in the year 1980, Returns were submitted, the land was being used for agricultural purpose on the appointed day.

Respondent No. 3 passed the order declaring the land as surplus and benefit of only one unit was given to the petitioners. Master plan came into force in February, 1980 and expired in 1990, in between none of the scheme shown in the master plan came to be implemented and petitioners till date are in possession of the said land and have not been dispossessed, order P/1 was passed in ceiling case, notice P/2 has been issued that land is required by the MP Housing Board. As the petitioners are in possession of land and they have not

been dispossessed pursuant to the order passed in ceiling case, the respondents have no right to take the land.

Respondents 1 to 4 in the return contends that decision in Smt. Atia Mohammadi Begum Vs. State of U.P. and others[OVERRULED], is of no help to the petitioners. Land was declared surplus, final statement was issued on 11-6-1985, statement was served upon the petitioners, final statement was published in the Gazette, copy of the order sheets R/3 record service on the petitioner. Gazette R/4 is also relied on. Thereafter the State Government took steps for taking possession of the land declared surplus and case No. 239/A-90 was initiated against the petitioners, notice R/5 was served on 2-3-1992 and possession was taken as per memo R/6 from petitioner No. 1, the land has vested in the State free from all encumbrances, Khasra R/7 records possession of the State, revenue records were corrected, Khasra R/8 also records the possession of the State.

Against petitioner No. 2 ceiling proceedings in case No. 62 were started, notices were served on the petitioners, draft statement R/9 was served on Vashudeo Awasthy on 23-12-1983, in spite of service nobody appeared, final statement was issued on 20-4-1984 which was served upon the petitioner on 18-4-1984, it appears that an Advocate appeared for the petitioners on 26-4-1985, 29-6-1985 and 29-8-1985, no objection was raised, final notification R/10 was published in Gazette, proceedings for taking possession were initiated. Possession was taken as per memo R/12. Revenue papers were accordingly corrected. Similarly proceedings were initiated against petitioner No. 4 and possession was taken as per R/14 and against petitioner No. 3 proceedings were taken, final draft statement was published, possession was taken, revenue record was corrected as per R/20. With respect to petitioner No. 5, it is submitted that in P/2 Sy. No. 12/4 is not mentioned as such petitioner No. 5 has no cause of action and petition filed by petitioner No. 5 is liable to be dismissed. Possession has been handed over to MP Housing Board on 27-4-1998 as per Panchnamas R/21 and R/22, possession has been taken which cannot be reverted back to the petitioners.

M.P. Housing Board in its return contends that draft statement was prepared, notice u/s 10(1) of the Urban Land Ceiling and Regulation Act was issued. Notification u/s 10(3) was also published in the Gazette dated 16-5-1986. Notices were issued to the petitioners. Possession has been handed over to the MP Housing Board.

Petitioners have filed rejoinder. It is submitted by the petitioners in the rejoinder that they are still in possession, scheme has not been implemented.

Shri D.K. Dixit, learned counsel appearing for the petitioners has submitted that possession has not been taken as such proceedings have lapsed by virtue of provision of section 4 of Urban Land Ceiling and Repeal Act, 1999 though the order declaring land as surplus was passed. Thus, the proceedings stand lapsed and P/2 deserves to be quashed. Learned counsel has relied on Khasras P/3 and

P/4 contending that petitioners are in possession of the land and are cultivating the land, choice was not asked from petitioners to retain the land.

Smt. Seema Agarwal, learned PL appearing for respondents 1 to 4 has submitted that it is a case where possession was duly taken, there is nothing to doubt the documents/receipts of taking over possession and the order passed in 1983 has not been assailed by the petitioners in any appeal and has attained finality, land has vested in the State. No proceedings were pending as on date of Repeal thus, nothing is saved under the Repeal Act.

Shri Manindar Bhatti, learned counsel appearing for respondent No. 5/MP Housing Board has also supported the stand taken by respondents 1 to 4.

It is clear that final order in the ceiling case was passed decades ago, land was declared surplus, thereafter State has taken the steps to issue final draft statement, gazette publication was made, notices were served as filed with the return of respondents 1 to 4 and there is absolutely nothing to doubt the correctness of receipt of possession R/6, R/11, R/16 and R/19. Revenue records have been placed on record in which name of the State Government has been recorded. Possession has been taken by the State Govt, is clear. Once after taking the possession in case petitioners have unlawfully entered in the possession again and their possession is recorded, the same cannot be of any utility to the petitioners. In view of receipts of taking possession, Gazette notifications and entry in Khasras made of the State Govt., I have no hesitation to come to the conclusion that possession was taken by respondents 1 to 4 and was handed over to the M.P. Housing Board as per circular R/21 and R/22. The provisions of Urban Land Ceiling Repeal Act saves only the proceedings under sections 11, 12, 13 and 14. In the instant case, in my opinion, possession was taken over by the respondents 1 to 4 and the present writ petition has been filed basically on the decision of Atia Mohammadi Begum vs. State of U.P. (supra) which has been partly overruled by the Supreme Court in The State of A.P. and ors Vs. N. Audikesava Reddy and ors, . The submission based on overruled part of Aria Mohammadi Begum (supra), with reference to preparation of master plan on a later date is liable to be rejected as master plan can be prepared subsequently as held in State of A.P. and others vs. N. Audikesava Reddy and others (supra).

Writ petition for challenging the order P/1 dated 15-11-1983 is otherwise also belatedly filed in 1998 and order P/1 has not been specifically assailed in the present petition. Once the proceedings in ceiling case have been allowed to attain finality and have not been challenged, in my opinion, it is not open to the petitioners to assail notice P/2 by which proposal was published in the newspaper in order to give the land to MP Housing Board.

Writ petition is dismissed. No order as to costs.