
(2007) 03 AHC CK 0217
In the Allahabad High Court

Rao Mashkur Ahmad Khan	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 12-03-2007

Acts Referred:

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

Citation : (2007) 4 ADJ 298 : (2007) 78 AWC 2155

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—This writ petition is directed against the orders dated 6.8.1984 and 4.7.2000 passed by prescribed authority and appellate authority, respectively arising out of proceedings under Urban Land (Ceiling and Regulation) Act, 1976.

2. Heard learned Counsel for the petitioner and learned standing counsel.

3. Learned Counsel for the petitioner on the strength of paragraph 12 of the writ petition urged that possession of petitioner on the land in dispute was not taken by authority concerned on the basis of order passed by prescribed authority. He urged that Urban Land (Ceiling and Regulation) Act, 1976 has already been repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999, the petitioner is entitled to get benefit by retaining possession of land in dispute u/s 3 of Act No. 15 of 1999. Learned Counsel for the petitioner relied upon a Division Bench judgment of this Court in Chabi Nath Vs. State of U.P., Director, Urban Land Ceiling Government of Uttar Pradesh and Competent Authority, Urban Land Ceiling, in support of his case.

4. Sri Bhola Nath Yadav, learned standing counsel in opposition urged that in view of averments made in paragraph 8 of the counter-affidavit possession was already taken from petitioner and the land vests in State of U.P. It is further stated possession was handed over to Saharanpur Development Authority.

Learned standing counsel for Saharanpur Development Authority also urged that petitioner is not entitled to get any relief in the writ petition and writ petition is liable to be dismissed.

5. I considered the arguments of learned Counsel for the petitioner and learned standing counsel and carefully gone through the materials on record. It is necessary to scan the relevant averments made in the writ petition and various affidavits.

6. Paragraph 12 of the writ petition is being quoted below:

That the petitioner is still in possession over the land in dispute alleged to have been declared as surplus. No action can be taken after the repeal of the Act for possession over the land in dispute. It is expedient in the interest of justice that the respondent be restrained from dispossessing the petitioner from the land in dispute during the pendency of the writ petition.

7. Paragraph 12 of the writ petition has been replied in paragraph 16 of the counter-affidavit. The same is also being quoted below:

That the contents of paragraph No. 12 of the writ petition are not correct as stated therein. It is submitted that after gazette notification u/s 10(3) of the Urban Ceiling Act, the disputed land has been vested in the State of U.P. and its mutation has been completed in the revenue records on 28.10.1995. Now the land has been recorded as the land of the State Government.

8. Paragraph 16 of the counter-affidavit has been replied in paragraph 8 of rejoinder-affidavit. The same is also being quoted below:

That in reply to the contents of paragraph Nos. 9, 10, 11, 12, 13, 14, 15 and 16 of the counter-affidavit, the contents of paragraph Nos. 7A, 7B, 8, 9, 10, 11 and 12 of the writ petition are reiterated and re-affirmed. It is further stated that the learned District Judge, Saharanpur has recorded a finding that the land was exempted from the Ceiling Act, on the ground of being recorded as grove/ anchored and the said facts was recorded on the basis of the evidence available before him, it is also wrong to say that no evidence was filed by the petitioner to establish that the land in question was not agricultural land. It is further stated although no evidence regarding gazette notification has been filed to support averments made in Para No. 16 of the counter-affidavit and no order of mutation has been filed, even assuming for the same of argument, but not admitting that the notification has been made and the land has been vested in the State of U.P., even then since the petitioner is still in physical possession of the property in question and according to Repeal Act, mere Mutation of entry in favour of the State is irrelevant and inconsequential, so far as the applicability of the Section of the Repeal Act is concerned.

9. Learned standing Counsel tried to improve the case. He made averments in paragraphs 7 and 8 to the second counter-affidavit. This affidavit has been filed by one Devendra Singh, posted as Assistant Engineer Urban Land Ceiling

Allahabad. The same are also being quoted below:

(7) That is relevant to point out that a notice has been issued to the petitioner u/s 10(5) of the Urban Ceiling Act on 12.10.1995. For the kind perusal of this Hon"ble Court, a copy of the notice dated 12.10.1995 is being filed herewith and marked as Annexure-1 to this affidavit.

(8) That in accordance with the Government Order dated 11.12.1996 but ultimately possession of the land in question has been given to the Saharanpur Development Authority on 26.5.2003. A copy of the possession letter dated 26.5.2003 is being filed herewith and marked as Annexure-2 to this affidavit.

10. After going through the pleadings of the parties, it is apparent that averments made in the writ petition to the effect that petitioner is still in actual physical possession has not been specifically denied. The main plea taken by opposite parties that mutation was already made. Specific averment of continuance of land in actual possession of petitioner has not been specifically denied. It appears that vague allegations have been made. From carefully going through the pleadings of parties and the materials on record it transpires that a wrong presumption was made by the authority about possession only on account of mutation but actual possession is still there of petitioner.

11. In view of the pleadings of the parties and other materials on record it is established that petitioner is still in continuous possession, possession of land in dispute was never taken.

12. The law laid down by Supreme Court in the case in Bharat Singh and Others Vs. State of Haryana and Others, , on pleadings of the parties in writ petition. Relevant paragraph is quoted below:

...If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the CPC and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.

13. From perusal of the entire materials on record and pleadings of the parties made in the writ petition, it is clearly proved that petitioner is entitled to retain possession u/s 3 of the Repeal Act No. 15 of 1999 by which Urban Land (Ceiling and Regulation) Act 1976 has already been repealed.

14. In view of the discussions made above, writ petition succeeds and is allowed. Impugned orders dated 6.8.1984 and 4.7.2000 passed by prescribed authority and appellate authority respectively, are quashed and petitioner is entitled to retain possession on the land in dispute and also entitled to get benefit u/s 3 of the Repeal Act No. 15 of 1999.