



2026:AHC:191297-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 30456 of 2014

Harpal and 4 others

.....Petitioner(s)

Versus

State of U.P. and 2 others

.....Respondent(s)

Counsel for Petitioner(s)	: M.N. Singh, Madhusudan Dikshit, Mahesh Narain Singh
Counsel for Respondent(s)	: C.S.C.

Reserved
AFR

IN Chamber

HON'BLE SARAL SRIVASTAVA, J.
HON'BLE SIDDHARTH NANDAN, J.

(Per: Siddharth Nandan 'J')

1. Heard Shri Mahesh Narain Singh, learned counsel for the petitioners and learned Standing Counsel for the State-respondents.
2. By way of the present writ petition, *inter alia*, the grounds taken, the petitioner has sought a writ of mandamus directing the respondents-authorities to correct the revenue entry and to record the petitioners as bhumidar over the land bearing Khasra No.238, 324, 337, 340, 341, 342, 344, 345, 350, 532, 361, 371, 378, 380 and 559 situated in village-Salenagar, Nawadia Pargana, Tehsil and District Bareilly; and further a direction to the respondents-authorities, not to interfere with the peaceful possession of the petitioners over the land in question.

Facts/Arguments of the petitioners

3. The present writ petition has been filed in the year 2014, seeking issuance of writ of mandamus, with the averments that one Jograj (predecessor in interest of the petitioner) was recorded in the revenue records as bhumidhar and has died in September, 1981; and after his death the petitioners had acquired bhumidhari rights over the land in dispute by way of inheritance and are in actual physical possession over the land in question, duly recorded in the revenue records.

4. It is the case of the petitioners that the proceedings under Section 8(4) of the U.P. Urban (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the “Act, 1976”), were initiated against Jograj, being registered as Case No.211/51/1982 (State vs. Jograj); and further that no notice of the aforesaid proceedings ever “appears” but have been served upon Jograj and an ex-parte order declaring the land in question, as surplus was passed; but however along with the petition, no documents except an order dated 30.09.1982, in relation to an application under Section 20 of the Act 1976 and the khatauni for 1416-1421 fasli has been filed.

5. The explanation of the petitioners for the delay in approaching this Court, is that in a routine manner, when an inspection of the revenue records was made and a copy of the khatauni was obtained, the petitioner was surprised to see that an endorsement is contained to the effect that the land in question has been declared as surplus and thereafter obtaining the necessary information, the present writ petition has been filed.

Contention of Respondents No.1, 2 and 3

6. Per contra, learned counsel appearing on behalf of respondents submits that the original tenure holder Jograj, was given notice under Section 8(3) of the Act, 1976 and he had also filed his objection, where after an order under Section 8(4) was passed. Having regard to the aforesaid, the contention of the respondents are that as per the scheme of the Act, after the disposal of the objections, the competent authority

determined the vacant land held by the petitioners, in excess of the ceiling limit and a copy of the final statement was served as per the requirement of Section 9 of the Act; where after a notification under Section 10(1) was also issued giving the particulars of the vacant land, held by such person in excess of the ceiling limit and eventually publication was also made under Section 10(3); where after the land vested absolutely in the State Government free from all encumbrances.

7. The original record of the proceedings was also produced to demonstrate that in pursuance of the notice under Section 10(5)/10(6) of the Act, 1976, dakhlanama was also prepared on 10.01.1992 and relevant entries were also made and the khatauni (1389-1394 and 1404-1409), are evidence of the aforesaid fact.

Issues

- i. Whether on account of failure to seek appropriate remedy against the dispossession under the Act, 1976 by the original owner, which has now attained finality; can a writ of mandamus be issued.
- ii. Whether approaching the Court after a considerable delay from the date of possession and the entry into the revenue records, any relief can be given to the petitioners, who are legal heirs of the original tenure holder or the possession of State, would acquire legitimacy by sheer lapse of time.

Discussion

Issue No. i:- Whether on account of failure to seek appropriate remedy against the dispossession under the Act, 1976 by the original owner, which has now attained finality; can a writ of mandamus as prayed can be issued.

8. It is admitted case of the petitioner that the property was recorded in the tenure holders name i.e. Jograj in the revenue record as bhumidhar and the proceedings under the Act, 1976 was initiated against the original tenure holder; and it is also evident that he had filed his

objections, which were decided under Section 8(4) of the Act, 1976 in proceedings registered as Case No.211/51/1982 (State vs. Jograj). Records demonstrate that a final statement was issued under Section 9 of the Act, 1976; where after notification under Section 10(3) of the Act was issued on 27.05.1989, notice under Section 10(5) was served on 29.08.1989; and eventually proceedings under Section 10(6) was undertaken; and after taking of the possession the dakhlanama was also executed, on 10.01.1992. The original records summoned by the Court, also corroborates, the above.

9. Learned counsel for the petitioners submits that there are certain irregularities in the dakhlanama as the signature of the person, who has handed over the possession is not available on the said document.

10. A perusal of the dakhlanama indicates that there are two signatures and thumb impression of independent witnesses, along with signature of the Tehsildar; and thereafter no objection on behalf of the original tenure holder or their legal heirs, is on record; and as such they were aware of the proceedings, on account of service of notice under Section 10(5) and the declaration under Section 10(3), based on which the revenue entries were also made in the name of the respondents-State; therefore, in view of the aforesaid it has to be examined whether the belated claim, merely on the ground of pendency of the application under Section 20 of the Act, 1976 and by not seeking remedy against the dispossession under the Act, 1976 by the original tenure holder, whether interference is warranted under Article 226 of the Constitution of India.

11. The petitioners does not dispute the records, which has been produced by the respondents but only raises two objections that the documents pertaining to the taking over of the possession are irregular and as a matter of fact they are still in *de facto* possession, while the *de jure* possession cannot dislodge the claim of the petitioners based on the benefit which accrues from Section 3/4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999. For ready reference Section 3 and 4 of the Act, 1999 is reproduced below:-

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

(a) the vesting of any vacant land under sub-section (3) of Section 10, possession of which has been taken over the State Government or any person duly authorised by the State Government in this behalf or by the competent authority,

(b) the validity of any order granting exemption under sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary,

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

(2) Where-

(a) any land is deemed to have vested in the State Government under sub-section (3) of Section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority, and

(b) any amount has been paid by the State Government with respect to such land

then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

4. Abatement of legal proceedings. *All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any court, tribunal or other authority shall abate:*

Provided that this section shall not apply to the proceedings relating to sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority.”

12. The petitioners further claim the benefit of Government Order dated 09.02.2000 and 29.09.2015 under which the land holders, who were in possession of the land at the time of coming into force the Repeal Act, 1999 would be entitled to the benefit of Section 4 of the Act, 1999; as the proceedings under the Act, 1976 shall stand abated; and as such land holders were entitled to remain in possession of the vacant land.

13. Learned counsel for the petitioner has also urged that it is for the respondents to establish that the possession was taken under Section 10(6) of the Act, 1976; and as on date the petitioners are in possession.

14. However, no document in support of their contention regarding the factum of possession has either been brought on record along with affidavit in the writ petition or the rejoinder affidavit filed by the petitioners.

15. It is the stand of the respondents, that the original tenure holder as well as the legal heirs were aware of the proceedings under the Act of 1976; and that he had also preferred an application under Section 20 of the Act, which was pending since 1982, and though reliance has been placed on the revenue records, but what is required to be seen is whether the petitioners were in actual possession of the land in question, on the date of notification of the Act of 1999, i.e., 18.03.1999. Any subsequent forceful possession or re-entry subsequent to the aforesaid date, cannot give them the benefit of Section 4 of the Act of 1999.

16. We have perused the records and the pleadings between the parties and we only find that apart from the revenue records, no other documents has been annexed and more so ever since an application under Section 20 of the Act, 1976 was moved as long back as in the year 1982, it can be safely concluded that the proceedings under the Act and the notification under Section 10(3) of the Act, 1976 was within the knowledge of the original tenure holder and legal heirs; but they had not taken any action against the dispossession under the Act, 1999; while the dakhnama dated 10.01.1992 establishes their dispossession and had only approached this Court in the year 2014 i.e. at a highly belated stage, i.e. more than 22 years from the date of taking over of the possession.

17. A perusal of the records also indicates that no objection was raised by the original tenure holder at the stage of notification under Section 8(3) of the Act, 1976 or subsequent to the revenue entries; and after a delay of 15 years i.e. after coming into force of Repeal Act, 1999, the question of *de facto* possession also cannot be looked into. The Court is conscious of the fact that as far as the revenue records are concerned, the same are not proof of title but however, the same can only raise a rebuttable presumption regarding the possession. On one side there is a

dakhalnama which is said to have been executed in the year 1992 and on the other side there is a khatauni of the year 1416-1421 fasli, which shows the continuation of the name of the legal heirs of the original tenure holder over Plot No.350(Mi) 0.4170 hectare.

18. The Apex Court in this regard, in the case of **State of Haryana and another v. Amin Lal (since deceased) through his LRs and others**, decided on 19.11.2024 had held as under:

"8.2 The plaintiffs relied on jamabandi entries to establish their ownership. The jamabandi for the year 1969-70 (Exhibit P1) records the name of Shri Amin Lal as owner to the extent of half share. Revenue records are public documents maintained by Government officials in the regular course of duties and carry a presumption of correctness under Section 35 of the Indian Evidence Act, 1872 While it is true that revenue entries do not by themselves confer title, they are admissible as evidence of possession and can support a claim of ownership when corroborated by other evidence "

19. As noted herein above, the date of possession is to be seen on the date of coming into force of the Repeal Act, 1999, which is 18.03.1999 and more so ever the khatauni indicates that plot no.350 is a milzumla plot, which could mean that the area which was left out in the said plot, being within the permissible limit, the name of the petitioners may have continued. Accordingly, there is no corroborative evidence, along with the revenue entries, to establish possession over surplus land, on the date of coming into force the Repeal Act, 1999 i.e. 18.03.1999.

20. Nevertheless, there is no evidence on record to demonstrate that the petitioners were in possession, subsequent to the execution of the dakhalnama in the year 1992 or on the date of coming into force of the Repeal Act, 1999 i.e. 18.03.1999; and as such without assailing the dispossession under the Act, 1976, the question of *de facto* possession of the petitioners cannot be looked into, in exercise of powers under Article 226 of the Constitution of India.

21. As far as Government Orders dated 29.09.2015 and 09.02.2000 are concerned, a perusal of the Government order dated 29.9.2015 reveals that the same was issued after the judgment of the Apex Court in the

case of **State of UP. v. Hariram**,¹. Further the said Government order also places reliance upon the previous Government orders dated 9.2.2000, 9.8.2000 and 24.1.2001. The Government order dated 29.9.2015 reads as under:

"संख्या-2228/आठ-6-15-124....सी/13

प्रेषक,

पनधारी यादव,

सचिव

उत्तर प्रदेश, शासन ।

सेवा में,

जिलाधिकारी

गोरखपुर, वाराणसी इलाहाबाद, लखनऊ,

कानपुर, आगरा, मेरठ, मुरादाबाद, अलीगढ़, बरेली, सहारनपुर।

आवास एवं शहरी नियोजन अनुभाग-6

लखनऊ: दिनांक 29 सितम्बर 2016

विषय- नगर भूमि (अधिकतम सीमा एवं विनियमन) निरसन अधिनियम, 1999 तत्कम में निर्गत शासनादेश तथा मा० उच्चतम न्यायालय के निर्णय दिनांक 11.3.2013 के संबंध में।

महोदय,

उपर्युक्त विषय पर मुझे यह कहने का निर्देश हुआ है कि भारत सरकार के अधिनियम संख्या-15/1999 दिनांक 18.3.1999 द्वारा नगर भूमि (अधिकतम सीमा एवं विनियमन) अधिनियम 1976 को निरसित करते हुए नगर भूमि (अधिकतम सीमा एवं विनियमन) निरसन अधिनियम 1999 प्राख्यापित किया गया जिसके क्रम में शासनादेश संख्या-502/9-न०पू०-21 यू०सी०/99, दिनांक 31.3.1999 द्वारा उक्त निरसन अधिनियम को उत्तर प्रदेश राज्य में अंगीकृत किया गया। निरसन अधिनियम 1999 की धारा-3 में यह प्राविधान है कि मूल अधिनियम का निरसन निम्नलिखित को प्रभावित नहीं करेगा-

1-(क)- धारा-10 की उपधारा (3) के अधीन किसी ऐसी रिक्त भूमि का निहित होना, जिसका कब्जा राज्य सरकार या राज्य सरकार द्वारा इस निमित्त सम्यक रूप से अधि.त किसी व्यक्ति या सक्षम प्राधिकारी ने ले लिया है।

(ख) धारा-20 की उपधारा (1) के अधीन छूट देने संबंधी किसी आदेश या उसके अधीन की गयी किसी कार्यवाही की किसी न्यायालय के किसी निर्णय में उसके विरुद्ध किसी बात के होते हुए भी विधिमान्यता।

(ग) धारा-20 की उपधारा (1) के अधीन प्रदान की गयी छूट की शर्त के रूप में राज्य सरकार को किया गया कोई संक्षयः

(2) जहां-

(क) मूल अधिनियम की धारा-10 की उपधारा (3) के अधीन किसी भूमि को राज्य सरकार में निहित होना मानी गयी है किन्तु जिसका कब्जा राज्य सरकार या राज्य सरकार द्वारा इस निमित्त सम्यक रूप से प्राधि.त किसी व्यक्ति या सक्षम प्राधिकारी द्वारा नहीं लिया गया और

(ख) ऐसी किसी भूमि की बाबत जिसके लिए राज्य सरकार द्वारा किसी सक्षम का संदाय कर दिया गया है तब तक प्रत्यावर्तित नहीं की जाये और जब तक कि राज्य सरकार को संदाय की गयी रकम का यदि कोई हो प्रतिदाय नहीं कर दिया जाता।

उक्त के क्रम में शासनादेश संख्या-777/9-न०भू०-135 यू०सी०/96 दिनांक 9.2.2000 का शासनादेश संख्या-1623/9-न०पू०-2000 दिनांक 9.5.2000 एवं शासनादेश संख्या-190/9-आ-6-2001 दिनांक 24.1.2001 निर्गत किये गये जिसमें मुख्य रूप से यह व्यवस्था की गयी कि

1. 2013 (4) SCC 280

मूल अधिनियम धारा 8(4) व अन्तर्गत जो भूमि रिक्त घोषित की गई थी और धारा-10 (3) के अन्तर्गत राज्य में निहित हो चुकी थी एवं धारा 10 (5) की कार्यवाही का आदेश हो चुका था. परन्तु इस भूमि पर राज्य सरकार का कब्जा प्राप्त नहीं हो सका था. ऐसी भूमि के सम्बन्ध में मूल भूधारक को अदा की गई धनराशि भूधारक द्वारा वापस करने पर भूमि मूल भूधारक का प्रत्यावर्तित की जा सकती है किन्तु अदा की गई धनराशि भू-धारक द्वारा प्राप्त न करने की दशा में भूमि पर कब्जा किये जाने के सम्बन्ध में विधि अनुसार अग्रिम कार्यवाही अमल में लायी जाये। यह भी व्यवस्था की गई कि जिस भूमि के सम्बन्ध में धारा-10(5) की कार्यवाही के उपरान्त भू-ारा 10(6) की कार्यवाही पूर्ण हो चुकी है और भूमि पर राज्य सरकार द्वारा कब्जा लिया जा चुका है वह सरप्लस भूमि अन्तिम रूप से राज्य सरकार में निहित मानी जायेगी।

3. नगर भूमि सीमारोपण गोरखपुर, वाराणसी, इलाहाबाद, लखनऊ, कानपुर, आगरा, मेरठ, मुरादाबाद, अलीगढ़ बरेली, सहारनपुर में लम्बित अर्बन सीलिंग प्रकरणों का समुचित रूप से निस्तारण न होने की स्थिति में भू-धारकों / वादियों द्वारा मा० उच्च न्यायालय में अधिक संख्या में रिट याचिकायें योजित की जा रही हैं। नगर बस्ती कार्यालयों द्वारा रिट याचिकाओं में विभागीय पक्ष समायान्तर्गत साक्ष्यों सहित प्रबलता से प्रस्तुत न किये जाने के कारण मा० न्यायालय द्वारा पारित आदेशों के क्रम में शासन को असमंजसपूर्ण स्थिति का सामना करना पड़ रहा है।

4. अर्बन सीलिंग के अन्य प्रकरण में राज्य सरकार द्वारा मा० उच्चतम न्यायालय नई दिल्ली में विशेष अनुमति याचिका संख्या-12960/2008 उत्तर प्रदेश राज्य बनाम हरीराम योजित की गयी। कालान्तर में अन्य जनपदों के अर्बन सीलिंग से संबंधित प्रकरणों में योजित विशेष अनुमति याचिकायें उक्त विशेष अनुमति याचिका से तलब की गयी। उक्त विशेष अनुमति याचिका संख्या 12960/2008 तथा उससे क्लव अन्य विशेष अनुमति याचिकाओं में पारित मा० उच्चतम न्यायालय के निर्णय दिनांक 11.3.2013 में अर्थन सीलिंग से सम्बन्धित प्रकरणों में मार्गदर्शक सिद्धान्त प्रतिपादित किये गये हैं। निर्णय दिनांक 11.3.2013 का महत्वपूर्ण एवं क्रियात्मक अंश निम्नवत् है-

प्रस्तर-39

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 18.3.99. State has to established 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 sub-section (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. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get benefit of Section 3 of the Repeal Act.

प्रस्तर-40

We, therefore find no infirmity in the judgement of the High Court and the appeal is, accordingly, dismissed so also the other appeals. No documents have been produced by the State to show that the respondents had been dispossessed before coming into force of the Repeal Act and hence, the respondents are entitled to get the benefit of Section 3 of the Repeal Act. However, there will be no order...

5. नगर भूमि (अधिकतम सीमा एवं विनियमन) निरसन अधिनियम 1999 में निहित प्राविधान तथा तत्क्रम में निर्गत शासनादेश दिनांक 9.2.2000 शासनादेश दिनांक 9.8.2000 एवं शासनादेश दिनांक 24.1.2001 स्वतः स्पष्ट है। विशेष अनुमति याचिका संख्या-12960/2008 उत्तर प्रदेश राज्य बनाम हरी राम तथा उससे अन्य विशेष अनुमति याचिकाओं में पारित मा० उच्चतम न्यायालय के निर्णय दिनांक 11.3.2013 में उल्लिखित सिद्धान्त/आदेश भी स्वतः स्पष्ट है।

6. पया नगर भूमि (अधिकतम सीमा एवं विनियमन) निरसन अधिनियम 1999 तथा उक्त शासनादेश दिनांक 9.2.2000 शासनादेश दिनांक 9.8.2000 एवं शासनादेश दिनांक 24.1.2001 में विहित व्यवस्था विशेष अनुमति याचिका संख्या-12960/2008 उत्तर प्रदेश राज्य बनाम हरी राम में पारित मा० उच्चतम न्यायालय के निर्णय दिनांक 11.3.2013 में उल्लिखित सिद्धान्तों/ आदेशों के आलोक में लम्बित प्रकरण में Legal ingredient देखते हुए आवश्यक कार्यवाही की जाये।

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पनधारी यादव
सचिव

22. The Government order dated 29.9.2015 lays emphasis on Government orders issued in this regard in the past and accordingly we may also advert to the first Government order dated 9.2.2000 issued in this regard, which has also been relied upon by the petitioners in several writ petitions, the same reads as under:

"प्रेषक,

अतुल कुमार गुप्ता,

सचिव.

उत्तर प्रदेश शासन ।

सेवा में,

1. निदेशक, नगर भूमि सीमारोपण, उत्तर प्रदेश.

जवाहर भवन, लखनऊ।

2. जिलाधिकारी/सक्षम अधिकारी, नगर भूमि सीमारोपण

लखनऊ, कानपुर, आगरा, इलाहाबाद, वाराणसी, गोरखपुर,

मुरादाबाद, बरेली, सहारनपुर, देहरादून, अलीगढ़, मेरठ।

आवास अनुभाग-6 लखनऊ

दिनांक 09 फरवरी, 2000

विषय-नगर भूमि (अधिकतम सीमा एवं विनियमन) अधिनियम 1976 के निरसन होने के उपरान्त अवशेष लम्बित कार्यवाहियों के सम्बन्ध में।

महोदय.

उपरोक्त विषय के सम्बन्ध में मुझे यह कहने का निर्देश हुआ है कि निरसन अधिनियम 1999 की धारा-4 के अनुसार मूल अधिनियम 1976 के अन्तर्गत लम्बित वाद व अन्य विधिक कार्यवाहियां जो किसी न्यायालय, अधिकरण या किसी प्राधिकारी के समक्ष लम्बित थी उपशमित हो जायेगा लेकिन निरसन अधिनियम की धारा-4 के परन्तुक (प्रोविजो) में उल्लिखित प्राविधानों के अनुसार मूल अधिनियम की धारा 11, 12, 13, 14 से संक्षेप सभी कार्यवाहियां चालू रहेंगी एवं मूल अधिनियम की धारा-23 एवं 34 के अन्तर्गत चल रहे वादों के उपशमन हेतु सम्बन्धित सक्षम न्यायालय, अधिकरण या प्राधिकरण के संज्ञान में लाने हेतु तत्सम्बन्धित आवेदन सक्षम न्यायालय में प्रस्तुत करना होगा तभी न्यायालय कथित प्राविधान का संज्ञान लेकर वादों को उपशमित कर सकेगा।

अधिनियम की धारा 10 (3) के प्राविधानों के अन्तर्गत जो भूमि राज्य में निहित नहीं हुई है उस भूमि पर राज्य द्वारा कब्जा किये जाने का औचित्य नहीं है। भले ही इस भूमि को सरप्लस घोषित किया गया हो। मूल अधिनियम की धारा 10 (3) के अन्तर्गत राज्य निहित हो चुकी थी एवं धारा 10 (5) की कार्यवाही का आदेश हो चुका था लेकिन इस भूमि पर राज्य सरकार का कब्जा नहीं प्राप्त हो सका था इस प्रकार के प्रकरण निरसन अधिनियम की धारा 3 (2) के अनुसार यदि शासन द्वारा प्रश्नगत भूमि के बाबत भूधारक को कोई धनराशि अदा की गयी थी यदि राज्य सरकार द्वारा अदा की गई धनराशि वापस करने की दशा में भूधारक को प्रश्नगत भूमि प्रत्यावर्तित की जा सकती है। किन्तु अदा की गयी धनराशि भू-धारक द्वारा वापस न करने की दशा में भूमि पर कब्जा किये जाने के सम्बन्ध में विधि अनुसार अग्रिम कार्यवाही अमल में लायी जाय।

अतः न्याय विभाग के उपरोक्त अभिमत के अनुक्रम में प्रचलित वादों के उपशमन हेतु अग्रिम कार्यवाही सुनिश्चित करें। इस हेतु वस्तु स्थित सम्बन्धित न्यायालय के संज्ञान में लाने हेतु आवेदन पत्र प्रस्तुत कर दिया जाय। सभी प्रश्नगत वादों में उपशमन हेतु आवेदन दिनांक 29.02.2000 तक

लगा देना चाहिए। तदनुसार कार्यवाही सुनिश्चित करते हुए त कार्यवाही से शीघ्र शासन को सूचित करने का कष्ट करें।

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ह० अपठनीय
(अतुल कुमार गुप्ता)"*

23. We have perused the Government orders dated 29.9.2015 and 2.9.2000, and that Section 3 and Section 4 of the Repeal Act, 1999 are themselves self explanatory and have been relied on, in both the Government orders.

24. It is further pointed out here that even the Government orders relied in the past lay down that after coming into force of the Repeal Act, 1999, the land holders who were in possession of their land, declared vacant under the Act, 1976 would continue to remain in possession of the same, subject to the refund of any amount paid to the land holder.

25. Thus, the Government orders simply relied on the provisions of Section 3 of the Repeal Act, 1999, which clearly provides that if possession of vacant land has not been taken over by the State or by any person duly authorized by the State Government in this behalf or by the Competent Authority and the ownership of the land, if vested, in the State Government under Section 10 (3), would be required to be restored to the original land holder, subject to repayment of any amount, that has been paid by the State Government with respect to such land. Further the proceedings under the Act, 1976 in respect of such vacant land would abate under Section 4 of the Act, 1976.

26. As far as the relief of mandamus in deciding the ceiling cases of the petitioners in pursuance of the Government order dated 29.9.2015 is concerned, it is the specific case of the respondent that the proceedings under the Act, 1976 stood concluded prior to coming into force of the Repeal Act, 1999.

27. In view of the specific case of the respondents, that proceedings under the Act, 1976 stood concluded prior to coming into force of the Repeal Act, 1999, while the entry of the State in the revenue records also not being disputed or subjected to any proceedings, and entry in the

revenue records with respect to a miljumla plot cannot be basis for establishing the possession over the surplus land and as such the benefit of Section 4 of the Act, 1999 or the Government Order dated 29.09.2015 and 09.02.2000 cannot be extended to the petitioners in the facts of the present case; especially when there is no specific challenge, to the dispossession under the Act, 1976, which has now attained finality.

28. The aforesaid view is also fortified by decision in the case of **State of Assam vs. Bhaskar Jyoti Sarma**², wherein also the original tenure holder had submitted the returns and a notification under Section 10(3) of the Act was issued to the effect that surplus land of the original tenure holder, now vests in the Government; and the name of the original tenure holder was also deleted from the revenue records; after the taking over of the possession in the year 1992 and the Act being repealed, a challenge was raised that the disposition was not preceded by any notice under Section 10(5) of the Act.

29. The Apex Court, having considered the legal position, opined that having the actual possession been taken from the landholder, any grievance raised under Section 10(5) ought to have been made within a reasonable time of such dispossession; and in absence of any such objection by the original owner or the person in possession, it shall be deemed to have waived his right under Section 10(5) of the Act.

30. Any other view would give a licence to a litigant to make a grievance not because he has suffered any real prejudice that needs to be addressed but only because of fortuitous circumstance of the Repeal Act tempted him to raise the issue regarding his dispossession, being in violation of the prescribed procedure. For ready reference, paragraph Nos. 16 and 17 of the judgment in the case of State of Assam (supra) is reproduced below:

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

2. 2015 (5) SCC 321

actual physical possession was taken over from the erstwhile land owner on 7th December, 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's case (supra). That decision does not, in our view, lend much assistance to the respondents. We say so, because this Court was in Hari Ram's case (supra) 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 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.

31. In view of the aforesaid, we have no hesitation in holding that in view of the fact that the erstwhile owner has not raised any grievance based on breach of Section 10(5) or Section 10(6) of the Act, at any stage during his lifetime, implying thereby that he had waived his right to do so; and accordingly the Issue No. 1 is determined against the petitioners, i.e., in case the original owner is found to have been dispossessed pursuant to a notice under Section 10(5) or by undertaking the proceedings under Section 10(6) of the Act of 1976, and against such dispossession, if no remedial proceedings have been undertaken by the

original tenure holder, no writ of mandamus can be issued for correction of the revenue entries or for any consequential benefit.

Issue No. ii:- *Whether approaching the Court after a considerable delay from the date of possession and the entry into the revenue records, any relief can be given to the petitioners, who are legal heirs of the original tenure holder or the possession of State, would acquire legitimacy by sheer lapse of time.*

32. Petitioners have contended that no notice were given to the legal heirs of the original tenure holder of the proceedings under Section 10 of the Act, 1976, which was ex-parte; and no possession as claimed under Section 10(6) of the Act, 1976 was given by the petitioners and their name continues in the revenue records; and as such their possessions were never disturbed.

33. Thereafter, the petitioners alleged that in a routine manner, they inspected the revenue records for the purpose of obtaining copy of the khatauni, and upon having obtained the said khatauni they came to see the endorsement, contained in the khatauni, with regard to land in question, having been declared surplus under the Act, 1976. For ready reference paras 16 and 17 of the affidavit filed along with the writ petition is reproduced below:-

“16 That, recently, the petitioners, in a routine manner, inspected the revenue records for the purpose of obtaining a copy of the Khatauni and upon having obtained the same, the petitioners were surprised to see an endorsement contained in the Khatauni with regard to the land in question having been declared surplus under the Act. A copy of Khatauni is being annexed herewith as ANNEXURE No. 2.

17. That, immediately thereafter the petitioners made further enquiries pertaining to the proceedings under the Act and it is only thereafter that after having made necessary enquiry, it transpired that Case No.211/51 of 1982 (State versus Jograj), as was initiated against Jograj (the predecessor-in-interest of the petitioners), has been finally concluded ex parte.”

34. From the perusal of the aforesaid pleadings it is evident that no particular date was disclosed regarding the date of knowledge and in a

very vague manner, delay with respect to the filing of the present proceedings i.e. after a period of more than 22 years, from the date of taking over the possession by the State and 15 years from coming into force of the Repeal Act, 1999, has been sought to be explained; and as such the respondents claimed that the writ petition is liable to be rejected on the ground of delay and latches itself; and the rights, if any, of the petitioners over the land in dispute stood waived, on account of the delay and acquiescence.

35. Learned counsel for the petitioner has also relied upon the various judgments of the Apex Court; and we proceed to examine the facts of those judgments, as we cannot loose sight of the fact, that said judgments, must be read as applicable to the facts proved or assumed to be proved. Since also that the generality of the expression, which may be found there, are not intended to be exposition of whole law but governed and qualified by a particular facts of the case, in which such expressions are to be found.

36. The Apex Court in the case of **Bharat Petroleum Company Ltd. v. N.R. Vairamani**,³ while holding that Court should not place reliance on decisions without discussing as to how the factual situation of the case in hand fits in with the facts, situation of the decision on which reliance has been placed, had held as under:-

"8. As rightly submitted by learned counsel for the appellants, provisions similar to Section 3 and 9 of the Tenants Act were not under consideration in Hindustan Petroleum case.

9. Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussions is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statute; their words are not to be interpreted as statutes. In

3. (2004) 8 SCC 579

London Graving Dock Co. Ltd. v. Horton Lord Dermott observed: (All ER p. 14 C-D)

The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge,....

10. In *Home Office v. Dorset Yacht Co.* (All ER p. 297g-h) Lord Reid said, "Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances". Megarry, J. in *Shepherd Homes Ltd. v. Sandham* (No. 2) observed: "One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

11. *Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.*

12 *The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CITS, AIR p. 688, para 19)*

"19. Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

37. If we examine the facts in the case of *State of U.P. v. Hari Ram* (supra), we find that in the said case, proceedings were initiated under the Act, 1976 against the land holder. On 19.6.1999, the Prescribed Authority issued a notice under Section 10 (5) of the Act, 1976 directing the land holder to hand over possession of the land declared as surplus to duly authorized persons. Aggrieved by the same, the land holder had

preferred an appeal under Section 33 of the Act, 1976 contending that no notice as contemplated under Section 8(3) of the Act, 1976 was served upon him. The appeal was allowed vide the judgment dated 14.12.1999 and the order dated 29.6.1981 passed under Section 8(4) of the Act, 1976 was quashed. The State being aggrieved by the order passed in appeal, had challenged the same in writ petition but the writ petition was ultimately dismissed, upholding the order passed in appeal. Subsequently the State had approached the Hon'ble Supreme Court. The Hon'ble Supreme Court while considering the various provisions of the Act, 1976 and the Repeal Act, 1999 had found no infirmity in the judgment of the High Court and the appeal was accordingly dismissed alongwith other appeals. It is pertinent to mention here that the Repeal Act, 1999 was enforced in the State of Uttar Pradesh on 18.3.1999 and the notice under Section 10(5) in the said case was issued subsequent thereto on 19.6.1999.

38. In the case of **A.P. Electrical Equipment Corporation v. Tehsildar and others**⁴, the panchnama under Section 10(6) dated 8.2.2008, was prepared; and it was contended by the State that the possession of the land was taken in pursuance thereto. However, it was the contention of the land holder (M/s. A.P. Electrical Equipment Corporation) that the State had only taken symbolic possession and actual possession continued to remain with the land holder.

39. In the meanwhile Repeal Act, 1999 was brought into force in the State of Andhra Pradesh on 22.4.2008 w.e.f. 27.3.2008. It was around the year, 2009 that the State authorities tried to take possession of the land and the land holder had challenged the said action by filing a writ petition. The writ petition so filed was ultimately allowed wherein it was held that the land holder had continued to remain in physical possession of the land in dispute. Subsequently the State had approached the Division Bench of the High Court and the appeal so filed was ultimately allowed as it was held that the learned Single Judge had erred on facts as well as in law, in declaring notice dated 5.1.2008 made under Section

4. 2025 SCCOnline SC 447

10(5) of the Act, 1976 as well as the panchnama dated 8.2.2008 void ab initio and non est in the eye of law. The land holder being aggrieved by the order passed in appeal had approached the Hon'ble Supreme Court and ultimately the Hon'ble Supreme Court while considering the law laid down in that regard while setting aside the order passed in appeal, had upheld the judgment of the Single Judge of the High Court.

40. The petitioners have also relied on a recent judgment of the Apex Court in the case of **Dalsukhbhai Bachubhai Satasia and others v. State of Gujarat and others**⁵, in support of the case of the petitioners.

41. The facts involved in the said case reveal that a ceiling return was filed under Section 6 (1) of the Act, 1976 by the original land holder. Subsequently in the proceedings initiated under Section 21 of the Act, 1976 and vide the order dated 18.2.1980 the Competent Authority had amongst others held that land comprised in Survey No. 339 was within ceiling limit and as such there was no excess land being held by the family members of the original tenure holder. Thereafter a society had purchased land of Survey No. 339 at a public auction held by the Special Recovery Officer on 28.4.1981, the auction was confirmed and the name of the society was entered in the records of rights. The society obtained construction permission for constructing industrial units from the Surat Municipal Corporation. Thereafter possession receipts were issued to multiple sub plots holders-appellants, who had remained in possession of the said sub plots since the year 1983-84. The said plot holders had developed industrial units over the said land.

42. In the meanwhile on 12.10.1984 the Assistant Collector canceled the mutation entry entered in favour of the society, on the basis that the public auction dated 28.4.1981 was not conducted according to the provisions of the Act, 1976. The order so passed was challenged in appeal before the Collector but the appeal was also dismissed. Subsequently the revision filed before the Assistant Secretary, Revenue Department was also dismissed. The Government of Gujarat on 3.5.1988

5. AIR 2026 SC 475

exercised its power of revision under Section 34 of the Act, 1976 and set aside the order dated 18.2.1980 of the Competent Authority, passed under Section 21 of the Act, 1976 and remanded the matter back to the Competent Authority for reconsideration of the question of excess land with regard to Survey No. 339.

43. Thereafter on 16.1.1989 the competent authority passed an order declaring that 662.18 sq. meters out of total area of 9303 sq. meters of land in Survey No. 339 as "excess land". On 22.11.1990 a notice under Section 10(5) of the Act, 1976 was issued to the original land holder directing him to vacate and handover the possession of the excess land, pursuant thereto a Panchnama dated 21.1.1992 for taking over possession of excess land to the tune of 662.18 sq. meters was issued.

44. It is only when some of the sub-plot holders-appellants had tried to resell their sub-plots, the Competent Authority sent letters dated 20.6.2007 and 5.7.2008 refusing to grant 'No Objection Certificates' for the subsequent sale, on the ground that the constructed units were situated over the alleged excess land and as the said surplus land was taken over and therefore vested in the Government since 21.1.1992. It is only then the sub-plot holders-appellants, for the first time, came to know that the said property had been declared as excess land by the Competent Authority and consequently the writ petition was filed before the Gujarat High Court seeking a relief in the nature of direction to issue necessary 'No Objection Certificates' for sale of the sub plots in the year 2009. Another writ petition was filed in the year 2010 in respect of the land use of the said sub-plots.

45. The Apex Court in the said judgment while adverting to the factual controversy involved had held as under :

"22.....

22.1.....It is only when the appellants herein sought 'No Objection Certificates' for further sale that they became aware that 'excess land' was taken over by the State Government and had vested with them. Hence, they filed the Writ Petition before the High Court which was dismissed.

22.2 The fact that notice under Section 10 (5) of the ULC Act was issued to the original owners implies that the respondents were aware that the possession of the said land had to be taken in accordance with Section 10 of ULC Act. This was without ascertaining the fact that possession of the said land was with the appellants herein but no notice was issued to the appellants herein who were in actual possession of the subject land.

22.3 Applying the above settled law to the fact at hand, we find the following fact on the face of record:

a) The appellants herein in actual possession of the subplots in question at the time of the Repealing Act.

b) On 22.11.1990, a notice under Section 10(5) regarding transfer of possession to the State Government was issued to the original landowner but not the appellants herein, who were in possession of the concerned sub-plots."

46. Hence, considering the factual aspect of the controversy involved in the said case, there was no dispute regarding the fact that the appellants were in actual possession of the land at the time of the enforcement of the Repeal Act, 1999. Further the appellants came to know that their land had been held to be excess land and taken over by the State Government for the first time only when the 'No Objection Certificates' were refused; and shortly thereafter the appellants had approached the High Court. Lastly notice under Section 10 (5) was issued to the original land holder but not to the appellants and it is also not disputed that the rights over the land in question stood transferred in favour of the appellants.

47. Thus, it is beyond doubt that the subject-matter in controversy in the said case, was very much different from that involved in the present proceedings, as there was no dispute regarding the possession of the land, at the time of enforcement of the Repeal Act, 1999; and also the question of delay in approaching the High Court was also not involved. Furthermore the sub-allottees were enjoying independent rights over the land in question and had no knowledge of proceedings under the Act, 1999.

48. However, in the present case the notice under Section 10 (5) was issued to the original land holders, the petitioners are descendants of the original land holder and claiming their rights through the original land

holders. Further a reply/objection was also filed by Jograj and thereafter orders were passed under Section 8(4); and subsequently the petitioners and legal heirs, had filed objections under Section 20; as such it cannot be said that they had no knowledge regarding the proceedings under the Act, 1976.

49. Be that as it may the Apex Court in the said case had also observed as under :

"20. We are inclined to agree with this view of this Court in AP Electrical regarding the effect of Bhaskar Jyoti Sarma : (2015 AIR SCW 548) on the dictum in Hari Ram: (AIR 2013 SC 1793). In the former, de facto possession had actually been transferred to the State Government. Albeit, this was done by force in contravention of the requirement to mandatorily issue notice under Section 10 (5) of the ULC Act. In this regard, this Court held that if the objection regarding the non-compliance with Section 10 (5) is not made within a "reasonable time", then the right to so object is "waived".

50. Petitioners have also relied upon a judgment of this Court in **Sanjay Kumar Pandey vs. State of U.P. and 3 others**⁶. In the aforesaid case, the respondents had failed to provide the date of possession over the land in question, being transferred to a development authority; and since vague assertions have been made regarding taking of possession by the respondents; and the failure to furnish a plausible reasons giving explanation as to why the land in question was recorded in the name of the State Government only vide order dated 20.09.2021 i.e. after lapse of more than 22 years from the enforcement of the Repeal Act, 1999, the judgment was made.

51. In the backdrop of the aforesaid facts, since the respondents had failed to provide an explanation, as to why they took more than 22 years to correct the entry in the revenue records, after coming into force of the Repeal Act, 1999; and also the mode of taking over the possession, the onus was put on the respondents-State to demonstrate *de facto* possession of the land in question; and accordingly the benefit of Section 4 of the Act in terms of the decision in the case of State of U.P. vs. Hari

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Ram (supra) was given to the petitioners therein; which facts are distinguishable.

52. Lastly the petitioners have also placed reliance on the case of **Lallu and others vs. State of U.P. and others**⁷, in which the question of defacto possession of the vacant land arose and while considering the evidence, the Court was of the view that voluntary surrender of vacant land or plea of forceful possession, under Section 10(5) or under Section 10(6) respectively, could not be demonstrated by the respondents-State; and on failure in establishing the aforesaid, the benefit of Section 3 of the Repeal Act, 1999 was given. There was a specific finding that the State did not bring on record any material to demonstrate that the State was handed over the possession by the tenure holder pursuant to notice under Section 10(5) nor there is any material to demonstrate that any notice under Section 10(6) of the Act was served, or forceful physical possession was taken by the State.

53. However, neither in the facts of the case in Sanjay Kumar Pandey (supra) nor in the facts of the case in and Lallu (supra), there is any similarity to the facts of the present case; as in the first case there was no explanation for entry in the name of the State, after lapse of 22 years from the enforcement of the Repeal Act, 1999; whereas in the present case, the entry in the revenue records was admittedly made in the year 1992 and on the contrary the original tenure holder is at fault of not assailing the dispossession under the Act, 1976 or challenge the revenue records; and now petitioners cannot be permitted to assail the same after a lapse of more than 22 years from the date of the possession and 15 years from the date of coming into force of the Repeal Act, 1999. In the second case, there was failure on the part of the State Government to bring on record the material demonstrating that the possession was either peacefully handed over, in pursuance to the notice under Section 10(5) or to demonstrate that forceful possession was taken by the State under Section 10(6) of the Act, 1976; but in the present case the service of notice under Section 10(5) of the Act, 1976 and consequential forceful

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possession of the property in question under Section 10(6) of the Act, 1976, is there before this Court; and as such no benefit can be given to the petitioners.

54. No other argument has been raised on behalf of the petitioners.

Conclusion

55. From the pleadings and the material on record, it is evident that the proceedings were initiated against the original tenure holder and he has also filed his objection in pursuance of the notice under Section 8(3) and only thereafter that orders were passed under Section 8(4) of the Act, 1976.

56. It is thereafter that the final statement was issued under Section 9, leading to notification under Section 10(1) and the publication under Section 10(3) of the Act, 1976. It is also evident that the entry in the revenue records were also made in the year 1992; which proceedings and the entries remain unchallenged and in absence of the same no mandamus, as prayed, can be issued.

57. The explanation given by the petitioners, as noted herein above are absolutely vague and does not justify filing of this writ petition before this Court after a delay of 22 years from the date of taking over possession and 15 years from the date of enforcement of the Repeal Act, 1999; and as such the same are liable to be rejected.

58. We may also note, before parting with the judgment, that on account of the un-explained delay, this Court has no reasons, at such a belated stage, to examine the irregularity in the issuance of notice under Section 10(5) or the preparation of the Dakhalnama; and is constrained to hold that the petitioners shall be deemed to have waived their right, on account of not having objected within a “reasonable time”.

59. Our aforesaid view is also fortified by the ratio laid down, by a co-ordinate Bench of this Court in the case of **Kumbh Karan vs. State of U.P. and others**⁸; wherein also the petitioner “Kumbh Karan” had slept

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over his rights (No Pun Intended); and this Court declined to grant any relief, on the ground of delay and laches.

60. In view of the aforesaid, no good grounds have been made for interference under Article 226 of the Constitution of India and accordingly, the writ petition is dismissed.

61. However, no order as to costs.

(Siddharth Nandan,J.) (Saral Srivastava,J.)

September 14, 2026

S.Prakash