(2010) 09 AHC CK 0173

In the Allahabad High Court

Case No : C.M.W.P. No. 193 of 1997

Star Paper Mills Ltd. APPELLANT

Vs

State of U.P. and Another RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(3), 10(5), 10(6), 20, 6
Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 3, 3(2)

Citation : (2010) 6 AWC 6182 : (2011) 112 RD 408

Hon'ble Judges : Virendra Singh, J;Sunil Ambwani, J

Bench : Division Bench

Advocate : Ravi Kiran Jain, Ghayyure Alam, P.K. Jain and Ankur Sharma, for the Appellant; Sanjay Goswami, C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani and Virendra Singh, JJ.—We have heard Sri Ravi Kiran Jain, learned senior advocate for the Petitioner. Sri Sanjai Goswami, learned standing counsel appears for the Respondents.

2. M/s. Star Paper Mills Ltd. -the Petitioner has prayed for a declaration that the Urban Land (Ceiling and Regulation) Act, 1976 has no application in respect of commercial land, and to set aside judgment dated 31.8.1996, passed by the District Judge, Saharanpur to the extent that the same declares 1,24,007.062 sq. mtr. of land held by the Petitioner as excess vacant land. The Company has also prayed for directions, not to interfere in their peaceful use and occupation of the land.

3. The Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Act of 1976) was repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999, (hereinafter referred to as the Act of 1999) w.e.f. 22.3.1999.

Section 3 of the Repealing Act provides as follows:

3. Savings.--(1) The repeal of the principal Act shall not affect--

(a) the vesting of any vacant land under Sub-section (3) of Section 10, 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;

(b) the validity of any order granting exemption under Sub-section (1) of Section 20 or any action taken there under, notwithstanding any judgment of any Court to the contrary ;

(c) any payment made to the State Government as a condition for granting exemption under Sub-section (1) of Section 20.

(2) Where--

(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 restored unless the amount paid, if any, has been refunded to the State Government.

4. Where a possession of the urban land declared as surplus, beyond the permissible limits under the Act, has not been taken over by the State Government or any person duly authorized by the State Government, such land would not vest under Sub-section (3) of Section 10 of the principal Act, and as a consequence to the repeal of the Act, the person even if he was holding or a surplus land was determined under the Act, would continue to remain in possession of the land.

5. In the present case, the Petitioner had filed a return on 9.9.1976 u/s 6 of the principal Act of 1976 showing that it had total land measuring 4,17,499.05 sq. mtr. Before the determination could be made by the prescribed authority, the Petitioner applied for exemption u/s 20 of the Act of 1976, on various grounds. The State Government by order dated 10.8.1981 granted exemption of the entire land for establishing industrial unit, with the condition that within five years, the Petitioner will be required to establish the unit. The Petitioner did not fulfill the condition and applied for extension. By a Government order dated 29.4.1987, the condition to establish the unit was extended for a further period of five years up to 10 years, and consequently the exemption was extended up to 9.8.1991. It appears that the Petitioner could not establish industrial unit even within the extended time. In the meantime a Full Bench of this Court, held that each building will be entitled to 500 sq. mtr. of land as appurtenant land on each constructed unit. The Prescribed Authority had by the order dated 24.7.1995 determined 1,36,155.14 sq. mtrs. of land as surplus vacant land. An appeal was preferred by the Petitioner u/s 37 of the Act of 1976. The District Judge, decided U.C.A. No. 30 of 1995, and by order dated 31.8.1996, modified the order of the

Prescribed Authority declaring surplus land by 1,24,007.062 sq. mtrs. giving rise to this writ petition.

6. It is stated by learned Counsel for the Petitioner that on account of the repeal of the principal Act, there will be no effect of declaration of surplus land, as the possession of such vacant land was not taken.

7. By an order dated 22.10.1999 we directed the State Government to file a supplementary-affidavit giving details of the proceedings of the exemption and to make a positive statement with regard to vesting and taking over of the land declared as surplus land. The order dated 22.10.1999 is quoted below:

It is stated in the counter-affidavit filed by the State Government that the possession in pursuance of the Exemption u/s 20 of the Act is saved by Section 3(1)(b) and (c) of the Repeal Act No. 15 of 1999. The exemption order u/s 20 of the Act is not on record.

The supplementary counter-affidavit of Sri Rajesh Chandra does not state full facts with regard to the exemption, the terms and condition of the exemption and the fact, whether the Petitioner is still in possession of the land declared as surplus. The affidavit also does not state whether the land is vested in the State Government.

The Petitioner has not placed full fact on record Including the orders u/s 20 of the Act. the renewal order and the fate of the orders u/s 20 of the Act. Let these facts any documents be brought on record.

The State Government will also file a detailed affidavit with regard to the possession over the land declared as surplus land and whether the land is vested in the State Government.

List on 17.11.2009 as part heard/tied up.

The certified copy of this order be given to the counsel of the Petitioner on payment of usual charge and learned chief standing counsel free of cost by tomorrow.

8. Learned standing counsel has filed an affidavit of Sri Abdul Basit, Tehsildar Judicial, Saharanpur in which in paras 9 and 10 it is stated as follows:

9. That as is evident from the two office memorandum the land covered in the exemption was 417056 sq.m. However, as the exemption was in respect of land held beyond ceiling limit by the Petitioner company, and as the office memorandum included the entire land under the exemption order, a corrigendum dated 29.3.1989 was issued reducing the area under exemption to 319774.20 sq.m. which was proposed to be declared as excess vacant. A copy of the office memorandum/corrigendum is annexed as Annexure-4 to this affidavit.

10. That the proceeding for taking possession of excess land was not undertaken by the Respondents due to the permission/exemption granted u/s 20 of the Act,

so far the question of vesting of the land in the State is concerned it is submitted that the same would be under the order u/s 20 of the Act on breach of terms and conditions of the Office Memorandum.

9. The State Government has admitted on record that the proceeding, to take possession of excess land, were not taken, and thus we are of the opinion that as a result of repeal of the principal Act, the proceedings under the Act of 1976 and the declaration of surplus vacant land would not affect the holding of the land by the Petitioner.

10. Sri Sanjay Goswami, learned standing counsel submits that u/s 3(1)(b) of the Act of 1999 (Repeal Act), the validity of the order granting exemption under Sub-section (1) of Section 20 the Act of 1976 or any action there under notwithstanding any judgment of any Court to the contrary, will not be affected by such repeal, and further under Sub-section (c) any payment made to the State Government as a condition for granting exemption under Sub-section (1) of Section 20, will also not be affected.

11. The order u/s 20 of the Act of 1976 granting exemption was limited to five years. The term extended for another period of five years, also came to an end in the year 1991. The proceedings for determination of surplus land had started after the exemption u/s 20 of the Act of 1976, had lapsed, and thus the determination of surplus land, even if such excess vacant land, is deemed to have vested in the State Government, would not affect the rights of the Petitioner over the land, as the possession was not taken by the State Government. The order u/s 20 of the Act, of exemption was not valid and operative on the date of repeal of the principal Act, to have any consequence thereon. In Chabi Nath Vs. State of U.P., Director, Urban Land Ceiling Government of Uttar Pradesh and Competent Authority, Urban Land Ceiling, relying upon Pt. Madan Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and Others, this Court has held that even if the entry has been made in favour of the State in the revenue records, without taking actual physical possession under Sections 10(5) and 10(6). the tenure holder cannot be deprived of the benefit of the Repeal Act. If the possession has not been taken, the proceeding will abate.

12. The writ petition is allowed. The judgment and order of dated 31.8.1996, passed by the District Judge, Saharanpur to the extent the same declares 1,24,007.062 sq. mtr. of land held by the Petitioner as excess vacant land is declared not to have any effect or consequence on the rights of the Petitioner to hold such land. The Petitioner would continue to retain possession of the land with the same rights, which he had, earlier to the determination of the surplus land. The Petitioner will also be entitled to record or to continue to record their names in the concerned revenue records.

