2023 INSC 906

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5721 OF 2023

(Arising out of SLP (C) No. 20137 OF 2023)

STATE OF U.P. & ANR. ... APPELLANTS

Versus

EHSAN & ANR. ... RESPONDENTS

J U D G M E N T

MANOJ MISRA, J.

1. This appeal is directed against the judgment and order of the High Court[1] dated 08.10.2018, passed in Writ C No. 21009 of 2012, by which the writ petition of the first respondent[2] was disposed of by declaring that the land in dispute shall continue to be in possession of the original petitioner and would not be treated as surplus land as he is entitled to the benefits of the Urban Land (Ceiling and Regulation) Repeal Act, 1999[3]. In addition to the above, a direction was issued to the Competent Authority (Urban Ceiling) Saharanpur[4] to ensure that the name of the original petitioner is restored in the revenue records.

[1] High Court of Judicature at Allahabad
[2] The original petitioner
[3] The Repeal Act, 1999
[4] The Competent Authority

Facts/Pleadings

2. The original petitioner had land holding admeasuring 7499.20 square meter comprising plot nos.166, 177, 179 and 185 in village Panjaura Bairoon, Tehsil and District Saharanpur. With the Urban Land (Ceiling and Regulation) Act, 1976[5] coming into force, proceedings thereunder were initiated against the original petitioner giving rise to Case No. 2186 of 1976. In these proceedings, *vide* order dated 26.11.1977, the Competent Authority declared 5499.20 square meter of land as surplus.

3. The aforesaid order dated 27.11.1977 was questioned before the High Court in the year 1986 through a writ petition, which was dismissed *vide* order dated 3.1.1986. The order dated 3.1.1986 is reproduced below:

> "This Writ Petition is against the order of the Competent Authority, Saharanpur dated 26.11.1977- The contention of the Learned counsel for the petitioner is that the impugned order is without jurisdiction and is unenforceable. If the order is unenforceable, the petitioner can demonstrate before the relevant authority and if that authority decides against the petitioner, the petitioner can approach this Court under Article 226 of the Constitution. At this stage, I

[5] The Ceiling Act, 1976

> am not inclined to interfere with the impugned order.
> The writ petition is dismissed with the above observation in limine and it would be open to the petitioner to approach this court under Article 226 of the Constitution if his contention is not accepted hereafter.
> A copy of this order may be given to the petitioner within 24 hours on receipt of usual charges."

4. Taking advantage of the observations made by the High Court in its order dated 3.1.1986, the original petitioner filed objections before the Competent Authority, which were rejected, *vide* order dated 27.03.1987, while observing that, -- (a) 5499.29 square meter of land was declared surplus on 26.11.1977; (b) the notification under Section 10(1) was published on 09.1.1978; (c) the notification under Section 10(3) was made on 15.01.1979, (d) the appeal of the original petitioner before the District Judge was rejected on 12.07.1979; (e) the objection with regard to jurisdiction of the Competent Authority, on the ground that land is agricultural and outside the master plan, is unsustainable because, according to the report, it fell in a residential area within the purview of the Master Plan; (f) the possession of the surplus land had already been taken.

5. The aforesaid order dated 27.03.1987 was questioned before the High Court through writ petition No.9702 of 1987 wherein, on 20.08.1987, an interim order was passed in the following terms:

> "Issue Notice.
> In the meantime, the petitioner shall not be dispossessed from the land declared to be surplus with him."

6. The said writ petition remained pending for over a decade and was decided on 28.02.2001, after the Repeal Act, 1999 was notified. The order dated 28.02.2001 is reproduced below:

> "Heard the learned counsel for the parties.
> This petition related to the Urban Land (Ceiling and Regulation) Act, 1976 as repealed in 1999. In Pt. Madan Swarup Shrotiya, Public Charitable Trust Vs. State of U.P. & others J.T. 2000(3) SC 391 it has been held by the Supreme Court that if the possession has been taken over by the State Government, then the proceedings under the Act will not abate but if the possession has not been taken then the proceeding will abate. We make it clear that the word possession means actual possession *(note: some words appear to be missing here)* has not been taken over the proceedings shall not abate otherwise they will abate.
> The petition is disposed of accordingly."
>
> (Note: supplied)

7. In the year 2012 a third writ petition[6] was filed by the first respondent claiming, *inter alia*, that actual possession of the surplus land was never taken; he continues to remain in possession of the land and is, therefore, entitled to a declaration that ceiling proceedings qua him stood abated by virtue of Section 4 of the Repeal Act, 1999. The cause of action for filing the third writ petition was that, when on 25.10.2012 the original petitioner applied for an extract of the *Khatauni* (i.e., record of rights) of 1414 to 1419 *Fasli,* he discovered that name of the State was entered in the records pursuant to a letter dated 20.05.2009. Therefore, to correct the same, the writ petition had to be filed.

8. Refuting original petitioner's case, on behalf of the State and the Competent Authority (i.e., the appellants herein), a counter affidavit was filed claiming, *inter-alia,* that,-- (i) the original petitioner had filed a statement under Section 6(1) of the Ceiling Act, 1976, in pursuance thereof, a draft statement proposing 5499.29 square meter of land as surplus was issued under Section 8(3) on 30.06.1977; (ii) on 26.11.1977 the Competent Authority confirmed the draft statement; (iii) on 09.01.1978 a notification under Section 10(1) was

[6] Writ Petition No. 21009 of 2012

published, which was followed by publication of a notification under Section 10(3) in the official Gazette on 15.1.1979, thereby vesting the land in the State; (iv) on 27.02.1979 a notice dated 26.02.1979, under Section 10(5), was served on the land holder and, pursuant thereto, physical possession of the surplus land admeasuring 5499.29 square meter was taken on 08.03.1979; (v) the benefit of the Repeal Act, 1999 is not available to the petitioner.

High Court's Findings

9. The High Court after considering the pleadings and the materials on record, concluded:

> "Having considered the submissions raised and applying the law laid down by the Apex Court, it is evident that the notice dated 26.02.1979 under section 10(5) of the Act which is said to have been served on 27.02.1979, as has been alleged in paragraph no. 4 of the counter affidavit, the same has been denied by the petitioner, but even assuming the same to be correct, the actual physical possession alleged to have been taken on 08.03.1979 could not be done as the period of 30 days had not expired. Even otherwise the document which has been filed as Annexure No. 1 to the counter affidavit is a report and not the actual possession memo. It also records that Bashir, who is the father of the petitioner refused to sign on the proceedings while

> possession was taken and the petitioner was not present at the time. It is, therefore, clear that this was a sheer paper transaction prepared before the expiry of the statutory period of 30 days and if the petitioner had not handed over voluntary possession, the dispossession could have been possible only by complying with the provisions of section 10(6) of 1970 Act. No such procedure has been followed nor any such evidence is on record.
>
> It is therefore evident that the case taken in the counter affidavit of having taken over the actual physical possession is not in conformity with law nor actual possession appears to have been taken."

10. Before concluding as above, the High Court took notice of various judicial pronouncements including of this Court, namely, (a) ***State of U.P.*** *vs.* ***Hari Ram***[7]; (b) ***Raghbir Singh Sehrawat*** *vs.* ***State of Haryana and Others***[8] and (c) ***State of Assam*** *vs.* ***Bhaskar Jyoti Sarma & Others***[9].

11. We have heard Mr. Rana Mukherjee, learned senior counsel for the appellants and Mr. Ankur Yadav for the first respondent.

[7] (2013) 4 SCC 280
[8] (2012) 1 SCC 792
[9] (2015) 5 SCC 321

Submissions On Behalf Of The Appellants

12. Learned counsel for the appellants submitted that notice under Section 10(5) of the Ceiling Act, 1976 was served on the tenure holder on 27.02.1979. Pursuant thereto, possession was taken on 8.3.1979. However, since the original petitioner avoided signing the memorandum of possession, the Competent Authority went to the spot, took possession in presence of two co-sharers and prepared a memorandum to that effect. Following that, the name of the State stood entered in the revenue records on 17.3.1982. As such, the land stood vested in the State. Later, it was transferred to Saharanpur Development Authority on 26.5.2003. Consequently, benefit of the Repeal Act, 1999 is not available to the original petitioner.

13. Appellants' also questioned the maintainability of the writ petition on the following grounds:

(i) There existed a serious dispute between the parties on a pure question of fact (i.e., whether actual possession was taken or not), which could appropriately be decided after taking oral evidence. Further, documentary evidence of possession could not be discarded merely because,

(a) possession was taken before expiry of 30 days from the date of service of notice under Section 10(5) of the Ceiling Act, 1976, and (b) the possession memorandum did not bear signature of the landholder. In these circumstances, the writ petitioner should have been relegated to a suit, particularly when in the earlier two rounds of litigation the High Court refrained from addressing the issue of possession.

(ii) The writ petition is highly belated, inasmuch as, after disposal of writ petition No. 9702 of 1987, the land which stood vested in the State was transferred to the Saharanpur Development Authority in the year 2003 and since then it has been in its possession whereas the writ petition was filed in the year 2012. Such a belated petition ought to have been thrown out on the ground of delay alone.

(iii) Once the land vests in the State and possession of the land has been taken, the State becomes absolute owner of the land and it cannot be divested of its title.

Decisions Cited By Appellants' Counsel.

14. In support of his submissions, the learned counsel for the appellants relied on several decisions, which are noticed, and discussed in brief, below:

(i) ***Syed Maqbool Ali*** *vs.* ***State of U.P.***[10]. In this case, in the context of a challenge to occupation of a piece of land without lawful acquisition and payment of compensation, it was observed that remedy of the landholder is either to institute a civil suit for recovery of possession and/or for compensation, or to file a writ petition if the action can be shown to be arbitrary, irrational, unreasonable, biased, mala fide or without the authority of law, and seek a direction that the land should be acquired in a manner known to law. It was also observed that in such matters, the person aggrieved should approach the High Court diligently. If the writ petition is belated, unless there is good and satisfactory explanation for the delay, the petition is to be rejected on the ground of delay and laches.

(ii) ***State of Assam*** *vs.* ***Bhaskar Jyoti Sarma,*** (supra). In this case, which arose out of

[10] (2011) 15 SCC 383

proceedings under the Ceiling Act, 1976, it was held that a bare reading of Section 3 of the Repeal Act, 1999 makes it clear that repeal of the principal Act does not affect the vesting of any land under sub-section (3) of Section 10 of the principal Act, possession whereof has been taken over by the State Government or any person duly authorized by the State Government in that behalf or by the competent authority. Further, in the context of the argument that due procedure for taking of possession was not followed, while distinguishing this Court's earlier decision in ***State of U.P.*** *vs.* ***Hari Ram*** *(supra)*, it was observed /held:

> "16. ..... Assuming that a person in possession could make a grievance, no matter without much gain in the ultimate analysis, the question is whether such grievance could be made long after the alleged violation of Section 10(5). If actual physical possession was taken over from the erstwhile landowner on 7-12-1991 as is alleged in the present case any grievance based on Section 10(5) ought to have been made within a reasonable time of such dispossession. If the owner did not do so, forcible taking over of possession would acquire legitimacy by sheer lapse of time. In any such situation the owner or the person in possession must be deemed to have waived his

right under Section 10(5) of the Act. Any other view would, in our opinion, give a licence to a litigant to make a grievance not because he has suffered any real prejudice that needs to be redressed but only because the fortuitous circumstance of a Repeal Act tempted him to raise the issue regarding his dispossession being in violation of the prescribed procedure.

17. Reliance was placed by the respondents upon the decision of this Court in *Hari Ram case* [*State of U.P.* v. *Hari Ram*, (2013) 4 SCC 280 : (2013) 2 SCC (Civ) 583] . That decision does not, in our view, lend much assistance to the respondents. We say so, because this Court was in *Hari Ram case* [*State of U.P.* v. *Hari Ram*, (2013) 4 SCC 280 : (2013) 2 SCC (Civ) 583] considering whether the word "may" appearing in Section 10(5) gave to the competent authority the discretion to issue or not to issue a notice before taking physical possession of the land in question under Section 10(6). The question whether breach of Section 10(5) and possible dispossession without notice would vitiate the act of dispossession itself or render it non est in the eye of the law did not fall for consideration in that case. In our opinion, what Section 10(5) prescribes is an ordinary and logical course of action that ought to be followed before the authorities decided to use force to dispossess the occupant under Section 10(6). In the case at hand if the appellant's version regarding dispossession of the erstwhile owner in December 1991 is correct, the fact that such dispossession was without a notice under Section 10(5) will be of no

> consequence and would not vitiate or obliterate the act of taking possession for the purposes of Section 3 of the Repeal Act. That is because Bhabadeb Sarma, erstwhile owner, had not made any grievance based on breach of Section 10(5) at any stage during his lifetime implying thereby that he had waived his right to do so.
>
> (Emphasis supplied)

(iii) ***Municipal Council, Ahmednagar and Another*** *vs.* ***Shah Hyder Beig and Others***[11]**.** In this case, in the context of a belated challenge to the land acquisition proceedings, applying the principle that delay defeats equity, it was observed that a belated challenge is not to be entertained and the plea of delay can be raised also at the stage of arguments.

(iv) ***Indore Development Authority*** *vs.* ***Manoharlal***[12]**.** Paragraph 258 of this judgment rendered by a Constitution Bench of this Court was cited to canvass that once title of the land vests in the State, consequent to acquisition and taking of possession, even if the landholder has retained possession or otherwise trespassed upon it after possession has been taken by the State, he remains a

[11] (2000) 2 SCC 48
[12] (2020) 8 SCC 129

trespasser and his possession would be deemed to be on behalf of the State.

(v) ***Banda Development Authority*** *vs.* ***Moti Lal Agarwal***[13]**.** In this case, this Court culled out principles concerning the mode of taking possession of a piece of land from the landholder. The relevant portion of the judgment is extracted below:

> "37. The principles which can be culled out from the above-noted judgments are:
>
> (*i*) No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.
>
> (*ii*) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.
>
> (*iii*) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.
>
> (*iv*) If the acquisition is of a large tract of land, it may not be possible for the

[13] (2011) 5 SCC 394

acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

(iv) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken.

38. In the light of the above discussion, we hold that the action of the State authorities concerned to go to the spot and prepare panchnama showing delivery of possession was sufficient for recording a finding that actual possession of the entire acquired land had been taken and handed over to BDA. The utilisation of the major portion of the acquired land for the public purpose for which it was acquired is clearly indicative of the fact that actual possession of the acquired land had been taken by BDA. Once it is held that possession of the acquired land was handed over to BDA on 30-6-2001, the view taken by the High Court that the acquisition proceedings had lapsed due to non-compliance with Section 11-A cannot be sustained."

(Emphasis supplied)

Submissions On Behalf Of The First Respondent

15. Per contra, on behalf of the first respondent, it was submitted that once the High Court *vide* order dated 03.01.1986 had allowed him to file an objection before the Competent Authority, any action taken prior to it became subject to further orders in the proceedings that followed. In writ petition No. 9702 of 1987, there was an interim order passed on 20.08.1987 directing that the original petitioner shall not be dispossessed from the land in dispute. This writ petition was disposed of without holding that actual possession of the surplus land was taken. Therefore, in the third round of litigation, when the original petitioner claimed that actual possession was never taken by the State, the burden was on the State to establish that possession was taken. The State not only had to prove that actual possession of the land was taken, but that it was taken in accordance with law. However, to discharge that burden, no proper documentary evidence was produced by the State. In these circumstances, the High Court was justified in allowing the writ petition.

16. It was urged that, admittedly, there was no compliance of the provisions of Section 10(5) of the Ceiling Act, 1976 as 30 days' notice was not given. Moreover, the memorandum of possession did not

bear signature of the landholder. Further, no compensation was paid. Therefore, in absence of any concrete evidence to indicate that possession was taken in the manner permissible under Section 10(6) of the Ceiling Act, 1976, conferment of the benefit of the Repeal Act, 1999 was justified.

17. As regards delay in filing the third writ petition, the learned counsel for the first respondent submitted that the High Court's order dated 28.02.2001 was already operating in favour of the first respondent and the revenue entries were also in his favour, therefore, cause of action to file third writ petition arose only when revenue entries were disturbed. Since information about change in revenue entry was received on 25.10.2012, the writ petition filed promptly thereafter was not barred by latches.

18. In support of his submissions, the learned counsel for the first respondent relied on those authorities which have been cited in the order impugned in this appeal.

Discussion And Analysis

19. We have considered the rival submissions and have perused the record.

20. Before we proceed further, it would be useful to recapitulate facts in respect thereof there is no dispute. These are:

(i) On 26.11.1977, 5499.29 square meter of land of the first respondent was declared surplus by the Competent Authority under Section 8(4) of the Ceiling Act, 1976.

(ii) Notification under Section 10(1) of the Ceiling Act, 1976 was published on 09.01.1978.

(iii) Notification vesting the surplus land in the State under Section 10(3) was published in the official Gazette on 15.1.1979.

(iv) Questioning the order dated 26.11.1977, a writ petition was filed by the first respondent in the year 1986 which was dismissed, *vide* order dated 3.1.1986, with liberty to raise the plea of jurisdiction before the Competent Authority.

(v) Objection taken by the first respondent came to be rejected by the Competent Authority *vide* order dated

27.03.1987. In the order it was observed that possession has already been taken.

(vi) The order dated 27.03.1987 was challenged through writ petition No. 9702 of 1987 wherein, on 20.08.1987, an *ex parte* interim order was passed directing that the original petitioner shall not be dispossessed from the land in dispute. However, while disposing of the said writ petition, the question of possession was left undecided. Rather, an open-ended declaration was made that if actual possession has not been taken by the date of commencement of the Repeal Act, 1976, the proceedings under the Ceiling Act, 1976 would abate, but if possession has been taken, they shall not abate.

21. From the facts noticed above, what is beyond controversy is, that,-- (a) 5499.29 square meter of original petitioner's land was declared surplus on 26.11.1977 and, after notification under Section 10(1) dated 9.1.1978, a notification was issued on 15.1.1979 vesting the land in the State under Section 10(3) of the Ceiling Act, 1976; (b) neither the order declaring the land as surplus, nor the notification vesting the land in the State, was set aside or

declared invalid. Even the order of the Competent Authority, dated 27.03.1987, rejecting objection of the original petitioner with regard to jurisdiction of the ceiling authorities, has not been set aside.

22. Surprisingly, the issue whether possession was taken prior to the commencement of the Repeal Act, 1999, though had arisen directly for determination in writ petition No.9702 of 1987, was not decided. This issue was critical because rights of the parties were dependent on its determination. Yet, for reasons unknown, the High Court chose not to decide the same while disposing of writ petition no. 9702 of 1987.

23. The factum of possession is essentially a question of fact. Although there is no hard and fast rule that a question of fact cannot be determined in writ jurisdiction but, in the event of a serious dispute between the parties on a question of fact, a writ court ordinarily refrains from deciding it. More so, when writ petitioner has an alternative remedy where such disputed questions of fact can be decided authoritatively.

24. In the instant case, a serious dispute had arisen regarding taking of actual possession of the surplus land. According to the appellants, physical possession of the surplus land was taken on

8.3.1979, after serving notice under Section 10(5) of the Ceiling Act, 1976 on the land holder on 27.02.1979. On the other hand, according to the original petitioner actual possession of the surplus land was never taken from him though the State may have taken possession on paper.

25. In the above backdrop, the foremost issue which arises for our consideration is:

> *Whether in exercise of writ jurisdiction the High Court should have refrained from adjudicating the contentious issue with regard to taking of actual possession of the surplus land from the landholder, when the same was not decided in the previous round of litigation even though it had arisen for consideration?*

26. Before we proceed further on the aforesaid issue, it would be useful to examine whether at the time of filing the third writ petition, the original petitioner had an alternative remedy of a suit to seek appropriate relief for protecting his rights, if any, over the land in dispute. In this regard, we may observe that ordinarily a suit to question the orders passed, and consequential notifications issued, under the Ceiling Act, 1976 is barred, inasmuch as the Ceiling Act, 1976 is a self-contained Code and any orders passed thereunder are subject to statutory appeal etc. For the same reason, a suit may not lie to declare

that surplus land, which has been notified as such under Section 10 (3) of the Ceiling Act, 1976, is free from ceiling for failure to take actual possession prior to enforcement of the Repeal Act, 1999. (**See: *State of M.P.*** *vs.* ***Ghisilal*[14]; *Competent Authority, Calcutta, Under The Urban Land (Ceiling and Regulation) Act, 1976 and Another*** *vs.* ***David Mantosh and Others*[15]; and *Saurav Jain and Another*** *vs.* ***A.B.P. Design and Another*[16]**).

27. However, in our view, on the aforesaid principle a suit on the cause of action shown in the third writ petition would not have been barred. Because, here, in the earlier round of litigation (i.e., writ petition No.9702 of 1987), the High Court had already made a declaration that if actual possession of the surplus land has not been taken prior to the cut-off date (i.e., 11.1.1999) specified in the Repeal Act, 1999, the proceedings under the Ceiling Act, 1976 would abate, and if actual possession had been taken by the cut-off date, it will not abate. In view of this conditional declaration, a further declaration in respect of validity of the orders passed, and notifications issued, under the Ceiling Act, 1976, was not required, therefore a court of competent

[14] (2021) SCC Online SC 1098
[15] (2020) 12 SCC 542
[16] (2021) SCC Online SC 552

jurisdiction could have entertained a suit and grant such relief, as may be warranted, dependent on its determination whether actual possession of the surplus land was taken or not, before the cut-off date. In this view of the matter, in our considered view, on the cause of action disclosed in the third writ petition, the first respondent could have instituted a suit to protect his interest, if any, in the land in dispute.

28. We are conscious of the law that existence of an alternative remedy is not an absolute bar on exercise of writ jurisdiction. More so, when a writ petition has been entertained, parties have exchanged their pleadings/ affidavits and the matter has remained pending for long. In such a situation there must be a sincere effort to decide the matter on merits and not relegate the writ petitioner to the alternative remedy, unless there are compelling reasons for doing so. One such compelling reason may arise where there is a serious dispute between the parties on a question of fact and materials/evidence(s) available on record are insufficient/inconclusive to enable the Court to come to a definite conclusion.

29. Bearing the aforesaid legal principles in mind, we would have to consider whether, in the facts of

the case, the High Court ought to have dismissed the third writ petition of the first respondent and relegate him to a suit as there existed a serious dispute between the parties regarding taking of possession. More so, when the High Court, in the earlier round of litigation, refrained from taking up the said issue even though it had arisen between the parties.

30. No doubt, in a writ proceeding between the State and a landholder, the Court can, on the basis of materials/evidence(s) placed on record, determine whether possession has been taken or not and while doing so, it may draw adverse inference against the State where the statutory mode of taking possession has not been followed **[See *State of UP* *vs.* *Hari Ram*** (supra)**]**. However, where possession is stated to have been taken long ago and there is undue delay on the part of landholder in approaching the writ court, infraction of the prescribed procedure for taking possession would not be a determining factor, inasmuch as, it could be taken that the person for whose benefit the procedure existed had waived his right thereunder **[See *State of Assam* *vs.* *Bhaskar Jyoti Sarma,*** (supra)**]**. In such an event, the factum of actual possession would have to be determined on the basis of materials/evidence(s) available on record and not merely by finding fault in the procedure

adopted for taking possession from the land holder. And if the writ court finds it difficult to determine such question, either for insufficient/ inconclusive materials/evidence(s) on record or because oral evidence would also be required to form a definite opinion, it may relegate the writ petitioner to a suit, if the suit is otherwise maintainable.

31. In the instant case, the original petitioner had knowledge that 5499.20 square meter of his land was declared surplus by order dated 26.11.1977. Yet, this order was challenged through writ petition not before the year 1986. What happened in between is not disclosed. Even if we assume that the third writ petition was based on a separate cause of action, still there could have been a whisper as to what was the reason for such long delay in filing the first writ petition, particularly when the original petitioner was throughout aware of State's case that possession had been taken in the year 1979 after publication of the vesting notification. The only explanation, if any, for this delay can be found in paragraph 4 of the writ petition, where it is stated that order dated 26.11.1977 was *ex-parte*. Even if we accept that order dated 26.11.1977 was *ex parte*, there is no disclosure in the writ petition as to when it came to the knowledge of the original petitioner.

32. What is even more interesting is that in the third writ petition there is no specific statement that recital in the order, dated 27.03.1987, with regard to taking of possession is incorrect. Though it is stated in paragraph 9 of the writ petition that under orders dated 26.11.1977 and 27.3.1987 possession was never taken. It be noted that possession was not taken under order dated 27.03.1987. Rather, it is alleged to have been taken pursuant to notification dated 15.1.1979. Thus, by the time third writ petition was filed, a vesting notification had already been published in the official gazette on 15.1.1979. Further, the Competent Authority's order dated 27.03.1987 categorically stated that State has taken possession of the land. Yet, there is no statement in the writ petition that order dated 27.03.1987 bears an incorrect recital with regard to taking of possession. For all the reasons above, in our view, the High Court ought to have been circumspect about the claim of the original petitioner that possession was not taken right up to the enforcement of the Repeal Act, 1999.

33. As far as documentary material placed by the original petitioner is concerned, we notice that no *Khatauni* or *Khasra* extract of the period starting from 1979 up to 1987 was filed. The third writ

petition annexes *Khatauni* or *Khasra* extracts of the period 1405 to 1417 *Fasli*, that is of the year 1998 to the year 2010. In addition to those documents, some revenue receipts of the period starting from 1989 have been filed. According to the State, possession of the surplus land was taken in the year 1979. If it were so, even if the petitioner entered into possession anytime thereafter, may be on the strength of the *ex parte* interim order dated 20.08.1987, the same would not defeat the right of the State in view of decision of this Court in ***Indore Development Authority*** (supra) where, in paragraph 258 of the judgment, it was held that once title of the land vests in the State, consequent to acquisition and taking of possession, even if the landholder has retained possession or otherwise trespassed upon it after possession has been taken by the State, he is just a trespasser and his possession, if any, would be on behalf of the owner i.e., the State.

34. At this stage, we may notice to reject another argument made on behalf of the respondent, which is, that the High Court had granted an interim order, dated 20.08.1987, protecting original petitioner's possession, therefore, it is to assumed that possession was not taken from him by that time. No doubt, the original petitioner succeeded in obtaining

an *ex parte* interim order but there is no material on record to suggest that this interim order was confirmed after considering State's objection. Moreover, if possession had been taken prior to the grant of interim order, as is the case of the appellants, and while disposing of the writ petition the question of possession was left open, the interim order would not, in any way, be conclusive to prove continuity of possession. In these circumstances as also that no documentary evidence was filed regarding original petitioner's possession between the years 1979 and 1987, in our view, the interim order did not carry much evidentiary value to prove that possession was not taken prior to the year 1987.

Conclusion

35. In view of the discussion above and having regard to the following: (a) that there was a serious dispute with regard to taking of possession of the surplus land; (b) that there was a delay of about seven years in filing the first writ petition from the date when possession was allegedly taken by the State, after publication of the vesting notification; (c) that no documentary evidence such as a *Khasra* or *Khatauni* of the period between alleged date of taking possession and filing of the first writ petition was

filed by the original petitioner; (d) that in the earlier two rounds of litigation, the High Court refrained from deciding the issue of possession of the surplus land even though that issue had arisen directly between the parties; and (e) that infraction of the prescribed statutory procedure for taking possession cannot be the sole basis to discard State's claim of possession, when it is stated to have been taken long before the date the issue is raised, we are of the considered view that the High Court should have refrained from deciding the issue with regard to taking of actual possession of the surplus land prior to the cut off date specified in the Repeal Act, 1999. Instead, the writ petitioner should have been relegated to a suit.

36. In view of the above conclusion, the appeal is allowed. The impugned order passed by the High Court is set aside. The first respondent's writ petition is dismissed without prejudice to his right to institute a suit. Parties to bear their own costs.

37. It is clarified that we have not expressed any binding opinion as to whether possession of the surplus land was taken by the State before the cut-off date as specified in the Repeal Act, 1999. Observations, if any, in this regard are purely for the purpose of deciding whether the High Court should

have entertained the writ petition or not. Hence, if any suit is instituted the same shall be decided on its own merits.

.....J.
(Pamidighantam Sri Narasimha)

.....J.
(Manoj Misra)

New Delhi;
October 13, 2023