
(2010) 04 AHC CK 0021
In the Allahabad High Court
Case No : C.M.W.P. No. 31458 of 2002

Smt. Ranno Devi	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 22-04-2010

Acts Referred:

Cantonments Act, 1924 — Section 3
Constitution of India, 1950 — Article 226
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 10(1), 10(3), 10(5), 10(6)
Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 3
Urban Land (Ceiling and Regulation) Rules, 1976 — Rule 6

Citation : (2010) 4 AWC 3844

Hon'ble Judges : V.M. Sahai, J; Jayashree Tiwari, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Jayashree Tiwari, J.—The present writ petition has been filed by the petitioner Smt. Ranno Devi w/o Shri Surendra Prasad r/o village Hasanpur, pargana Dehat Amanat, tehsil and district Varanasi, seeking relief in the nature of certiorari for quashing the order of Competent Authority, Urban Land Ceiling, Varanasi dated 12.8.1981 (Annexure 1 to the writ petition) and also for quashing the ex-parte appellate order of Appellate Authority (District Judge). (Annexure-3 to the writ petition) and also for issuing a mandamus directing that the petitioner's possession over her agricultural land measuring 7660-97 sq. metres may not be disturbed, as the Ceiling Act stands repealed by virtue of the Repealing Act No. 15 of 1999.

2. The facts of the case in brief are that the petitioner is the bhumidhar (Sankramaniya) of the said land in the village Hasanpur, pargana Dehat, district Varanasi. Petitioner also has his residential house in Hasanpur, pargana Dehat Amanat, tehsil district Varanasi with appurtenant land area 264.95 acre and total owned by the petitioner is 7670-97 sq. metres. Petitioner filed a return No. 4936

u/s 6 of the Urban Land (Ceiling and Regulation) Act, 1976 for the total area of 7660-97 sq. metres. The respondent Competent Authority, Urban Land Ceiling, Varanasi allowed deducting the permitted area of 1,500 sq. metres, the proposed excess vacant land as 6170-97 sq. metres and issued a draft statement u/s 8(3) of the Ceiling Act. Against which petitioner filed objection to the point that the notice u/s 8 is contrary to legal provisions and no valid master plan has been sanctioned under the U.P. Urban Planning Act, 1973 nor any master plan has been enforced. The alleged master plan is illegal and has no proof of enforcement as the plot number and the area are incorrect. The disputed land was agricultural land prior to passing of Ceiling Act, 1976 and was being utilized as agricultural land and it was never used for non-agricultural purposes, hence the Ceiling Act does not apply. The land revenue is being realized by the State, since last 50 years, the land is a sole source of livelihood of the petitioner from the time of his ancestors and belongs to Hindu United Family. The proper hearing on the objections u/s 8 was required by the competent authority who brushed aside the objections by giving inadequate findings and reasons at the stage of Section 8 of the Act. The illegality committed by the competent authority were pointed out by the petitioner in an appeal filed u/s 33 of the Ceiling Act before the appellate authority, copy of the order of competent authority is annexed as Annexure-1 to the writ petition. The khatauni for the years 1398 to 1403 fasli. village Hasanpur pargana Dehat is filed as Annexure-2 to the writ petition and the Nakal Joth Chakbandi Akar Patra 23 is filed as Annexure-3 to the writ petition. An appeal was filed before the District Judge, Varanasi u/s 33 of the Ceiling Act, copy of the same is annexed as Annexure-4 to the writ petition. Copy of the Ch. Form 45 and new Gata No. 154Ka is annexed as Annexure-5 to the writ petition. The Joth Chakbandi Akar Patra 11 is annexed as Annexure-6 to the writ petition. The death certificate of Shri Raghu is annexed as Annexure-7. The final statement u/s 9 of the Act, was never served upon the petitioner. It is also alleged that the compliance of the important provisions contained under Sections 10(1), 10(3) and 10(5) was not done and the petitioner is in actual physical possession over the land. The provisions contained under Sections 10(3) and 10(5) of the Ceiling Act are most essential ingredients and non-compliance of those provisions has rendered the ceiling determination a nullity. The petitioner's land was basically a agricultural land within the meaning of definition included u/s 2 of the Ceiling Act, the petitioner was not under any legal duty to file return u/s 6 of the Act. Yet the authorities made such out of proportion propaganda and due to apprehension petitioner filed a return hoping that just decision will be taken and that there will be no ceiling to his land as the same was agricultural land but filing of the return u/s 6 has forced him to come into the litigation. The Ceiling Act has been repealed by the Repeal Act No. 15 of 1999. The notification u/s 10(1) of the Ceiling Act was not published in the manner provided under the law, i.e., Rule 6 of the Urban Land (Ceiling and Regulation) Rules, 1976. The copies of the notification were not affixed at conspicuous places in the office of the Collector, Tehsildar and Municipal Committee and no such endorsement has been found. The competent authority never called upon the petitioner to

surrender or to deliver possession of 6170.97 sq. metres of alleged excess land. Besides, there is no paper on record which may indicate that actual physical possession was ever taken. On the other side, the land has been in continuous possession of the petitioner. The Urban Land (Ceiling and Regulation) Repeal Act, 1999 came into force in the State of U.P. w.e.f. 18.3.1999, Section 3 of the Repealing Act only saves those vesting in which possession has been taken. In the petitioner's case, no possession has been taken and no amount of compensation has been paid, since the possession has not been taken, the title reverts to the petitioner. The learned appellate authority District Judge simply dismissed the appeal in default and the aforesaid important provisions contained u/s 3 of the Repealing Act of 1999 were never applied. The master plan came into force after the appointed day of 17.2.1976, when the Ceiling Act came in force. The petitioner was left with no alternate and efficacious remedy except to approach the Hon'ble Court in its writ jurisdiction under Article 226 of the Constitution of India. The family is dependent on the agricultural income. The land illegally came under the Ceiling Act in 1976 and the land is existing at 12 Kms. outside of city and the petitioner belongs to Harijan and Scheduled Caste and no compensation has been received by the petitioner. The land in question is a rural land and therefore the entire proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 is vitiated and bad in the eyes of law, hence the order passed by the learned District Judge, Varanasi in appeal is arbitrary and illegal. No notice u/s 9 of the Act was given to petitioner and without service of notice under Sections 9 and 8(2) of the Act, the entire proceeding are vitiated. The proceedings were initiated in arbitrary manner and possession of the petitioner is still there, with petitioner Smt. Ranno Devi is the only legal heir of Sri Raghu and no information u/s 8(4) was given to petitioner by the competent authority.

3. Sri Vinod Kumar Singh, Assistant Engineer. Urban Ceiling, Varanasi has filed counter-affidavit on behalf of respondent Nos. 1 and 2, in his counter-affidavit, he has denied the contentions of the petitioner and has stated that the contentions of the petitioner is that he has 7670.97 sq. metres land is admitted and need no reply. It is further stated that on the objections filed by the petitioner, the petitioner failed to produce any evidence and on this ground his objection overruled by the competent authority u/s 8(4) by the order dated 8.12.1981, the order dated 8.12.1981 states that petitioner was heard on the objections. It is further contended that u/s 9 the legal formalities were completed on 1.9.1982. It is further submitted that the proceeding under Sections 10(1) and 10(3) were published in the Government Gazette on 9.5.1986 and the proceeding for mutation have been done and the adequate compensation has been fixed by the competent authority on 21.9.1996, information of which was given to deceased Raghu and Sri Nakhdu s/o deceased Raghu. It is further submitted that the order prepared u/s 10(5) is annexed at page 5/1 to 5/3 of the file but it does not bear the signature of the competent authority.

4. It is further submitted that the excess land has vested in the State Government and the mutation has also been effected. It is further stated that

after the enforcement of the Repeal Act, the District Judge has no right to dispose of the case on merit etc.

5. Against the counter-affidavit, a rejoinder-affidavit has been filed by the petitioner in which contradicted the contentions as raised in the counter-affidavit. It is further contended that the objections of the petitioner were arbitrarily rejected and not properly considered by the competent authority vide order dated 8.12.1981. It is further contended that the provisions of the Urban Ceiling Act is not applicable in the petitioner's land and since the same Act, i.e., Urban Land Ceiling Act, has been repealed, the order dated 8.12.1981 is unjust and illegal. It is further contended that the petitioner's possession has never been taken over by the State and the petitioner is still in his undisturbed possession.

6. We have heard learned Counsel for the petitioner as well as learned standing counsel.

7. The crux of the matter rotates round the question whether the land of the petitioner is covered under the Urban Land Ceiling Regulation Act and whether in the proceeding under the said Act, the possession was taken by the State Government in the legal manner and whether land vested in the State. It is also to be considered whether after repeal of the aforesaid Act, Urban Ceiling Act what will be the consequences if the actual physical possession has not been taken over by the State legally and the petitioner is still in peaceful possession of his alleged land.

8. In this connection, it will be appropriate to go through the provisions of Sections 8, 9 and 10 of the Urban Land (Ceiling and Regulation) Act, 1976. Section 8 provides for preparation of draft statement as regards vacant land held in excess of ceiling limit and provides that:

(1) On the basis of the statement filed u/s 6 and after such inquiry as the competent authority may deem fit to make the competent authority shall prepare a draft statement in respect of the person who has filed the statement u/s 6.

(2) Every statement prepared under Sub-section (1) shall contain the following particulars, namely:

(i) the name and address of the person;

(ii) the particulars of all vacant land and of any other land on which there is a building, whether or not with a dwelling unit therein, held by such person:

(iii) the particulars of the vacant lands which such person desires to retain within the ceiling limit;

(iv) the particulars of the right, title or interest of the person in the vacant land; and

(v) such other particulars as may be prescribed.

(3) The draft statement shall be served in such manner as may be prescribed on

the person concerned together with a notice stating that any objection to the draft statement shall be preferred within thirty days of the service thereof.

(4) The competent authority shall duly consider any objection received, within the period specified in the notice referred to in Sub-section (3) or within such further period as may be specified by the competent authority for any good and sufficient reason, from the person whom a copy of the draft statement has been served under that subsection and the competent authority shall, after giving the objector a reasonable opportunity of being heard, pass such orders as it deems fit.

Section 9 provides for final statement:

9. Final statement.-After the disposal of the objections, if any, received under Sub-section (4) of Section 8, the competent authority shall make the necessary alterations in the draft statement in accordance with the orders passed on the objections aforesaid and shall determine the vacant land held by the person concerned in excess of the ceiling limit and cause a copy of the draft statement as so altered to be served in the manner referred to in Sub-section (3) of Section 8 on the person concerned and where such vacant land is held under a lease, or a mortgage, or a hire-purchase agreement, or an irrevocable power-of- attorney, also on the owner of such vacant land.

Section 10 provides for acquisition of vacant land in excess of ceiling limit and provides that:

10. Acquisition of vacant land in excess of ceiling limit.-(1) As soon as may be after the service of the statement u/s 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that:

- (i) such vacant land is to be acquired by the concerned State Government; and
- (ii) the claims of all person interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land,

to be published for the information of the general public in the official Gazette of the State concerned and in such other manner as may be prescribed.

(2) After considering the claims of the persons interested in the vacant land, made to the competent authority in pursuance of the notification published under Sub-section (1), the competent authority shall determine the nature and extent of such claims and pass such orders as it deems fit.

(3) At any time after the publication of the notification under Sub-section (1) the competent authority may, by - notification published in the official Gazette of the State concerned, declare that the excess vacant land referred to in the notification published under Sub-section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the

State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.

(4) During the period commencing on the date of publication of the notification under Sub-section (1) and ending with the date specified in the declaration made under Sub-section (3):

(i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void; and

(ii) no person shall alter or cause to be altered the use of such excess vacant land.

(5) Where any vacant land is vested in the State Government under Sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorized by the State Government in this behalf within thirty days of the service of the notice.

(6) If any person refuses or fails to comply with an made under Sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorized by such State Government in this behalf and may for that purpose use such force as may be necessary.

Explanation.- In this section, in Sub-section (1) of Section 11 and in Sections 14 and 23, "State Government", in relation to:

(a) any vacant land owned by the Central Government, means the Central Government; and

(b) any vacant land owned by any State Government and situated in the Union territory or within the local limits of a cantonment declared as such u/s 3 of the Cantonments Act, 1924 (2 of 1924), means that State Government.

9. As per the contention made in the counter-affidavit, it is clear that legal formalities u/s 9 were completed on 1.9.1982 and further the proceeding u/s 10(1) and Section 10(3) were published in the Government Gazette on 9.5.1986 and the proceeding for mutation have been done and it is also urged that the adequate compensation has been fixed by the competent authority on 21.9.1996, information of which was given to deceased Raghu and Sri Nakhdu s/o deceased Raghu.

10. It comes out from averments made in counter-affidavit that notice u/s 10(5) was prepared but the same was not signed by the competent authority. In this connection, it will be relevant to note that mere mutation of the name of the State without taking actual physical possession of the land is not sufficient in the

matter. Accordingly, u/s 10(5) notice is required to be given to the tenure holder for surrendering the excess land in favour of the State, which lays as follows:

Where any vacant land is vested in the State Government under Sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice.

11. It is admitted in para 12 of the counter-affidavit that on the order u/s 10(5) regarding surrendering or delivering of the possession of the excess land, the notice has not been signed by the competent authority unless the notice is signed and issued in accordance with law by the competent authority the notice is held to be no notice in the eye of law because it does not bear the signature of the competent authority.

12. In the circumstances from the contention as has come out in the counter-affidavit itself proceedings u/s 10(5) and Section 10(6) have not been duly completed and in between the Repeal Act has come into force on 8th March, 1999 which says that all proceedings relating to any order made or purported to be made under the Principal Act pending immediately before commencement of this Act, before any Court, or Tribunal or other authority shall abate.

13. Since the proceedings u/s 10(5) and Section 10(6) could not be completed before the Repeal Act was enforced. Hence, the entire proceedings stand abated and the mere mutation of name in the revenue record or Government will not be sufficient because Section 3(a) of the Repeal Act says that the vesting of any vacant land under Sub-section (3) of Section 10, possession of which has been taken over the State Government or any person duly authorised by the State Government in this behalf or by the competent authority. Thus, since the possession under the law as required under the Urban Land (Ceiling and Regulation) Act, 1976 has not been taken so the proceeding shall stand automatically abated. No person shall be deprived of his property except by the authority of law. Thus, it is clearly indicated that notice as required u/s 10(5) for surrendering or delivering possession of the land to the State Government or any person duly authorised by him was not duly served upon land holder.

14. Even there is no document shown and no document produced which may go to show that possession was" taken on behalf of the State Government by the competent authority or any person duly authorised by him because no memo of possession has been filed alongwith the counter-affidavit to show that actual physical possession was ever taken u/s 10(6). Simultaneously, no such material has been filed which may go to show that tenure holder have ever delivered possession of land in favour of the State Government to the competent authority. Thus, the mere mutation of name of revenue record without any evidence of actual physical possession without any production of memo of possession being recorded entries in U.L.C. Forms 3 and 4. It will not be sufficient to deem that

possession under the law u/s 10(5) and Section 10(6) have been taken. The Repeal Act came in force in 18.3.1999 since actual physical possession was not taken by the State Government. All the proceedings stand abated in view of Section 4 of the Repeal Act:

(a) any land is deemed to have vested in the State Government under Sub-section (3) of Section 10 of the Principal Act but possession of which has not been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority: and

(b) any amount has been paid by the State Government with respect to such land, then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

15. Section 4 of the Repeal Act provides that all the 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 authorized by the State Government in this behalf or by the competent authority.

16. The crux of the provisions as enunciated in Section 4 is that if the factual possession has been taken by the State Government or any concerned deputed competent authority then the proceeding relating to Sections 11, 12, 13 and 14 shall remain in force but if no actual physical possession as required u/s 10(6) has been taken then the entire proceedings pending before any Court, Tribunal or authority shall abate.

17. In the present case, admittedly notice u/s 10(5) was prepared but not signed by the authority as per the contention in the counter-affidavit. It is clear that the necessary proceeding required under law under Sections 10 (5) and (6) could not be completed. Hence, the mere mutation order in the absence of any actual physical possession is not sufficient to deem the possession in favour of the State Government as has been held in case of Hari Ram Vs. Collector and Others, and also in case of Mukarram Ali Khan v. State of U.P. and Ors. AIR 2007 SC (Supp) 985, it was held that Urban Land (Ceiling and Regulation) Repeal Act (15 of 1999), Section 4-Abatement of legal proceedings taken under Repeal Act- Order passed against land owner by appellate authority under Repeal Act-Possession of land in question not taken over by State as surplus land-Proceedings would stand abated u/s 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999.

18. In the circumstance since actual physical possession in accordance with law has not been taken the proceedings pending in this respect stand abated in accordance with law with provisions of Section 4 of the Urban Land (Ceiling and

Regulation) Repeal Act, 1999.

19. Accordingly, we allow the present writ petition and direct that all the proceedings stand abated in accordance with provisions of Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999. Respondents are further directed not to make any interference in the peaceful possession of the petitioner. Accordingly, the order passed by the Competent Authority Urban Ceiling, Varanasi dated 8.12.1981 and also the order of the Appellate Authority (District Judge) dated 20.5.2002 is hereby quashed and it is directed that all the proceedings stand abated.

20. The present writ petition is allowed.