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**(2014) 08 JH CK 0070**  
**In the Jharkhand High Court**  
**Case No : L.P.A. No. 495 of 2012**

Shantanu Kumar Choudhary

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

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**Date of Decision :** 06-08-2014

**Acts Referred:**

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 10(1), 10(3), 11, 12  
Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 4

**Citation :** (2014) 4 JLJR 123

**Hon'ble Judges :** R. Banumathi, C.J.; Amitav Kumar Gupta, J

**Bench :** Division Bench

**Advocate :** Mahesh Tiwari, S. Rahman and O.P. Singh, Advocate for the Appellant; Sunil Kumar, V. Shivnath, Senior Advocates, Shamin Akhtar, S.C. Mines, A. Aditya and S. Shekhar, Advocate for the Respondent

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## Judgement

R. Banumathi, C.J.—This Letters Patent Appeal is preferred against the order dated 2.11.2012 passed in W.P.(C) No. 3406/2008, whereby the learned Single Judge disposed of the writ petition observing that the court is refraining itself from expressing any opinion on the respective claim of the parties inter se since the Urban Land Ceiling proceedings being pursued against the appellant in the respective cases, have been held to be abated.

2. The dispute regarding Khata No. 60 in various plot Nos. 2476, 2477, 2478, 2479, 2480, 2481 and 2483 in Mouza Hirapur and the proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 have led to proliferation of litigation. The dispute has a chequered history of about three decades. The core issue falling for determination is whether the State Government had taken possession of the land and after Repeal Act, 1999 was adopted by the State of Jharkhand on 24.01.2011 whether entire proceeding under the Urban Land (Ceiling and Regulation) Act, 1976 has abated. Yet another point falling for consideration is whether the appellant/writ petitioner is entitled to the entire land of 1.61 acres/37 1/2 decimals or to no extent at all.

3. Brief facts of the case are that the land under Khata No. 60, Mauza-Hirapur was recorded in last survey and settlement operations as agricultural lands and "Bandh" in the name of Narayan Paul and others and the same was sold to Rai Bahadur Shivdas Banerjee by a registered deed of sale dated 29.08.1925. Rai Bahadur Shivdas Banerjee died leaving behind his only daughter Srimati Gouri Rani Devi who sold the land under Khata No. 60 admeasuring an area 1.61 acres to the appellant, Shantanu Kumar Choudhary, by a registered deed of sale. On 01.04.1976, the Urban Land (Ceiling and Regulation) Act, 1976 came into force. Notice No. 307 under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 was sent to the appellant with regard to the excess land than the ceiling area as per the provisions of the Urban Land (Ceiling and Regulation) Act, 1976. On 28.10.1976, the appellant submitted reply to the Collector giving details of the land stating that the land in question is an agricultural land.

4. On 25.5.1982, the appellant had given Power of Attorney to one Awadh Kishore Sahay. On 17.6.1982, the Power of Attorney holder sold lands to Savitri Devi and others, who are wife and children of the Power of Attorney holder, by sale deeds dated 17.6.1982 and 2.9.1982. On the basis of the returns filed by the appellant claiming exemption of the land from ULC proceedings, the appellant, 4th respondent and other purchasers have filed objections before the competent authority. The Deputy Commissioner, Dhanbad by order dated 08-03-1988 rejected the claim of exemption of the appellant and also of the respondent No. 4 and recommended for acquiring the entire land of 1.61 acres. Challenging the order dated 08-03-1988, two Lands Ceiling Appeal being Appeal No. 50 of 1988 and 56 of 1988 were filed before the Commissioner, North Chhotanagpur Division, Hazaribag and the same were heard and by order dated 09-04-1990, the matter was remitted to the competent authority for deciding the matter afresh as per the issues framed by the Commissioner in the order.

5. Pursuant to the order dated 09-04-1990, the competent authority by order dated 31-12-1995 held that the lands were not agricultural land and the land holder viz., the appellant, was entitled to only one unit, i.e. 1/5th out of 1.61 acres of land, i.e. 37 1/2 decimals and the remaining lands were declared as surplus land. The Respondent No. 4 and other purchasers filed appeal being Urban Land Ceiling Appeal No. 25 of 1996 before the Divisional Commissioner, North Chhotanagpur, Hazaribag and during the pendency of the appeal, the authorities proceeded to take possession of the land. For that reason the Respondent No. 4 filed writ being C.W.J.C. No. 889 of 1996 (R) and the same was disposed of on 25.03.1996 directing that the order dated 31.12.1995 would not be given effect to till orders were passed by the appellate authority on their application for interim relief. Ultimately the Divisional Commissioner by order dated 18-06-1996 dismissed the appeal affirming the order dated 31.12.1995. Thereafter, the Respondent No. 4 and other purchasers filed writ being C.W.J.C. No. 2078 of 1996(R) challenging the order dated 31.12.1995 and 18.06.1996 and the same was allowed on 09.08.1996 and the appellate authority was directed to decide the matter afresh. Again the appellate authority concluded the

matter and rejected the appeal by order dated 31.08.1999. As against the order dated 31.8.1999 passed by the appellate authority, the Respondent No. 4 and other purchasers again filed Writ Petition being C.W.J.C. No. 545 of 2000 and the same was allowed on 12.10.2001 and the appellate order dated 31.8.1999 was set aside and the appellate authority was directed to consider the matter afresh.

6. The appellate authority by order dated 11.02.2004 again rejected the appeal holding that this was an old matter and the Repeal Act 1999 had not been adopted by the State of Bihar and the merit of the appeals were not required to be considered and the order passed by the competent authority (dated 31.12.1995) was confirmed. Challenging the order of the appellate authority dated 11.02.2004 and the original order 31.12.1995, the Respondent No. 4 and other purchasers filed writ being W.P.(C) No. 2160 of 2004. On 09.02.2012 writ petition being W.P.(C) No. 2160 of 2004 was allowed holding that the entire proceedings under the Urban Land Ceiling Act had abated and against that the appellant has filed appeal being L.P.A. No. 515 of 2012. Challenging the order passed in W.P.(C) No. 2160/2004 the State has also preferred the appeal in L.P.A. No. 438/2012 and the L.P. As are pending before Division Bench No. II.

7. The Appellant filed Title Suit No. 190 of 1987 and the same was dismissed on 22.11.2007 where few issues are said to have been decided in favour of the appellant and Title Appeal Nos. 3 & 14 of 2008 filed by the appellant were also dismissed. On 15.05.2008 the appellant filed writ petition being W.P.C. No. 3406 of 2008 for demarcation of 37.5 decimals of land and the respondent No. 4 filed an application for impleading him as a party and was ordered to be impleaded as respondent. In the meantime the State of Jharkhand adopted the Urban. Land (Ceiling and Regulation) Repeal Act, 1999 (with effect from 24.1.2011) and the appellant filed amendment petition for releasing entire 1.61 decimals of land and the amendment petition was allowed. The appellant filed another Title Suit No. 136 of 2012 for declaration, confirmation and restoration of possession and injunction in respect to the land in question and the same was dismissed as withdrawn on 26.11.2012. In the writ petition being W.P.(C) No. 3406 of 2008 the Respondent No. 4 was made party by order dated 02.11.2012 and by a separate order the writ was dismissed holding that the Urban Land Ceiling Act proceedings itself have been held to have abated in W.P.(C) No. 2160/2004 (dated 9.2.2012) and also that the contention of the appellant that the rest of the land had been taken over by the Respondent are unfounded.

8. The learned Counsel for the appellant, Mr. Mahesh Tiwari, submitted that the respondent No. 4 had no locus standi in view of the fact that no relief or no direction is sought as against him in the writ petition and the writ was exclusively between the appellant and the State Authorities and the learned Single Judge without looking to this aspect directed to implead the Respondent No. 4 as party respondent. The learned counsel further submitted that 37.5 decimals of land out of 1.61 acres was delivered to the present appellant on 05.11.2011. It was submitted that since Repeal Act has been adopted by the State of Jharkhand on

and from 24.01.2011, State has no authority to retain the land. Learned counsel for the appellant contended that the extent of 1.23 1/2 acres of land which remains in possession of the State Government should be released to the appellant.

9. Learned Senior Counsel appearing for the respondent No. 4, Sri Sunil Kumar, contended that possession of 37.5 decimals of land ordered to be released in favour of the appellant was never delivered to him and mere exchange of documents between the themselves cannot amount to taking over of possession. Learned Senior Counsel further urged that the Repeal Act was adopted by the State of Jharkhand on 24.1.2011 and nothing has been done as regards possession of Khata No. 60 and there was no notification (under Section 10(1) or 10(3) of the Act) and the notification under Section 10 is mandatory and in absence of such notification, excess land does not automatically vest in the Government. It was further contended that there was no notification under Section 10(1) or 10(3) of the Act and the order of the appellate authority dated 11.2.2004 was set aside by the writ court in W.P.(C) No. 2160/2004. It was further contended that the appellant, having been unsuccessful in the Title Suit being Title Suit No. 190/1987 and having withdrawn the subsequent Title Suit, has no legs to stand and the LPA deserves to-be dismissed.

10. The State has filed counter-affidavit stating that the possession of the entire extent of 1.61 acres of land upon falling with the State Government and pursuant to the orders passed by the ULC authorities, 37.5 decimals of land of the landholder was demarcated on 5.11.2011. The stand of the State is that the competent authority has passed the order after considering the entire matter and the possession of the entire land of the ULC proceedings was taken over by the State Government, out of which, as per the order of the authorities, only one unit, i.e. 37.5 decimals was duly demarcated and returned back to the landholder/appellant on 5.11.2011, in view of the order of the competent authority, the Commissioner, dated 11.2.2004. The State has also taken the stand that the sale deed having got registered during the pendency of the ULC proceeding is nonest in view of the special provisions of the Principal Act.

11. Having regard to the rival stand of the parties, the issues mainly revolve around whether the State had taken over the possession of the entire land of the ULC proceedings and whether the ULC proceedings fall within the proviso to Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 excluding the application of the effect of Section 4, i.e. excluding the proceeding from the effect of abatement.

12. The writ court observed that it is refraining itself from expressing any opinion and the learned Single Judge disposed of the writ petition in extenso referring to the judgment passed in W.P.(C) No. 2160/2004 and observing that by the operation of Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, all proceedings relating to ULC case Nos. 374/1976, 247/1979 and 176/1983 stood abated, in W.P.(C) No. 2160/2004, the writ court held as under:-

"...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 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 authorized by the State Government in this behalf or by the competent authority.

In the instant case, admittedly, there was no publication of notification under Section 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 the 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.

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

Being aggrieved by the said judgment, the appellant and the State have preferred L.P.A. No. 515/2012 and L.P.A. No. 438/2012 respectively and both the L.P.As. are pending before Division Bench No. II.

13. As pointed out earlier, the issues falling for consideration are:- (i) whether the State Government has taken over the possession of the entire lands of the ULC proceedings; (ii) whether the instant proceedings fall under the proviso to Section 4 excluding the application of the effect of Section 4, i.e. excluding the effect of abatement; (iii) whether the actual possession of 37.5 decimals of land out of the entire extent of 1.61 acres of land was handed over to the appellant; (iv) the effect of dismissal of Title Suit No. 190/1987 and withdrawal of subsequent Title Suit No. 136/2012, after the order of the appellate authority

dated 11.2.2004 was set aside by the writ court in W.P.(C) No. 2160/2004, which is the subject-matter of challenge in L.P.A. Nos. 438/2012 and 515/2012. All the above contentious points could be resolved only by taking up L.P.A. Nos. 438/2012 and 515/2012 along with this appeal.

14. The learned counsel for the appellant Mr. Mahesh Tiwari vehemently insisted upon taking up the matter immediately. In the present LPA, we have heard the arguments of learned counsel for the appellant and the learned counsel for the respondents at length for about two days. Earlier when the appeal came up for hearing on 1st May, 2013 and 7th May, 2014, this Court was of the view that all the appeals are to be heard together and without hearing L.P.A. Nos. 438/2012 and 515/2012, the present appeal cannot be decided. Learned Senior Counsel appearing for the 4th respondent, Mr. V. Shivnath, had raised objection regarding withdrawal of L.P.A. Nos. 438/2012 and 515/2012 from Division Bench No. II to this Court. In fact, vide order dated 1st May, 2013, this Court has earlier taken the view that when L.P.A. Nos. 438/2012 and 515/2012, which are pending under the heading for orders, as and when matures for listing under the caption for hearing, the same may be mentioned for listing of those matter along with LPA No. 495/2012. In spite of such specific order, the learned counsel appearing for the parties insisted on independent hearing of this LPA No. 495/2012. Any amount of persuasion was of no effect.

15. Having left with no other alternative, we were to hear this L.P.A. No. 495/2012 at length for two days. After hearing the matter at length, we are of the firm view that without hearing L.P.A. Nos. 438/2012 and 515/2012 along with this appeal, the present LPA cannot be decided independently. The contentious points raised in this Letters Patent Appeal without hearing other two appeals, L.P.A. Nos. 438/2012 and 515/2012, would be a futile exercise. Therefore, L.P.A. Nos. 438/2012 and 515/2012 pending before the Division Bench No. II, are directed to be listed along with the present L.P.A. No. 495/2012. The matter is directed to be placed before the Hon'ble Chief Justice in the administrative side for withdrawing L.P.A. Nos. 438/2012 and 515/2012 for being tagged and heard along with L.P.A. No. 495/2012.