

(1999) 09 AHC CK 0058

In the Allahabad High Court

Case No : C.M.W.P. No. 571 of 1981 and 20 other Writ Petitions

State of U.P. and another

APPELLANT

Vs

Doon Ydyog (P.) Ltd., Dehradun and another

RESPONDENT

Date of Decision : 01-09-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 252, 252(2)

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 1, 1(3), 2, 3, 3(2)

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 5(2)

Citation : (1999) 4 AWC 3324 : (1999) AWC 3324

Hon'ble Judges : Yatindra Singh, J

Bench : Single Bench

Advocate : S.C. and V.D. Singh, for the Appellant; M.S. Negi, for the Respondent

Judgement

Yatindra Singh, J.—The Urban Land (Ceiling and Regulation) Act, 1976 (the Principal Act for short) has been repealed by the Ordinance No. 5 of 1999, later replaced by the Central Act No. 15 of 1999 (the repealing Act for short). What is the effect of the repeal on the writ petitions arising out of the order passed under the Principal Act.

(i) Do these writ petitions abate, in view of Section 4 of the repealing Act?

(ii) Should these writ petitions be decided on merits?

1st Question : Writ Petitions --Abatement?

The Principal Act--Not in Force

2. The repealing Act, in view of Section 1(3) applies to a State from the date the resolution in this behalf is passed under Article 252(2) of the Constitution of India, The standing counsel has brought to my notice a Government Order dated 31-3.1999, which states that the requisite resolution has been passed on 18.3.1999. Thus, the Repealing Act has come into force in the State of Uttar

Pradesh on 18.3.1999. The Principal Act is no longer in force.

Writ Petition--Is not continuation

3. The Section 4 of the Repealing Act provides that all proceedings (except under few sections) relating to any order made or purported to be made under the Principal Act pending at the time of enforcement of the repealing Act will abate. These writ petitions arise out of order passed under the Principal Act. They are not covered by the exception. Should they be abated on this ground?

4. (A) decision in a writ petition is not a decision about the merits of the parties in issue in the proceedings giving rise to it..... (A) Proceeding under Article 226 of the Constitution is not a continuation of the suit or proceeding giving rise to it and there exists a clear distinction between an appeal or revision and a writ petition(The) orders passed in the original suit or proceeding do not merge in the orders passed in such petition. Since a special appeal, directed against an order passed in a writ petition, is merely a rehearing of the petition, it has..... the characteristics of a petition under Article 226 of the Constitution. (the U.B. Singh case). This was the reason that the full bench in the U. B. Singh case held, Section 5(2)(a) of the U. P. Consolidation of Holdings Act has no impact on the writ petitions or special appeals arising out of them". And the writ petitions and special appeals do not abate in view of notification u/s 5 (2) of the U. P. Consolidation of Holdings Act ; though all other proceedings do.

5. I see no reason why these observations will not apply in the present case. Neither the writ petitions nor the special appeals arising out of them abate u/s 4 of the repealing Act.

2nd Question : Writ Petition--Decision on merits

The Scheme of The Principal Act

6. All persons holding vacant land in excess were required to file statement u/s 6 of the Principal Act. The competent authority could also require such persons to file statements. Thereafter a draft statement was prepared u/s 8 of the Principal Act and was served on the persons concerned u/s 8(3) of the Act, requiring them to file their objections. These objections were decided u/s 8(4) of the Principal Act. This order was subject to an appeal or a revision u/s 33 or 34 of the Principal Act. The competent authority was to make necessary amendment in the draft, determining vacant land, and prepare the final draft u/s 9 of the Principal Act. This draft was published u/s 10(1) of the Principal Act. Any other person (not served with the notice) could file his objection u/s 10(2) of the Principal Act. After decision on objection, if any, u/s 10(2) of the Principal Act, the competent authority was required to publish a declaration u/s 10(3) of the Principal Act vesting the excess vacant land in the State. The excess vacant land vested absolutely (without any encumbrances) in the State Government from that date.

7. The possession of the excess vacant land could be surrendered by the person concerned. On his failing to do so, the competent authority was required to serve

a notice on the person in possession to hand over possession of the excess vacant land u/s 10(5) of the Principal Act. And on his failure to do so, the competent authority could take forcible possession u/s 10(6) of the Principal Act. This possession is relevant under the Repealing Act. Let's consider the implication of the Repealing Act.

Effect of the Repealing Act

8. Sections 2 to 4 of the Repealing Act lay down its effect. The Principal Act stands repealed u/s 2 of the Repealing Act but it does not affect the vesting of land in the State Government u/s 10(3) of the Principal Act where possession is taken over by the State Government or by any authorised person. In case the land has not vested in the State Government, as the required declaration has not been published u/s 10(3) of the Principal Act, then nothing can be done. Now neither the declaration can be published u/s 10(3) of the Principal Act, nor the excess vacant land can be vested in the State Government. These proceedings, except for a few, even if they are pending are to abate. Section 3(2) of the repealing Act further provides that even where any land is deemed to have vested u/s 10(3) of the Principal Act but possession has not been taken, the land may be restored (divested) after the amount paid by the State Government is refunded. Let's see its effect on the four groups of the writ petitions.

1st Group

9. The first group of five writ petitions (Serial Nos. 1 to 5) are against the orders of the appellate court and the competent authority in proceedings for declaration of excess vacant land. The appellate court or both the Courts below have decided against the State. The subject-matter in these proceedings has been held in favour of the "persons" concerned. Obviously, the land in dispute in the first group of the writ petitions, no declaration has been published u/s 10(3) of the Principal Act. There is no question of vesting the land in the State or taking over possession over the same. Even if these writ petitions are allowed, the State Government can neither take steps to vest the land u/s 10(3) of the Principal Act nor take possession of the land. It is necessary to decide these writ petitions on merit. They have become infructuous and are dismissed.

IIInd Group

10. The second group of next 11 writ petitions (at Serial Nos. 6 to 16) are not against the order passed by any authority declaring, any excess vacant land. In these writ petitions, the person concerned had filed an application for permission to sell the land u/s 27 of the Principal Act. This application was dismissed on the ground that proceedings for determining excess vacant land are pending and notification u/s 10(1) is yet to be published. The persons concerned had filed appeals u/s 33 of the Act, which were allowed. These writ petitions are against the order granting permission to sell the land. In the 10 writ petitions (at Serial Nos. 6 to 15), no interim orders were granted by this Court, but in the 11th writ petition, namely, at Serial No. 16 an, interim order was granted by this Court

staying the operation of the appellate order. But this is immaterial.

11. In these writ petitions, no land has been declared as excess vacant land. The permission to transfer was refused as notification u/s 10(1) of the Act was not published. There is no question of publication of declaration u/s 10(3) of the Act. There is also neither anything on the record, nor the standing counsel could point out if declaration u/s 10(3) of the Principal Act has been published. The State Government in view of the Repealing Act can neither take proceeding to vest the land, nor take possession. It is also unnecessary to decide these writ petitions on merits. They have become infructuous and are dismissed.

IIIrd Group

12. The third group of two writ petitions (at Serial Nos. 17 and 18), unlike the earlier ones, are by the persons concerned. In these two writ petitions, the orders were passed by" the competent authority In favour of the person concerned. Thereafter the State Government in revision u/s 34 of the Principal Act remanded the case back to the competent authority for re-decision. There is an interim order in these two writ petitions. The competent authority is yet to determine the excess vacant land. The cases are still pending before the competent authority. There is no question of publication of declaration of vesting of any land in the State Government u/s 10(3) of the Principal Act. Even if these two writ petitions are dismissed, neither any proceedings can be taken to vest the land, nor possession can be taken. In view of this, it would be appropriate to dispose of these two writ petitions (without deciding them on merit) with an observation that the State Government will not be entitled to further proceed in the case or take possession.

IVth Group

13. The fourth group of three writ petitions (at Serial Nos. 19 to 21) are like the 3rd group by persons concerned. In the first two writ petitions of the IVth Group (at Serial Nos. 19 to 20), orders were passed by the competent authority against them and thereafter their appeals were also dismissed u/s 33 of the Principal Act. They have filed the writ petitions against these orders. In the third petition of the 4th group (at Serial No. 21), the competent authority passed an order against the person concerned, thereafter he filed an appeal, which was barred by time. He filed an application for condonation of delay, which was allowed. Thereafter the State Government filed an application to recall the order condoning the delay. This application was allowed and the order condoning the delay was set aside. The writ petition at Serial No. 21 is against the order recalling the order condoning the delay.

14. There is nothing on the record of the case to show that declaration u/s 10(3) of the Principal Act has been published or possession has been taken. As a matter of fact, this Court had already granted an interim order in favour of the petitioners. Here also, even if these three writ petitions are dismissed, the State Government can neither take proceedings to vest the land nor the possession

can be taken. It is unnecessary to decide those writ petitions on merits. But it is possible that declaration might have been published and parties may not be aware. It would be appropriate to dispose of these three writ petitions with the observation that State Government will not be able to take possession of the excess land from the person concerned and in case the declaration u/s 10(3) of the Principal Act has been published, then the petitioners would be at liberty to take proceedings for restoration or divesting the same as indicated in Section 3(2) of the Repealing Act.

A Caveat

15. I have held:

(1) The writ petitions and the special appeals do not abate due to Section 4 of the Repealing Act.

(2) It is unnecessary to decide these writ petitions on merits in view of the Repealing Act.

(3) Does it mean that all writ petitions against the order passed under the Principal Act are to be decided without entering into the merits of the petitioner? I don't think so. The proviso to Section 4 of the Repealing Act saves certain proceedings, namely those relating to Sections 11 to 14 of the Principal Act. The writ petition against these proceedings, if any, may have to be decided on merits. So is the case where the State Government or duly authorised person has taken possession.

16. The repeal of the Principal Act does not affect those cases where possession has been taken. But the State Government or duly authorised person could not take possession. ? unless the orders in the proceedings were legal. Their legality will have to be seen. The writ petitions in the cases, where possession has been taken, may have to be decided on merits.

Conclusion

17. In view of the repealing Act, the writ petitions do not abate, but it is not necessary to decide these writ petitions on merits. The writ petitions at Serial Nos. 1 to 16 are dismissed as infructuous. The rest of the writ petitions are disposed of with the observation that now the State Government is not entitled to take possession over the land in pursuance of any orders passed under the Principal Act and in case the declaration u/s 10(3) of the Principal Act has been published, the persons concerned would be at liberty to take proceedings for restoration or divesting the land in accordance with law.