

(2015) 03 AHC CK 0120

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 14606 of 2014

Yamdullah Khan and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

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

Citation : (2015) 4 ADJ 329

Hon'ble Judges : Krishna Murari, J; Pramod Kumar Srivastava, J

Bench : Division Bench

Advocate : Siddhartha Varma, for the Appellant

Final Decision : Allowed

Judgement

1. We have heard Sri Siddhartha Varma, learned counsel for the petitioners and the learned Standing Counsel for the respondents-State. The case of the petitioners is that though the land of the petitioners was declared as surplus under the Urban Land (Ceiling and Regulation) Act, 1976 (in short hereinafter referred to as "Act") but actual physical possession has not been taken and thus they would be entitled to the benefit of sub-section (3) of Section 3 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (in short hereinafter referred to as "Repeal Act").

2. Specific case of the petitioners is that no authority of the Urban Ceiling Office or the Tehsil or any other officials of the State had ever taken possession of the land of the petitioners, which was declared surplus on 29.12.1989 by the Competent Authority, Urban Land Ceiling, Bareilly, at any point of time before the enforcement of the U.P. Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Act No. 15 of 1999) or even after that.

3. Despite time having been allowed to the learned Standing Counsel to file counter-affidavit vide order dated 15.4.2014 and 9.2.2015, no counter-affidavit

has been filed and thus the allegations made in the writ petition that possession has not been taken is uncontroverted.

4. The issue was considered by the Division Bench of this Court in the case of Ram Chandra Pandey v. State of U.P., 2010 (7) ADJ 488 (DB), wherein it was held that mere symbolic possession does not amount to taking over actual physical possession. It was further held that unless actual physical possession has been taken by the State, the party would be entitled to the benefit of the Repeal Act, 1999.

5. The same view has been taken by the Apex Court in the case of State of U.P. Vs. Hari Ram, (2013) 6 AD 266 : AIR 2013 SC 1793 : (2013) 4 JT 275 : (2013) 2 RCR(Civil) 499 : (2013) 3 SCALE 348 : (2013) 4 SCC 280 : (2013) AIRSCW 1683 . The question for consideration before the Apex Court in the said case was whether deemed vesting of surplus land under Section 10(3) of the Act would amount taking over de facto possession depriving the landholders to the benefit of the saving clause under sub-section (3) of the Repeal Act. This issue was answered by the Apex Court in para 39 of the said judgment, which reads as under:

"The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under subsection (6) of Section 10. On failure to establish any of those situations, the land owner or holder can claim the benefit of Section 3 of the Repeal Act."

6. The same issue has been reaffirmed by the Apex Court in the case of Gajanan Kamlya Patil Vs. Addl. Collector and Comp. Auth. and Others, AIR 2014 SC 1843 : (2014) AIRSCW 1359 : (2014) 3 JT 211 : (2014) 3 RCR(Civil) 477 : (2014) 2 SCALE 286 : (2014) 6 SCJ 90 .

7. The petitioners are thus entitled to get the benefit of the Section 3 of the Repeal Act. In the facts and circumstances, the writ petition deserves to be allowed. Accordingly, the writ petition succeeds and stands allowed. A writ of mandamus is issued commanding the respondents not to interfere in the actual physical possession of the petitioners over the land in dispute and they are further directed to restore the entry of the name of the tenure holders in the revenue records. There shall be no order as to costs.