
(2012) 11 JH CK 0118
In the Jharkhand High Court
Case No : Writ Petition (C) No. 3406 of 2008

Shantanu Kumar Choudhary	Vs	APPELLANT
The State of Jharkhand and Others		RESPONDENT

Date of Decision : 07-11-2012

Acts Referred:

Constitution of India, 1950 — Article 252
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(1), 10(3), 11, 12, 13
Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 4

Citation : (2012) 11 JH CK 0118

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Mahesh Tiwari and Mr. A.K. Sinha, for the Appellant; Jai Prakash, Mrs. Chaitali C. Sinha and Mr. Ayush Aditya, Shamim Akhtar, SC (L and C), for the State, for the Respondent

Judgement

Aparesh Kumar Singh

I.A. No. 1179/10

1. The applicant in the instant I.A. has prayed for impleading himself as party respondent in the present writ petition as according to him, he has vital stake in the issues involved in the present writ application. It is further submitted that the issues arising out of the order passed in U.L.C. No. 25 of 1996 was under challenge on behalf of the applicant along with others in W.P.(C) No. 2160 of 2004 whereby the present petitioner was the respondent no. 6. Counsel for the petitioner has however objected to the same.

However, since it appears that the present petitioner was himself respondent no. 6 in the writ petition being W.P.(C) No. 2160 of 2004 preferred by the intervener along with others challenging the same impugned order dated 11th February 2004 passed by the Commissioner, North Chhotanagpur Division, Hazaribagh in U.L.C. Case No. 25 of 1996, it will be proper to allow the intervener to be impleaded as party respondent in this case. Accordingly, let the intervener be

impleaded as respondent no. 4 in the instant case.

I.A. stands disposed of.

W.P.(C) No. 3406 of 2008

Heard learned counsel for the parties. This writ petition has been preferred for directing the respondent nos. 2 & 3 to ensure demarcation of the land of the petitioner which has been released appertaining 37.5 decimals in a proceeding under Urban Land Ceiling Act, 1976 by order dated 31st December 1995 passed by the Deputy Commissioner, Dhanbad in U.L.C. Case No. 24 of 1990 which according to the petitioner, was affirmed by the Commissioner, Chhotanagpur (N) in U.L.C. Appeal No. 25 of 1996 dated 11th February 2004 out of 1.61 acres of land of Khata No. 60 Mouza-Hirapur Plot No. 2476, 2477, 2478, 2479, 2480, 2481 and 2483 said to have been purchased by the petitioner through a registered sale deed no. 269222 on 6th December 1974 from one Smt. Guri Rani Devi. The writ petition was filed in the year 2008 and thereafter certain developments have occurred which have been brought on record by way of interlocutory applications by the petitioner.

2. The State has appeared and filed their counter affidavit. The petitioner has also preferred I.A. No. 2124 of 2012 seeking amendment in the prayer made in the main writ application by incorporating further prayer for release of the surplus land to the tune of 123.5 decimals of land taking into account the subsequent development that the proceedings in the Urban Land Ceiling Case has been held to have been abated with effect from 24.01.2011 in W.P.(C) No. 2160 of 2004. It is worthwhile to state here that the said writ petition being W.P.(C) No. 2160 of 2004 was preferred against the same order dated 11.02.2004 passed by the Commissioner, North Chhotanagpur Division, Hazaribagh (Annexure-1) by the intervener newly added respondent no. 4 along with others.

3. The order passed by this court in W.P.(C) No. 2160 of 2004 has been brought on record by the petitioner himself as Annexure-5 to the I.A. No. 2124 of 2012.

4. Rival parties do not dispute that in the said writ petition being W.P.(C) No. 2160 of 2004, the order passed in the Appeal No. 25 of 1996 by the Divisional Commissioner in the said Urban Land Ceiling Cases were under challenge by one Savitri Devi & others one of whom sought to intervene in the present writ application and he has been impleaded as respondent no. 4 herein. According to the respondent no. 4, the properties forming the subject matter of the Urban Land Ceiling Proceedings were purchased by him and others by registered sale deeds dated 2.9.1982 and 17.6.1982 and are in their possession. He had also challenged the orders passed by the Deputy Commissioner dated 31.12.1995 in U.L.C. Case Nos. 247/79, 176/83 and 24/90 in the said U.L.C. Appeal No. 25 of 1996 dated 11.01.2004. In the said writ petition, this writ petitioner was the respondent no. 6. This court after taking into account the Urban Land (Ceiling & Regulation) Repeal Act 1999 which has been adopted by the State of Jharkhand with effect from 24th January 2011, proceeded to hold as follows:

14/09.02.2012 When this writ petition is taken up, Mr. V Shivnath, learned senior counsel appearing on behalf of the petitioners submitted that Urban Land (Ceiling & Regulation) Act, 1976 has been repealed by Urban Land (Ceiling & Regulation) Repeal Act, 1999. The said Repeal Act of 1999 has been adopted by the State of Jharkhand with effect from 24.01.2011 by a Resolution dated 24.01.2011. As a consequence, all proceedings relating to any order made or purported to be made under the principal Act in U.L.C. Case Nos. 374 of 1976/247 of 1979/176 of 1983 stand abated and no further order remains to be challenged in the writ petition. Learned counsel submitted that Section 4 of the Urban Land (Ceiling & Regulation) Repeal Act, 1999 clearly provides for abatement of legal proceedings with the exception that the said provision shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the Principal Act insofar as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person authorised by the State Government.

Learned counsel submitted that in the instant case, possession of the alleged surplus land has not been taken over by the State. The proceeding was at the stage of publication of notification u/s 9 and there was no publication of notification under Sections 10(1) and 10(3). In view of the above, as on this date, there is no surviving provision of the Urban Land Ceiling Act to be enforced against the petitioner and all the initial proceedings stand abrogated.

Learned Additional Advocate General appearing on behalf of the respondents, on the other hand, vehemently opposed the said contentions and submitted that the proceeding against the petitioner cannot be said to be abated in view of the fact that in the instant case there was notification u/s 10(1) of the Act. The petitioner preferred appeal against the said order in appeal No. 25 of 1996 before the Divisional Commissioner. The same was ultimately dismissed. The proceeding in the instant case, thus, arrived at the conclusive stage holding the petitioner's land as surplus and as such, the proceeding against the petitioner does not come under the ambit of Section 4 of the repealing Act. Learned counsel, however, admitted that Government of Jharkhand has taken resolution under Article 252 of the Constitution of India adopting the Urban Land (Ceiling & Regulation) Repeal Act, 1999.

I have heard learned counsel for the parties and considered the facts and materials on record. It is admitted position that the Urban Land (Ceiling & Regulation) Act, 1976 was repealed by enacting Urban Land (Ceiling & Regulation) Repeal Act, 1999, which is a central legislation. Government of Jharkhand adopted the said Act under Article 252 of the Constitution of India by a resolution dated 24.01.2011. Section 4 of the said Act provides for abatement of legal proceedings, which reads as follows :

S. 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 insofar as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority.

It is clear from the bare reading of Section 4 that 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. Exception to the said provision is 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.

In the instant case, admittedly, there was no publication of notification u/s 10(3) of the Urban Land (Ceiling & Regulation) Act, 1976, for taking over possession of the surplus land, meaning thereby that there was no proceedings relating to Sections 11, 12, 13 and 14 of principal Act, as the proceeding of the instant case has not reached that stage. In my view, therefore, the instant proceeding does not come within the said exception excluding the application of effect of Section 4 i.e. excluding from the effect of abatement.

In view of the above discussion, it is held that by operation of Section 4 of the Urban Land (Ceiling & Regulation) Repeal Act, 1999, all the proceedings relating to any order made or purported to be made under the principal Act in U.L.C. Case Nos. 374 of 1976/247 of 1979/ 176 of 1983 stood abated.

This writ petition is, accordingly, disposed of with the said observations.

5. From perusal of the aforesaid judgment, it is apparent that after hearing the parties, this court categorically held that admittedly, there was no publication of the notification u/s 10(3) of the Urban Land (Ceiling & Regulation) Act, 1976 for taking over possession of the surplus land meaning thereby that there was no proceeding relating to sections 11, 12, 13 and 14 of the Principal Act, as the proceeding of the instant case has not reached that stage. In that view of the matter, it was held that by operation of section 4 of the Urban Land (Ceiling & Regulation) Repeal Act, 1999, all the proceedings relating to any order made or purported to be made under the principal Act in U.L.C. Case Nos. 374 of 1976, 247 of 1979 and 176 of 1983 stood abated.

6. It is not in dispute that the present petitioner was also one of the parties in appeal being U.L.C. No. 25 of 1996 preferred against the orders passed in the aforesaid U.L.C. Cases and the U.L.C. Case No. 24/90. Learned counsel for the petitioner, by referring to the order dated 11th February 2004 passed by the Commissioner, North Chhotanagpur Division, Hazaribagh in U.L.C. Case No. 25 of 1996 (Annexure-1), has vehemently submitted that the land of the petitioner totalling 1.61 acres had been taken over by the respondent officials of the State

in the said proceedings and out of which, only 37.5 decimals of land have been released and the rest of the land which ought to have been released in view of the fact that the proceedings have abated, have not been released.

7. After hearing the parties and after specifically going through the orders passed in W.P.(C) No. 2160 of 2004, it is apparent that this court has categorically held in no uncertain term that there was no publication of notification u/s 10(3) of the Urban Land (Ceiling & Regulation) Act, 1976 for taking over the possession of the surplus land. In these circumstances, this court in the said judgment held that all the proceedings relating to any order made or purported to be made under the principal Act in the said U.L.C. Cases out of which the Appeal No. 25 of 1996 arose which was under challenge in the said writ petition, stood abated. In these circumstances, since the continuance of the said proceedings which involves the present petitioner and the intervener/newly added respondent no. 4 who was one of the petitioners in W.P.(C) No. 2160 of 2004 stood abated, it would have the legal consequence that the proceedings ceased to have any effect. As corollary thereof, no consequences would ensue out of any order passed in those proceedings earlier by any competent authority in view of the abatement of all the proceedings on account of repeal Act of 1999 having been adopted by the State of Jharkhand with effect from 24th January 2011 and accordingly held by this court in the said W.P. (C) No. 2160 of 2004. In these circumstances, the contention of the learned counsel for the petitioner that the rest of the land has been taken over by the respondent State officials appear to be unfounded. However, since the Urban Land Ceiling Proceedings in question itself are held to have abated, the respondent State would not be entitled to withhold any land in respect of the said proceedings. Counsel for the intervener/respondent no. 4 has also submitted that the present petitioner has preferred Title Suit No. 136 of 2012 for declaration of right title and interest of the plaintiffs over the land concerning 6.44 acres including 1.61 acres which have been referred in the writ application and also for confirmation of the possession of the plaintiffs over the said land described in the schedule of the said plaint. However, in the present writ petition, this court refrains from expressing anything on the respective claim of the parties inter se since the Urban Land Ceiling Proceedings being pursued against the petitioner in the respective cases, have been held to be abated.

With the aforesaid observations, this writ petition stands disposed. I.A. Nos. 1491/11 & 2124/12 also stands disposed of.