



2026:AHC:133743-DB

AFR

Reserved on 09.04.2026

Delivered on 06.07.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 12144 of 2010

Krishna Kumar Mishra And Ors.

.....Petitioner(s)

Versus

State Of U.P. Thru. P.S. Admin. And Ors.

.....Respondent(s)

Counsel for Petitioner(s)	: S.C. Tiwari, Shakti Shanker Tiwari
Counsel for Respondent(s)	: Abhinava Krishna Srivastava, C.S.C., Ramesh Upadhyay, S.C., Sanjai Singh Jatav, Vivek Varma

Court No. - 4

HON'BLE NEERAJ TIWARI, J.

HON'BLE SUDHANSHU CHAUHAN, J.

(Delivered by Hon'ble Sudhanshu Chauhan, J)

1. The present writ petition has been filed for the relief that the respondents be commanded not to dispossess the petitioners from the land in dispute and further a direction may be issued to the respondents to expunge the entries in the name of Urban Ceiling in the revenue records and the same be recorded in the name of the petitioners in respect of land in dispute.
2. The case of the petitioners is that the predecessors of the petitioners were the recorded tenure holders of the land measuring 1.004 hectares comprised in Plot Nos. 357, 358, 359 and 360 situated at Village – Bara Sirohi, Tehsil Sadar, District-Kanpur Nagar (herein after referred to as the land in dispute).
3. It is also stated that although the ceiling proceedings were initiated in respect of the land in dispute under the Urban Land (Ceiling and Regulation) Act, 1976 (herein after referred to as the Act, 1976) but the petitioners continued to remain in possession of the land in dispute.
4. It is further contended that no compensation was paid to the petitioners at any point of time under the provisions of the Act, 1976. The petitioners have also relied upon the government orders dated 02.02.2000 and 09.08.2000 under which if the possession of the land has not been taken at the time of enforcement of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (herein after referred to as "the Repeal Act, 1999") then the land holders would continue to remain in possession of the land in question.

5. The petitioners in support of their possession have filed irrigation receipts, the latest pertaining to the year 2015. The petitioners have also filed orders passed by the revenue authority dated 29.07.1998 by means of which the land in dispute was recorded in the name of Kanpur Development Authority respondent no. 3.

6. Per contra, it has been contended on behalf of the respondent State that as the land holders did not file ceiling return under Section 6(1) of the Act, 1976, thereafter notice no. 915 dated 08.07.1996 was issued under Section 6(2) of the Act, 1976. However, no statement was filed by the land holders even thereafter. Subsequently, an order under Section 8(4) of the Act, 1976 was passed on 31.03.1997. Thereafter, proceedings under Sections 9 and 10(1) of the Act, 1976 had taken place and a notification under Section 10(3) of the Act, 1976 was published on 18.07.1998. Notice under Section 10(5) of the Act, 1976 was issued to the land holders on 29.09.1998, which was served upon the land holders. However, as the land holders did not handover the possession of the land in dispute, the possession was taken under Section 10(6) of the Act, 1976 by means of a Dakhalnama (possession memo) dated 11.02.1999. The perusal of the Dakhalnama reveals that it had signatures of the person handing over the possession. Thus, it is stated that the possession of the land in dispute was taken prior to enforcement of the Repeal Act, 1999.

7. The case of the Kanpur Development Authority-respondent no. 3 is that the possession of the land in dispute was taken by the State and subsequently the possession of the land in dispute was transferred to the respondent no. 3 - Authority and the name of the respondent no. 3 - Authority was also recorded in the revenue records. It is also stated that the land in dispute has been developed by the respondent no. 3 - Authority under the Housing Scheme namely, "Jawaharpuram" and the residential plots carved out therein have already been allotted to the public. Further reliance has been placed upon the judgment and order dated 19.09.2018 passed by this Court in Writ-C No. 31059 of 2015 (Jagdish Chandra Vs. State of U.P. & 2 others), wherein the land in question was similarly situated in Village-Bara Sirohi, Tehsil and District-Kanpur Nagar and the order dated 26.03.2015 passed by the District Magistrate/Collector, Kanpur Nagar rejecting the representation of the petitioner in the said writ petition was upheld. Subsequently, the Special Leave Petition filed against the judgment and order dated 19.09.2018 passed by this Court was also dismissed by the Apex Court. Further it is contended that the possession of the land in dispute was taken in the year 1999 and the same was recorded in the name of the respondent no.3 - Authority and as such the writ petition has been filed after a delay of 11 years from the date of

taking the possession and is liable to be dismissed solely on the ground of delay.

8. Thus, the contention of petitioners is that the petitioners have continued to remain in possession of the land in dispute after the enforcement of the Repeal Act, 1999 and as such the petitioners are entitled to protect their possession by virtue of the provisions of the Repeal Act, 1999 and the government orders dated 02.02.2000 and 09.08.2000. The petitioners in support of their contention that they are in possession of the land in dispute have filed the receipts of payment made to the Irrigation Department as well as photographs.

9. On the other hand, the contention of the respondents is that the possession of the land in dispute was taken under Section 10(6) of the Act by means of a Dakhalnama prior to enforcement of the Repeal Act, 1999 and the land was also recorded in the name of the respondent no. 3 – Authority in the revenue records but the petitioners had never objected to the same. Further a residential colony by the name of Jawaharpuram is situated over the land in dispute. It is vehemently contended that the present writ petition filed after a lapse of more than 11 years from being or the possession of the land in dispute and is grossly time barred and is liable to be dismissed solely on the ground of delay.

10. We have perused the records of the case. The respondent State in paragraph 4 of their counter affidavit dated 30.11.2010 have taken a specific stand that the possession of the land in dispute stood transferred to the State by means of a Dakhalnama on 11.02.1999. The relevant part of the counter affidavit is reproduced herein under:-

"4. That statements under Section 6(1) of the Urban Land (Ceiling and Regulation Act), 1976, hereinafter referred to as Act, 1976 were filed by Sri Satya Narain son of Mitthu, Sri Shiv Kumar, Shri Ram Kumar and Shri Lala Ram, all sons of Shri Shiv Ram, resident of Village Maqsoodabad, Kanpur giving the details of their land and property owned by them, being statements No. 7570, 7571, 7572 & 7573. On the said statements after completing the proceedings according to the provisions of the aforesaid Act, the benefit of 1000 Sqm. land were given to each of the land holders. It is submitted that no proceedings for taking possession in the concerned files were conducted. Later on, a scheme known as 'Jawaharpuram housing scheme' was started by the Kanpur Development Authority, under which plot Nos. 357, 358, 359 & 360 situate in village Barasirohi, District Kanpur were found to be in possession and owned by the aforesaid land holders. It is relevant to

mention here that the aforesaid land holders had not disclosed the details of the said plot Nos., 357, 358, 359 & 360 situate in village Barasirohi, Kanpur in their statements filed earlier under Section 6(1) of the Act, due to which no proceedings in respect of the said land under the provisions of the Act, were initiated. Therefore, again a notice No. 915 dated 8.7.1996 under Section 6(2) of the Act was issued to the land holders for submitting their statements in respect of the said plots. But thereafter no statement were filed by them in response to the said notice dated 8.7.1996. It is stated that according to survey report 5018.2 Sqm. land were found in possession of Satya Narain, 1692.93 Sqms. land was found in possession of Shiv Kumar, 1692.93 Sqms. Land in possession of Ram Kumar and 1692.93 Sqms. and Land in possession of Lala Ram, total 10037.64 sqm. land. It is submitted that the benefit of 1000 sqm. land under the provisions of aforesaid Land to each of the land holder had already been given. As such an order under Section 8(4) of the Act was passed on 31.3.1997 declaring the said land (10037.64 sqm. land) as surplus being beyond the ceiling limit with the land holders. Thereafter, after completing the proceedings under Section 9 and 10(1) of the Act, when no interested person filed any objection under Section 10(2) of the Act then a notification was made on 25.3.1998 under Section 10(3) of the Act for its publication in the government gazette, which was published in the government gazette on 18.7.1998, and the entire declared surplus land free from all encumbrances, were vested in the State Government. Thereafter a notices under Section 10(5) of the Act were issued to each of the land holders on 29.9.1998 for handing over possession themselves, which was served upon them at the level of Tehsil / Up Ziladhikari. When the aforesaid land holders were themselves not handed over the possession of the declared surplus land then the Tehsil staff went on spot and taken over the possession of the declared surplus land on behalf of District Magistrate under Section 10(6) of the Act on 11.2.1999 and prepared Dakhalnama in this connection on spot and on the same date the declared surplus was transferred in favor of Kanpur Development Authority, Kanpur. Thereafter the proceedings under Section 11 of the Act were initiated for fixation of the compensation in respect of the declared surplus land, which is still pending. Photocopy of the Dakhalnamas of the land in question is being annexed herewith and marked as Annexure No. CA -1 to this Counter Affidavit."

11. The petitioners in their rejoinder affidavit in response to the contents of paragraph 4 of the counter affidavit in their rejoinder affidavit dated 01.04.2023, wherein para wise reply of the counter affidavit dated 30.11.2010 has been submitted, have stated as under:-

"That the contents of paragraph no. 4 of the counter affidavit are misconceived hence vehemently denied. In reply thereto it is respectfully submitted that the Satya Narain s/o-Mitthu, Shiv Kumar, Ram Kumar, and Lala Ram all sons of Shiv Ram R/O-village Maqsoodabad District Kanpur had filed the detail statements bearing no. 7570, 7571, 7572 and 7573 and thereafter authorities were found that there was no access urban land and as such the proceedings were completed without issuing any further notice to the owners. Moreover, the Arazi no.-357, 358, 359 & 360 situated at village Bara Sirohi Tehsil Sadar, District Kanpur Nagar were used for only agriculture purpose and cultivation of foods grain has still continuing. The petitioner has already annexed copy of Khasra of relevant years as the annexure no. 01 of the writ petition which is at page no. 22 of the writ petition. From perusal of Khasra from year of 1473, it is clear that this Arazi numbers were duly irrigated through canal for cultivation of the grains and the land are only utilize for agriculture purpose. The petitioner vide his paragraph no. 12 pleaded that the land in question has been irrigated through canal and government itself receiving the payment of water charges. The receipt has also been annexed as annexure no.-5 to the writ petition.

It is noteworthy to state that "The Urban Land (Ceiling and Regulation) Act 1976 define the Urban Land vide Section 2-(o) of the Act - "urban land" means,-(i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or, (ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat, but does not include any such land which is mainly used for the purpose of agriculture."

"It is also relevant to state here that the Village Bara sirohi was initially beyond the Municipal area as well as the areas of agglomeration but later on by introducing Jawaharpuram Housing Scheme the Kanpur Development Authority brought this area under the agglomeration area but the K.D.A did not notified the land of petitioner under the Jawaharpuram Housing Scheme as such no land acquisition proceeding have ever taken place by the authorities.

The allegation of respondents that the land holder does not disclose the details of aforesaid Arazi is wholly misconceived hence denied. The land in question being agriculture land not cover under the definition of Urban

land as defined in section 2(o) of the Act.

It is noteworthy to state that alleged notice no 915 u/s-6(2) has never been issued and served to the land owners. The petitioners have no knowledge of any proceeding. In fact the proceeding was only on paper work and no any opportunity was provided to the petitioners. The Authorities passed the Ex- party orders without serving notice to the petitioner. However, after the passing of Ex-party order u/s- 8(4) no proceeding of section 9 and 10 (1) of the act was held. There was no notice under section 10(5) was ever issued and served. The respondent deliberately did not file the copy of notice as well as disclosed the date of the notice or receiving date of the notice. More over, Dakhalnama enclosed with the counter affidavit at page no 10 to 13 has no concerned with the taking of possession from the land owners. From perusal of the dakhalnama, it appears that the Naib Tehsildar, UCL, Kanpur Nagar in pursuance to the order date 31/03/1997 passed under section 8(4) deliver the possession of the land on 11-02-1999 to the Kanpur Development Authority. There is no whisper of the fact on which date the possession have taken from the land owners, even the petitioners have no knowledge of any such activities, there is no signature of witness The document itself Contradictory to the Govt. record of Mutation as annexure no 02 of the writ petition as in the record the name of the K.D.A has appears to be recorded void order 25-07-1998, while the proceedings under section 10(5) has been claimed to be taken place thereafter the Dakhalnama disclosed that the K.D.A has taken the possession on 11/02/1999, thus, prior to 11.02.1999, there was no occlusion to record the name of the K.D.A.

It is also relevant that there was several of shares of the land in question thus without partition of the arazi part of the arazi land could not be taken by the authorities. Since only 1/6 shares was alleged to be declares surplus, therefore, without partition of land under the provision of the Act and Rules, the possession could not be exchanged. This fact is also apparent from the annexure no -01 where boundaries of the land does not disclose and no map of the land which was taken make part of the Dakhalnama.

The Arazi of the land is as large area and without partition of the land the possession could not be possible takeover."

12. We have perused the Dakhalnama the same is signed by the person handing over possession as well as the person taking over possession i.e. Nayab Tehsildar, Urban Land Ceiling, Kanpur and the date of taking possession thereon is mentioned as 11.02.1999. The petitioner in the

rejoinder affidavit do not make any mention about the signatures of the person handing over the possession, what to say about any denial of the same. Further, the allegation of no mention of the date on which possession was taken from the land holder is also without any basis, as the perusal of the Dakhalnama reveals that the possession of the land in dispute was handed over to Supervisor Kanoongo/Nayab Tehsildar on 11.02.1999 and after the possession was handed over by the land holder to the Nayab Tehsildar that the Nayab Tehsildar went on to hand over the possession to the representative of Kanpur Development Authority. The petitioners in their response to paragraph 4 of the counter affidavit have not disputed the Dakhalnama/possession memo but only state that the same has not been signed by the witnesses.

13. Further, the petitioners themselves admit that the land in dispute was recorded in name of Kanpur Development Authority vide order dated 25.07.1998 and the same was done after the vesting of the land in dispute in the State by means of proceedings under section 10(3) of the Act, 1976, which were published in the State Gazette on 18.07.1998 and we find no irregularity in the same. We also fail to understand as to what took the petitioners 12 years to file the present writ petition, once, the petitioners were aware of the order dated 25.07.1998 by means of which the land in dispute was recorded in the name of respondent no. 3 – Authority, the petitioners themselves having filed the of revenue authorities orders along with the writ petition.

14. The only document produced by the petitioners to show their possession of the land in dispute are receipts issued by the Irrigation Department but the same too pertain upto the year 2011 and one receipt is of the year 2015. The petitioners have not filed any receipt of recent years, hence, it cannot be ruled out that the Department of Irrigation stopped issuing receipts once development commenced under the Jawaharpuram Scheme by the respondent no. 3. Moreover, the receipts from Irrigation Department can be obtained by depositing the amounts payable and the same are admittedly not in consonance with the revenue records, wherein the name of the respondent no. 3 authority has been recorded since the year 1998. Hence, it is difficult to hold that the petitioners are in possession of the land in dispute solely on the basis of receipts of Irrigation Department. Further, the photographs relied upon by the petitioners in no way establish that they pertain to the land in dispute and, thus, fail to establish the possession of the petitioners over the same.

15. Moreover, the respondent no. 3-authority has filed a lay out plan of the residential scheme Jawaharpuram to be developed in village Bara Sirohi,

Kanpur Nagar and also details of expenditure under which the amount of Rs. 174 crores had already been spent upto 30.06.2016.

16. Besides, a Coordinate Bench of this Court in respect of the proceedings under the Act, 1976 pertaining to land situated in Village-Bara Sirohi, Kanpur Nagar had dismissed the writ petition filed by the land holders being Writ-C No. 31059 of 2015 (Jagdish Chandra Vs. State of U.P.), decided on 19.09.2018, wherein this court amongst others had held as under:-

"13. Learned counsel for petitioner did not dispute that in Revenue records of Fasli 1406 to 1411 name of KDA has been entered in respect of land in dispute. He has also placed on record certain photographs which shows existence of roads, installed electrical polls etc in substantial part of land in dispute and also construction of water supply tank, some houses etc., which are not constructed by petitioner but KDA. The de facto possession, therefore, in respect of land in dispute is evidently with KDA. In the entire writ petition, it is not stated anywhere as to when KDA had undertaken all these developmental activities. There is nothing to show that KDA did not acquire possession of land prior to cut off date prescribed in Repeal Act, 1999. Without entering into question whether possession of land in dispute is validly taken or not or there exists proper memo of possession or not, suffice it to mention that KDA is in possession of land in dispute and has undertaken some development activities by constructing roads, installing electrical polls, construction of water supply tanks, houses etc. In absence of anything to show that aforesaid possession of KDA is subsequent to Repeal Act, 1999, we find no reason to disbelieve the finding recorded by District Magistrate that KDA got possession over the land in dispute. If de facto possession of land was taken by the authorities before cutoff date prescribed in Repeal Act, 1999, it will render the ceiling proceedings ineffective and would abate the same."

17. Thus, in view of the facts above he hold that the possession of the land and dispute stood transferred to respondent no. 3 prior to enforcement of the Repeal Act, 1999.

18. There is another aspect of the subject matter in a controversy that of delay, it is contended on behalf of the respondents that the petitioners have approached this court after a delay of 12 years from the date the land in dispute was recorded in the name of respondent no. 3 – Authority and 11 years after the possession was handed over to the State.

19. It is pointed out here that the respondents have relied upon the case, **State of Assam v. Bhaskar Jyoti Sarma and others, 2015 (5) SCC 321**. In

that case submission was raised by the State of Assam that physical possession has been taken over by the competent authority and it was submitted on behalf of the landowner that procedure prescribed under Section 10 (5) of the Act, 1976 was not followed. It was before taking possession under Section 10 (6) of the Act, 1976, the notification under Section 10 (5) was necessary; thus no possession can be said to have been taken under Section 3 of the Repeal Act, 1999. The question before the Hon'ble Supreme Court was whether actual physical possession was taken over by the competent authority. The State of Assam submitted that though possession was taken over in the year 1991, may be unilaterally and without notice to the land owner. It was urged that mere non-compliance with Section 10 (5) would be insufficient to attract the provisions of Section 3 of the Repeal Act, 1999. The Apex Court while repelling the submission of the landowner had held as under:-

"14 We say so because in the ordinary course actual physical possession can be taken from the person in occupation only after notice under Section 10(5) is issued to him to surrender such possession to the State Government, or the authorized officer or the competent authority. There is enough good sense in that procedure inasmuch as the need for using force to dispossess a person in possession should ordinarily arise only if the person concerned refuses to cooperate and surrender or deliver possession of the lands in question. That is the rationale behind Sections 10(5) and 10(6) of the Act. But what would be the position if for any reason the competent authority or the Government or the authorised officer resorts to forcible dispossession of the erstwhile owner even without exploring the possibility of a voluntary surrender or delivery of such possession on demand? Could such use of force vitiate the dispossession itself or would it only amount to an irregularity that would give rise to a cause of action for the aggrieved owner or the person in possession to seek restoration only to be dispossessed again after issuing a notice to him? It is this aspect that has to an extent bothered us.

15. The High Court has held that the alleged dispossession was not preceded by any notice under Section 10(5) of the Act. Assuming that to be the case all that it would mean is that on 7-12-1991 when the erstwhile owner was dispossessed from the land in question, he could have made a grievance based on Section 10(5) and even sought restoration of possession to him no matter he would upon such restoration once again be liable to be evicted under Sections 10(5) and 10(6) of the Act upon his failure to deliver or surrender such possession. In reality therefore unless there was something that was inherently wrong so as to affect the very process of taking over such as the identity of the land or the boundaries

thereof or any other circumstance of a similar nature going to the root of the matter hence requiring an adjudication, a person who had lost his land by reason of the same being declared surplus under Section 10(3) would not consider it worthwhile to agitate the violation of Section 10(5) for he can well understand that even when the Court may uphold his contention that the procedure ought to be followed as prescribed, it may still be not enough for him to retain the land for the authorities could the very next day dispossess him from the same by simply serving a notice under Section 10(5). It would, in that view, be an academic exercise for any owner or person in possession to find fault with his dispossession on the ground that no notice under Section 10(5) had been served upon him.

16. The issue can be viewed from another angle also. 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. That decision does not, in our view, lend much assistance to the respondents. We say so, because this Court was in Hari Ram case 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."

20. The aforesaid judgment of the Supreme Court in the case of ***State of Assam v. Bhaskar Jyoti Sarma and others*** has also been relied upon by a Co-ordinate Bench of this Court in the case of ***Shiv Ram Singh v. State of U.P. and others, 2015 SCC Online All 8853*** wherein this Court while dismissing the writ petition on the ground of delay and laches had held as under:-

"10. We must also advert to another aspect of the matter particularly. having regard to the recent decision of the Supreme Court in Bhaskar Jyoti Sarma (supra). The petitioner moved the first writ petition in 2002 nearly three years after the Repeal Act had come into force. After the earlier writ petition was disposed of by directing the District Magistrate to pass an order on the representation of the petitioner, an order was passed by the District Magistrate on 10 May 2007. The petitioner thereafter waited for a period of over two years until the present writ petition was filed in July, 2009. If the petitioner had been dispossessed of the land without due notice under section 10(5), such a grievance could have been raised at the relevant time. As a matter of fact, it has been the case of the State all along that a notice under section 10(5) was, in fact, issued in the present case which would be borne out from the original file which has been produced before the Court. The issue is whether such a grievance could be made long after, before the Court. The petitioner had waited for nearly three years after the Repeal Act came into force to file the first writ petition and thereafter for a period of over two years after the disposal of the representation despite the finding of the District Magistrate that possession was taken over on 25 June, 1993. In our view, such a belated challenge should not, in any event, be entertained. However, we would hasten to add that this is quite apart from the fact that we have, independent of this finding, held that possession was in fact taken over prior to 18 March, 1999 consequent upon which the petitioner would not be entitled to the benefit of the Repeal Act."

21. It is also pertinent to mention here that the law laid down by the Hon'ble Supreme Court in the case of *State of Assam v. Bhaskar Jyoti Sarma and others* came up for consideration of a Constitution Bench of the Hon'ble Supreme Court in the case of ***Indore Development Authority v. Manohar***

Lal, (2020) 8 SCC 129, although the question involved in the said case pertained to interpretation of Section 24 of the Right to Fair Compensation and Transparency and Land Acquisition, Rehabilitation and Resettlement Act, 2013, the Apex Court while considering paras 15 to 17 of the judgment in the case of **State of Assam v. Bhaskar Jyoti Sarma and others (supra)** had held as under:-

"This Court held that provisions of the Repeal Act could not be extended in such a case where possession has been taken without following the procedure, and the landowner cannot retain the land. This Court also observed that once possession has been taken over in the year 1991, any grievance as to non-compliance of Section 10 (5) ought to have been made within a reasonable time of such dispossession. By sheer lapse of time, the possession would acquire legitimacy. Thus, the owner or the person in possession must be deemed to have waived his right under Section 10 (5) of the Act. This Court also observed that only because of the fortuitous circumstances of a Repeal Act, which confers regarding his dispossession, being in violation of the prescribed procedure. It is clear from the aforesaid decision that such claim cannot be entertained, and any such dispute raised belatedly was repelled by this Court."

22. In this regard, the Apex Court in the case of **Kapilaben Ambalal Patel and others v. State of Gujarat and others, 2021 (12) SCC 95** where the writ petition had been filed after a lapse of 14 years from taking of possession of the land from the land holders. The Hon'ble Supreme Court while upholding the judgment of the Division Bench of the High Court, inter alia dismissing the writ petition on the ground of delay had held as under:-

"17. The Division Bench, in our opinion, therefore, was right in concluding that the writ petition filed by the appellants after lapse of 14 year was hopelessly barred by delay and suffered from laches. We are in agreement with the said view taken by the High Court in the peculiar facts of the present case.

18. Strikingly, in this appeal by special leave, a vague ground has been raised to challenge the said conclusion of the Division Bench. Further, no substantial question of law has been formulated in the appeal by special leave in that regard. Furthermore, in the grounds all that is asserted is that the High Court erred in holding that there was delay of 14 years in filing of writ petition and in not appreciating that the notice under Section 10 (5) of the 1976 Act, dated 23.1.1986, was not served upon Ambalal Parsottambhai Patel as he had already expired on 31.12.1985 and the notice sent to him was returned back on 2.2.1986 unserved with remark "said owner has expired". Further, the legal heirs of Ambalal

Parsottambhai Patel ought to have been served with the said notice. From the factual matrix already stated hitherto, these ground, in our opinion, are of no avail to the appellants. It is manifest from the acknowledgement produced by the respondent State that the first notice under Section 10(5) issued to Ambalal Parsottambhai Patel was duly served on 26.12.1985. By the time second notice under Section 10(5) was issued on 23.1.1986, Ambalal Parsottambhai Patel had died (on 31.12.1985). The second notice was also issued to others, namely Bhikhabhai Manganbhai Patel, Natvarbhai Bhailabhai Patel and Jayantibhai Babarbhai Patel. Be that as it may, we are not inclined to reverse the conclusion recorded by the Division Bench of the High Court that the writ petition filed by the appellants was hopelessly delayed and suffered from laches. That is possible view in the facts of the present case.

19. The respondents had additionally relied on the decision of this Court in Larsen & Turbo Ltd (supra), wherein the Court adverted to the exposition in Balwant Narayan Bhagde vs. M.D. Bhagwat & Ors, Balmokand Khatri Educational and Industrial Trust vs. State of Punjab and Tamil Nadu Housing Board vs. A. Viswam (Dead) by Lrs. Regarding the settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. Further, that the normal mode of taking possession is drafting the Panchnama in the presence of Panchas and taking possession and giving delivery to the beneficiaries is accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession. Reliance is also placed on paragraphs 14 to 16 of the Bhaskar Jyoti Sarma (supra). However, it is not necessary for us to dilate on these aspects having agreed with the conclusion recorded by the Division Bench of the High Court that the writ petition filed in the year 2001 by the appellants with limited relief of questioning the Possession Panchnama dated 20.3. 1986, suffered from laches. The Division Bench of the High Court noted that the learned single Judge completely glossed over this crucial aspect of the matter, and we find no reason to depart from that conclusion."

23. It is further pointed out that as far as the question of delay in filing of writ petition is concerned, the Apex Court in the case of **Marinmoy Maity v. Chhanda Koley and others, (2024) 15 SCC 215**, which case although does not relate to proceedings under the Act, 1976 had held as under :-

"9. Having heard rival contentions raised and on perusal of the facts obtained in the present case, we are of the considered view that writ petitioner ought to have been non-suited or in other words writ petition

ought to have been dismissed on the ground of delay and laches itself. An applicant who approaches the court belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or laches is one of the factors which should be born in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action.

10. The discretion to be exercised would be with care and caution. If the delay which has occasioned in approaching the writ court is explained which would appeal to the conscience of the court, in such circumstances it cannot be gainsaid by the contesting party that for all times to come the delay is not to be condoned. There may be myriad circumstances which gives rise to the invoking of the extraordinary jurisdiction and it all depends on facts and circumstances of each case, same cannot be described in a straight jacket formula with mathematical precision. The ultimate discretion to be exercised by the writ court depends upon the facts that it has to travel or the terrain in which the facts have travelled.

11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is involved, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court....."

24. It is also pertinent to mention here that a Co-ordinate Bench of this Court in **Writ C No. 38977 of 2022 (Mithai Lal and others v. State of U.P and others)**, where the relief of abatement of proceedings under the Act, 1976 and correction of revenue records was sought on the ground that the

petitioners were in possession of land in question and no proceedings under Section 10 (6) of the Act, 1976 had been initiated, had went on to dismiss the writ petition on the ground of delay vide judgment and order dated 16.02.2023 where in it was held as under:-

*"19. For the reasons aforesated and also in view of the law laid down by Hon'ble Supreme Court in the case of **Bhaskar Jyoti Sharma (supra)**, **Kapilaben Ambalal Patel (supra)** and a coordinate Bench decision of this Court in the case of **Shiv RamSingh (supra)**, we do not find any merit in the writ petition. This writ petition is also highly time barred and no reason for the inordinate delay has been given in the writ petition.*

*20. Consequently, the writ petition is **dismissed**. "*

25. Thus, in view of above as the possession of the land in dispute already stood transferred to the respondent no. 3 – Authority prior to enforcement of the Repeal Act, 1999 and there being substantial delay on the part of the petitioners in approaching this court, thus we have no hesitation in concluding that no case is made out in favour of the petitioners.

26. Hence, the present writ petition lacks merit and is dismissed. No order as to costs.

July 6, 2026
Arif

(Sudhanshu Chauhan,J.) (Neeraj Tiwari,J.)