



2026:AHC:172337-DB

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Reserved On: 09.07.2026

Delivered On: 17.08.2026

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**WRIT - C No. - 42857 of 2023**

Munna Lal

.....Petitioner(s)

Versus

State of U.P. and 3 others

.....Respondent(s)

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|---------------------------|-----------------------------------------------------------------------------|
| Counsel for Petitioner(s) | : Amish Kumar Srivastava, Santosh Kumar Srivastava, Suresh Kumar Srivastava |
| Counsel for Respondent(s) | : C.S.C., Ravi Prakash Pandey                                               |

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**Court No. - 40**

**HON'BLE SARAL SRIVASTAVA, J.  
HON'BLE SUDHANSHU CHAUHAN, J.  
(Delivered by Hon'ble Sudhanshu Chauhan,J.)**

1. Heard Sri Amish Kumar Sivastava, Learned Counsel for the petitioner, Sri Mohan Sivastava, Learned Standing Counsel for respondents No.1 to 3 and Sri Ravi Prakash Pandey, Learned Counsel for respondent No. 4.

2. The petitioner has filed the present writ petition for quashing the order dated 18.10.2023, passed by the Competent Authority, Urban Ceiling, Varanasi by means of which the representation of the petitioner for correction of revenue entries has been rejected ,besides directions are

sought to abate the proceedings of Ceiling Case No. 486/2480/5523 (State v. Sri Ram Nihor) and also to expunge the revenue entries in the name of State.

3. The present controversy arises out of proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as, 'the Act 1976') and the land in dispute is Arazi No. 26/1 M, situated in Village Hasanpur, Pargana Shivpur, Varanasi and Arazi nos.169,184,185,190 and 191 and Arazi Nos.14/2,19,111, situated in Village Singhpur, Pargana Shivpur, Varanasi involving a total area of 8,834.60 sq m.

4. The facts of this case are that the petitioner is the grandson of one Ram Nihor, the original landholder. Ram Nihor had filed a ceiling return under Section 6(1) of the Act,1976 registered as Ceiling Case No.486/2480/5523/81-82. Subsequently, a notice under Section 8(3) was issued and an order dated 20.05.1982 was passed under Section 8(4) declaring the land in dispute as excess vacant. The same was followed by a notice under Section 9 dated 18.12.1981, containing the final statement. Notification under Section 10(3) of the Act, 1976, was published in the State Gazette on 26.01.1981. Ultimately, a notice under Section 10(5) of the Act, 1976, for taking over voluntary possession of the land in dispute was issued .Thereafter, the possession of the land in dispute was allegedly handed over to Varanasi Development Authority-respondent no. 4 on 20.07.1998.

5. In the revenue records, the land in dispute continued to remain recorded in the name of the predecessor of the petitioner, Ram Nihor, who passed away on 10.10.1992, and subsequently the name of the father of the petitioner, Lal Chandra, came to be recorded in the revenue records. Lal Chandra passed away on 19.01.2014, and thereafter the name of the petitioner, along with other co-tenure holders, was recorded in the revenue records and vide the order dated 20.09.2021 the land in dispute was recorded in the name of the State in the Khatauni of the Fasli year 1427-1432.

6. In the meanwhile, the petitioner had filed Writ C No. 1784 of 2021 (Munna Lal v. State of UP and others) and the same was disposed of vide the judgement and order dated 15.06.2021, thereby directing that, if the respondents were satisfied that the petitioner may get his name recorded over the land in the revenue records after spot inspection by them, the respondents shall pass necessary orders within twelve weeks and also that the writ petition shall be treated as representation made to the Tehsildar Sadar, District Varanasi. It is in pursuance of the directions of this Court that the District Magistrate Varanasi- respondent no.2, by means of the impugned order dated 18.10.2023, has rejected the representation of the petitioner.

7. In the above background, it is the contention of the petitioner that the grandfather of the petitioner and the original landholder, Ram Nihor, was never served with the notice under Section 8(3) of the Act, 1976 and the order dated 20.05.1982 under Section 8(4) had been passed ex parte in a mechanical manner. The notice under Section 10(5) of the Act, 1976, is undated and was never served upon the original landholder. Further, there are no signatures of any witnesses on the aforesaid notice showing that the possession of the land in dispute had been handed over. No notice whatsoever was issued under Section 10(6) of the Act, 1976. Thus, the possession of the land in dispute was never handed over to the respondents and continued to remain with the predecessors of the petitioner and thereafter with the petitioner. Subsequently, with the enforcement of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as , “the Act, 1999”), the petitioner became entitled to continue to remain in possession of the land in dispute, as the possession had never been transferred to the respondents.

8. Further that the name of the predecessors of the petitioner continued to remain recorded in the revenue records and subsequent to the demise of the father of the petitioner, the name of the petitioner was recorded in the revenue records. The petitioner in this regard has placed reliance upon the Khatauni for the Fasli years 1425-1430, and the Khasra

for the Fasli year 1422 and the Fasli year 1428, to show that the name of the petitioner was recorded in the revenue records. It is only in pursuance of the order dated 20.09.2021 passed by the Competent Authority that the land in dispute came to be recorded in the name of the State Government.

9. The impugned order dated 18.10.2023 has been passed in an illegal and arbitrary manner without application of mind, however, even therein it has been held that the house of the petitioner has been constructed over the land in dispute. Hence, it is contended that, in view of the long standing revenue entries in the name of the predecessors of the petitioner and thereafter that of the petitioner and the fact that the house of the petitioner was existing over the land in dispute clearly establishes that the petitioner is in possession of the land in dispute and the same was never handed over to the respondents.

10. On the contrary, it has been contended on behalf of the respondents-State that, after the filing of the ceiling return by Ram Nihor under Section 6(1), a notice under Section 8(3) was issued on 05.08.1982, however, the original land owner had not submitted any objections to the notice and ultimately, an order dated 20.05.1982 was passed under Section 8(4), declaring the land in dispute as excess vacant. Subsequently, notification under Section 10(1) and Section 10(3) of the Act, 1976, was published in the State Gazette. The voluntary possession of the land in dispute was taken in pursuance of notice under Section 10(5). Thereafter, the possession of the land in dispute, along with other lands, was handed over to Varanasi Development Authority vide the letter dated 20.07.1998. Hence, it is contended that the proceedings under the Act 1976 stood concluded much prior to the enforcement of the Repeal Act, 1999. It is also contended that the present petition is liable to be rejected on the ground of delay having been filed after a lapse of 25 years from the date of taking over possession of the land in dispute.

11. The Varanasi Development Authority-respondent no. 4 has supported the contention so raised on behalf of the State. It is further contended that the land in dispute is in possession of Varanasi Development Authority in pursuance of the letter dated 20.07.1998. It is also contended that the notification under Section 10(3) of the Act, 1976, had been published in the State Gazette on 26.01.1985. Hence, it is contended that the impugned order dated 18.10.2023 has rightly been passed by the District Magistrate, Varanasi, as the land in dispute is in possession of the Varanasi Development Authority and the petitioner has illegally encroached upon the land in dispute and constructed a house thereon.

12. We have perused the records, and one of the most striking irregularity found from the same is that, admittedly, the notice that under Section 8(3) of the Act, 1976, has been issued on 05.08.1982, whereas the order under Section 8(4) has been passed on 20.05.1982. Even in the impugned order dated 18.10.2023, it is stated that the notice under Section 8(3) had been issued on 05.08.1982, whereas the order under Section 8(4) has been passed on 20.08.1982. The averments made in paragraph 2 of the Counter Affidavit filed on behalf of the State are also relevant in this regard, and the same read as under :

*"2. That the original tenure holder Sri Ram Nihor son of Ramdas R/o- Singhpur, Pargana- Shivpur, Tehsil and District- Varanasi had submitted Return under Section 6(1) where upon the Ceiling Case No. 486/2480/5523/81-82 (State vs. Ram Nihor) was instituted. After necessary survey the Draft Statement under Section 8(3) along with Notice was issued on 05.08.1982. No objection was submitted by the Original Tenure Holder against the said notice. The Competent Authority passed order under Section 8(4) on 20.05. 1982 declaring an area of 8834.66 sq meter as surplus vacant. Copy of the Notices under Section 8 (3) dated 05.08.1982 and copy of the order under Section 8(4) dated 20.05.1982 is collectively being enclosed herewith and marked as Annexure No. CA 1 & 2 to this affidavit"*

13. From the perusal of the said annexures it is also revealed that the notice under Section 8(3) is dated 05.08.1982, whereas the order under Section 8(4) is dated 20.05.1982.

14. Thus, it is evident that the order dated 20.05. 1982 under Section 8(4) precedes the notice dated 05.08.1982 under Section 8 (3) of the Act, 1976 and as such has been passed without issuing any proper notice to the original land holder, Ram Nihor, and as such is not sustainable in the eyes of law.

15. Further, the notice under Section 10(5) of the Act, 1976, is undated, and even in the Counter Affidavit filed on behalf of the respondents no mention of any date on which the aforesaid notice had been issued is made. Even in the impugned order dated 18.10.2023, although it has been stated that a notice under Section 10(5) had been issued, however, there is no mention of any date on which the said notice had been issued. Further, the notice under Section 10(5) neither bears the signature of the original landholder or any of his representatives and has also not been signed by two witnesses as provided under law. Admittedly, no notice under Section 10(5) of the Act, 1976, has ever been served, and the respondents allege to be in possession of the land in dispute solely on the basis of the undated notice under Section 10(5). Thus, there is nothing on record to demonstrate, as to how and when the possession of the land in dispute was handed over to the respondents by the original landholder or his legal representatives at any point in time.

16. As far as revenue entries are concerned, the same reveal that the land in dispute continued to be recorded in the name of the original landholder, Ram Nihor and thereafter in the name of his son, Lal Chandra ,the father of the petitioner. Subsequent to the demise of the father of the petitioner, Lal Chandra, the land in dispute was recorded in the name of the petitioner in the revenue records. The perusal of the Khatauni for the Fasli year 1425 to 1430, corresponding to the year 2018 to 2023 CE, reveals that the land in dispute is recorded in the name of Lal Chandra , the father of the petitioner. Similarly, in the Khasra for Fasli year 1422, corresponding year 2015 CE, Arazi nos.169, 184, 185,190 and 191 are recorded in the name of Lal Chandra and other co-tenure holders. In the Khasra for Fasli year 1428, corresponding year

2021 CE, Arazi nos. 169, 190, and 191 are recorded in the name of the petitioner and other co-tenure holders. It is only in pursuance of the order dated 20.09.2021 passed by the Competent Authority, Urban Ceiling, Varanasi, that the land in dispute, comprised in Arazi Nos. 169, 184, 185, 190, and 191, was recorded in the name of the State in the Khatauni for the Fasli year 1427-1432, corresponding year 2020 -2025 CE. Besides, the perusal of the records reveals that there is no other order, other than the order dated 20.09.2021, directing that the land in dispute be recorded in the name of State in the revenue records. Thus, it is beyond doubt that the land in dispute continued to be recorded in the name of petitioner and his predecessors for more than 23 years, even after the taking over of the alleged possession of the land in dispute in the year 1998. In this regard, we would also like to advert to the pleading of the respective parties regarding the entries in the revenue records. The petitioner in paragraphs 15 and 16 of the writ petition has stated as under:

*" 15. That bare perusal of the khatoni fasli year 1425-1430 demonstrate that the name of the original tenure holder Ram Nihor and his son Lal Chandra was duly recorded pertaining to the land in question. The name of the petitioner was also subsequently recorded in the Revenue Records (Khasra) after the death of his father Lal Chandra and Grand Father Sri Ram Nihor. However, the khatoni fasli year 1427-1432 demonstrate that by order dated 20.09.2021 of the Competent Authority, Urban Land Ceiling, Varanasi, referring to some undated "Purva Preshit Namantaran Aadesh" the name of the original tenure holder Ram Nihor and his son Sri Lal Chandra was deleted and the name of the State/ Urban Ceiling was recorded in the Revenue Records pertaining to the Arazi numbers in question. From the aforesaid, it is clearly apparent that prior to the order dated 20.09.2021 of the Competent Authority the name of the original tenure holder was duly recorded in the khatoni pertaining to the land in question. Copy of the khatoni for the fasli year 1425-1430, 1427-1432 is being filed as Annexure No. -9 to this writ petition.*

*16. That the petitioner bring on record the photocopy of the Khasra of the land pertaining to Gram Singhpur, Shivpur, Varanasi for fasli year 1422, 1428. From the khasra aforesaid, it is clearly evident that the name of the petitioner Munna Lal Patel and share holders/original tenure holder is mentioned as owner of the land in question. Further that the crops are standing and the name of various crops are also mentioned in the Khasra. Thus it is duly proved that the land in question is in physical possession of the petitioner Munna Lal Patel and the tenure holders/share*

*holders and being utilized for the agricultural purposes. A copy of the Khasra for Fasli year 1422, 1428 is being enclosed herewith and marked as Annexure No. 10 to this writ petition."*

17. The respondent - State in response to the above said paragraphs in the writ petition, in paragraphs 17 and 18 of the counter affidavit have stated as under :

*" 17. That in reply to the contents of paragraph no. 14 and 15 of the writ petition, the submission in view of the facts stated in the preceding paragraphs of this Counter Affidavit is that the subject land is under the ownership and possession of the State Government and after completing the urban ceiling proceeding, the subject land was transferred to the Varanasi Development Authority in the year 1998 and since then the land is in custody of the Development Authority. In case the petitioner claim any possession over the subject land same is illegal and encroachment over the Government land as held in writ petition no. 9516 of 2006 (Susheela Devi vs. State of U.P.).*

*That the intimation regarding death of the Original Tenure Holder or his son was never given to the office of the answering respondent, however since the death of the Original Tenure Holder occurred in the year 1992 as mentioned in the paragraph under reply, the legal heirs were under statutory obligation under Section 15 of the Urban Land (Ceiling and Regulation) Act, 1976 to give intimation and file separate Return disclosing their share within 90 days of the death, which was not done.*

*That so far as recording of subject land in favour of the State Government, in the Revenue records is concerned, it is submitted that the order for mutation was earlier issued, which was not complied with. Therefore a Reminder vide memo No. 111 dated 20.09.2021 was issued and in pursuance thereto, the name of the State Government was recorded in the Revenue Records.*

*18. That the contents of paragraph no. 16 and 17 of the writ petition is incorrect as stated hence denied. The correct facts are that after completing the urban ceiling proceeding, the subject land had been transferred to the Varanasi Development Authority much before the enforcement of Repeal Act, 1999, hence the petitioner have no legal right or claim over the subject land. Moreover the Claim of the petitioner regarding possession over the urban ceiling land is hit by the law laid down in writ petition no. 9516 of 2006 (Susheela Devi vs. State of U.P.) "*

18. Thus, it is evident that the respondents have not raised any dispute as far as the entries in the revenue records are concerned. It is only alleged that the order of mutation had been issued earlier, which was not

complied with, however, no such order passed earlier, as alleged, has been brought on record by the respondents. Hence, it is beyond doubt that the entries in the revenue records in the name of the State were made for the first time in pursuance of the order dated 20.09.2021.

19. We are aware of the fact that revenue records serve only a fiscal purpose, and their primary function is to enable the person whose name is mutated in the records to pay the land revenue. The revenue record is not a document of title and does not confer any ownership or title upon the person whose name appears in it, but the revenue records can raise a presumption regarding possession. However, the court cannot embark upon an inquiry into the correctness of revenue records unless they are false or fraudulent, which is not so in the present case. The Apex court in this regard, in the case of **Vishnu Vijay Bharti vs. Fakhruul Hasan and others**, (1976) 3 SCC 642, had held as under :

*" 14. It is true that the entries in the revenue record ought, generally, to be accepted at their face value and courts should not embark upon an appellate inquiry into their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent, entries. The distinction may be fine but it is real. The distinction is that one cannot challenge the correctness of what the entry in the revenue record states but the entry is open to the attack that it was made fraudulently or surreptitiously. Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title.*

*15. In Amba Prasad v. Abdul Noor Khan', it was held by this Court that Section 20 of the U. P. Act No.1 of 1951 does not require proof of actual possession and that its purpose is to eliminate inquiries into disputed possession by acceptance of the entries in the khasra or khatauni of 1356 Fasli. While commenting on this decision this Court observed in Sonawati v. Sri Ram, that the Civil Court in adjudging claim of a person to the rights of an adhvasi is not called upon to make an enquiry whether the claimant was actually in possession of the land or held the right as an occupant cases of fraud apart, the entry in the record alone is relevant.*

*We have supplied the emphasis in order to show that the normal presumption of correctness attaching to entries in the revenue record, which by law constitute evidence of a legal title, is displaced by proof of fraud."*

20. The Apex Court in the case of **The State of Haryana and others V. Amin Lal (since deceased) through his LRs and others, SLP (C) No. 25213 of 2024**, decided on 19.11.2024, while considering the question of admissibility of revenue records as evidence of possession, 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.*

*8.3 The respondents have produced copies of registered sale deeds and mutation records before this Court, which were part of the additional documents filed with the counter-affidavit. Plaintiff No. 1, Shri Amin Lal, derived title through a registered sale deed dated 5th July 1960, and mutation No. 8329 was sanctioned on 20th April 1982. Plaintiff No. 2 Shri Ashok Kumar, derived his title through a registered sale deed dated 12<sup>th</sup> March 1973, and mutation No. 8330 was sanctioned on 20<sup>th</sup> April 1982. These documents establish a chain of title and cannot be ignored"*

21. Thus, in view of the law considered above, the fact that the land in dispute continued to be recorded in the name of the predecessors of the petitioner after the alleged taking over of possession in the year 1998 can lead us to a presumption that the land in dispute continues to remain in possession of the petitioner and his predecessors prior thereto.

22. Now, if we revert to the impugned order dated 18.10.2023, the perusal thereof reveals that, although it makes a mention of an undated notice under Section 10 (5) of the Act, 1976, neither the date of notice nor the date of service of the same upon the land holder is mentioned therein. Besides the date of voluntary taking over of possession of the land in dispute is also not mentioned therein . The impugned order also does not make any mention of taking possession under Section 10 (6) of the Act, 1976. But at the same time the impugned order acknowledges the fact that construction of a house has been raised on a part of the land

in dispute but goes on to conclude that, as no title documents in respect of the construction were provided, hence the construction was illegal/unauthorized. The finding so arrived at by the respondent No. 3 is perverse and vitiated in view of the fact that the proceedings under the Act, 1976 were initiated against the Ram Nihor, the predecessor of the petitioner in respect of the land in dispute, on the premise that Ram Nihor had a valid title and was in possession of the land in dispute. Hence, there was no question of proving title over the land in dispute. We are well aware of the fact that the burden of proof of taking over possession of the land in proceedings under the Act, 1976, rests upon the State, however, in the present case, the respondents have utterly failed to discharge this burden.

23. We now advert to the law laid down by the Apex Court in respect of the transfer of possession to the State under the Act, 1976 and the effect of the Repeal Act, on the proceedings so initiated. The Apex Court in the case of *State of U.P. v. Hariram*, 2013 (4) SCC 280 has held as under:-

*"Peaceful Dispossession"*

*34 Sub-section (5) of Section 10, for the first time, speaks of "possession" which says that where any land is vested in the State Government under sub-section (3) of Section 10, the competent authority may, by notice in writing, order any person, who may be in possession of it to surrender or transfer possession to the State Government or to any other person, duly authorised by the State Government.*

*35. If de facto possession has already passed on to the State Government by the two deeming provisions under sub-section (3) of Section 10, there is no necessity of using the expression "where any land is vested" under sub-section (5) of Section 10. Surrendering or transfer of possession under sub-section (3) of Section 10 can be voluntary so that the person may get the compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-section (5) of Section 10 to surrender or deliver possession. Sub-section (5) of Section 10 visualises a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession.*

*Forceful dispossession*

36. The Act provides for forceful dispossession but only when a person refuses or fails to comply with an order under sub-section (5) of Section 10. Sub-section (6) of Section 10 again speaks of "possession" which says, if any person refuses or fails to comply with the order made under sub-section (5) the competent authority may take possession of the vacant land to be given to the State Government and for that purpose, force-as may be necessary-can be used. Sub-section (6), therefore, contemplates a situation of a person refusing or fails to comply with the order under sub-section (5), in the event of which the competent authority may take possession by use of force. Forcible dispossession of the land, therefore, is being resorted to only in a situation which falls under sub-section (6) and not under sub-section (5) of Section 10. Sub-sections (5) and (6), therefore, take care of both the situations i.e. taking possession by giving notice, that is, "peaceful dispossession" and on failure to surrender or give delivery of possession under Section 10(5), then "forceful dispossession" under sub-section (6) of Section 10.

37. The requirement of giving notice under sub-sections (5) and (6) of Section 10 is mandatory. Though the word "may" has been used therein, the word "may" in both the sub-sections has to be understood as "shall" because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of non-issue of notice under sub-section(5) or sub-section (6) of Section 10 is that it might result in the landholder being dispossessed without notice, therefore, the word "may" has to be read as "shall".

42 The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18-3-1999. The State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the landowner or holder can claim the benefit of Section 4 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 the benefit of Section 4 of the Repeal Act.

43. We, therefore, find no infirmity in the judgment 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 4 of the Repeal Act. However, there will be no order as to costs."

(emphasis added)

24. Further the Apex Court in the case of **A.P. Electrical Equipment Corporation v. Tehsildar and others**, 2025 SCC Online SC 447 while relying upon the law laid down in the case of Hari Ram (supra) has held as under:

*“20. Thus, by virtue of the provisions of Section 3 of the Repeal Act, 1999, if possession of vacant land has been taken over on behalf of the State Government before the coming into force of the Repeal Act, 1999, the repeal of the Principal Act would not affect the vesting of such land under sub-section (3) of Section 10 of Act, 1976. Hence, the issue as to whether actual possession of land declared excess under the Act has been taken over or not assumes great significance after the coming into force of the Repeal Act, 1999 inasmuch as if possession has not been taken over, the proceedings would abate under Section 4 of the Repeal Act, 1999 and the ownership of the land, if vested in the State Government under Section 10 (3) of the Act, 1976 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*

*25. Thus, applying the principle of strict construction as explained in the aforesaid two decisions, the authorities are required to act strictly in accordance with the statutory provisions. Thus, when sub-section (5) of Section 10 mandates giving notice of an order under the said sub-section to the person in possession, the same is required to be complied with in its true letter and spirit. Considering the nature of rights involved, mere issuance of notice without service thereof, cannot be said to be due compliance with the provisions of the statute. Besides, the provisions of subsection (6) of Section 10 can be resorted to only if the person fails to comply with an order under sub-section (5) thereof, within a period of thirty days of service of notice. Hence, possession cannot be taken over under Section 10(6) of the Act, 1976 unless a period of thirty days from the date of service of notice has elapsed. In absence of service of notice under sub-section (5) of Section 10, there will be no starting point for calculating the period of thirty days. In other words, time will not start running, hence the question of taking over possession under sub-section (6) of Section 10 of the Act, 1976 will not arise at all. In this view of the matter, in the case on hand, it was not open to the respondent authorities to resort to the provisions of sub-section (6) of Section 10 of the Act, 1976 without first strictly complying with the provisions of sub-section (5) thereof. Hence, such action being in contravention of the statutory provisions cannot be sustained and deserves to be struck down.*

*41 The propositions of law governing the issue of possession in context with Sections 10(5) and 10(6) respectively of the Act, 1976 read with Section 3 of the Repeal Act, 1999 may be summed up thus:*

*[1] The Repeal Act, 1999 clearly talks about the possession being taken under Section 10(5) or Section 10(6) of the Act, 1976, as the case may be.*

*[2] It is a statutory obligation on the part of the competent authority or the State to take possession strictly as permitted in law.*

*(3) In case the possession is purported to have been taken under Section 10(6) of the Act, 1976 the Court is still obliged to look into whether "taking of such possession is valid or invalidated on any of the considerations in law."*

*[4] The possession envisaged under Section 3 of the Repeal Act, 1999 is de facto and not de jure only.*

*[5] The mere vesting of "land declared surplus" under the Act without resuming "de facto possession" is of no consequence and the land holder is entitled to the benefit of the Repeal Act, 1999.*

*[6] The requirement of giving notice under sub-sections (5) and (6) of Section 10 respectively is mandatory. Although the word "may" has been used therein, yet the word "may" in both the sub-sections should be understood as "shall" because a Court is obliged to decide the consequences that the legislature intended to follow from the failure to implement the requirement.*

*[7] 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 18th March 1999.*

*[8] The State has to establish by cogent evidence on record that there has been a voluntary surrender of vacant land or surrender land delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10.*

*53. Thus, it would all depend on the nature of the question of fact. In other words, what is exactly, that the writ court needs to determine so as to arrive at the right decision. If the only issue, that revolves around the entire debate is one relating to actual taking over of the physical possession of the excess land under the provisions of sub-sections (5) and (6) of Section 10 of the Act, 1976 respectively, then in such circumstances, the writ court has no other option but to go into the factual aspects and take an appropriate decision in that regard. The issue of possession, by itself, will not become a disputed question of fact. If all that has been*

said by the State is to be accepted as a gospel truth and nothing shown by the landowner is to be looked into on the ground that a writ court cannot go into disputed questions of fact, then the same may lead to a serious miscarriage of justice.

54 We are of the considered opinion that the issue as regards taking over of the actual physical possession of the excess land in accordance with the provisions of sub-sections (5) and (6) of Section 10 of the Act, 1976 could be said to be a mixed question of law and fact and not just a question of fact. Mixed question of law and fact refers to a question which depends on both law and fact for its solution. In resolving a mixed question of law and fact, a reviewing court must adjudicate the facts of the case and decide relevant legal issues at the same time. Mixed questions of law and fact are defined "as questions in which the historical facts are admitted or established, the rule of law is resolved and the issue is whether the facts satisfy the statutory standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated[Bausch & Lomb v. Unites States C.I.T. 166, 169 (Ct. Int'l Trade 1997]"

(emphasis added)

25. Recently the Apex Court in the case of **Dalsukhbhai Bachubhai Satasia and others v. State of Gujarat and others**, 2026 SCC Online SC 25 while considering the provisions of the Act, 1976 and the Repeal Act, 1999 had held as under:

"18.1 We, therefore, see that the requirement of issuance of notice under Section 10(5) is mandatory and must be issued to the person(s) actually in possession of the concerned land. This is clear from the wording of the statute ("order any person who may be in possession of it"), which are Interpreted by this Court in Hari Ram. This Court opined that the importance of delivering notice lay in avoiding a situation where a person is "dispossessed" without notice which would be in violation of the principles of natural justice, thereby clearly envisioning that the possessor must be served with notice.

19.2 The delivery of notice to the person in possession was therefore unequivocally held to be mandatory. Indeed, the emphasis was on the service of notice on the possessor, as opposed to mere issuance of the same. In the absence of such service of notice, any attempt at forced dispossession was held to be contrary to the statute and hence illegal.

19.3. This Court reiterated the conclusion in Hari Ram, i.e., that if possession has not been taken over by the State Government, then the proceedings under the Act would abate under Section 4 of the Repealing Act. The "mere vesting of the vacant

land with the State Government by operation of law, without actual possession, is not sufficient". This Court in AP Electrical phrased the conclusion of Hari Ram in the following manner:

.....

29....To put it in other words, the mere paper possession would not save the situation for the State Government unless the State is able to establish by cogent evidence that actual physical possession of the entire land was taken over by evicting each and every person from the land. The onus is on the State to establish that actual physical possession of the excess vacant land was taken over before the repeal."

22.4. Therefore, as per the provisions of Sections 10(3) and 10(5) of the ULC Act, the subject land, despite having 'vested' (along with acquisition of title or interests) in the State Government, was not in the possession of the Government. Further, possession was not taken by any of the three possible means, i.e., voluntary transfer by the appellants, issuance of notice under Section 10(5) to the appellants followed by peaceful transfer or forceful acquisition of possession under Section 10(6) of the ULC Act. The possession of the land continues with the appellants herein till date.

22.5. Such a scenario is clearly one where the provision of abatement under Section 4 of the Repealing Act applies. The proviso to Section 4 states that the section would not apply to proceedings under Sections 11, 12, 13 and 14 of the ULC Act relating to land that has already been taken possession of by the State Government. Therefore, the proviso has no applicability to the facts at hand and the benefit of abatement under the section would apply wholesale.

22.6 That the approach to be had with cases such as the present one is also evident upon a reading of Sections 3 and 4 of the Repealing Act. Clearly, the legislative intent is that in cases where lands were deemed to have been vested but possession was not yet transferred as on date of enforcement of the Repealing Act (such as the present case), the lands were to remain in possession of the private parties. Section 3 (2) of the Repealing Act prescribes the procedure to be followed in specific types of situations, i.e., where amounts paid by the State Government must be refunded. This is not so in the present case. However, the underlying concepts are clear that vesting and possession are distinct and that without the latter, the private parties have a claim over continuing to be in possession. This is subsequently further emphasised in Section 4 of the Repealing Act, as explained earlier under which proceedings abate as a result."

26. Now if we advert to the facts of the present case on the touchstone of law laid down by the Apex Court, as discussed above, the requirement of giving notice under Section 10 (5) and Section 10 (6) is mandatory. Admittedly in the present case there has been no forceful dispossession under Section 10 (6). As far as the notice under Section 10 (5) is concerned, the same is undated and does not bear the signatures of the person handing over the possession and that of two witnesses. The date of handing over of possession is also neither pleaded nor the same is evident from the evidences filed before this Court even though the notice under Section 10 (5) has been brought on record by the respondents. Thus, the mandatory requirement of delivery of notice under Section 10 (5) to the petitioners not not been complied with. Even otherwise the order passed under Section 8(4) of the Act, 1976 declaring the land as excess vacant, is vitiated for the reason above.

27. Another question raised before us and vehemently argued on behalf of the respondents that the present writ petition is liable to be dismissed solely on the ground of delay, the petitioners having approached this Court after a delay of about 30 years after the land was declared to be vacant surplus and after about 25 years since the possession of the land was taken over by the respondents.

28. Before we consider the factual aspects of the controversy in respect to delay the respondents amongst others have heavily relied upon the law laid down by the Apex Court in the case of **State of Assam v. Bhaskar Jyoti Sarma** 2015 (5) SCC 321 in that regard. The law laid down by the Apex Court in the said case came to be considered in the case of **Dalsukhbhai Bachubhai Satasia (supra)** wherein the Apex Court had held as under:-

*“34. We have supplied emphasis on paras 15 and 17 of Bhaskar Jyoti Sharma (supra) referred to above, for the purpose of highlighting that Hari Ram (supra) has not been diluted in any manner. We are of the firm view that Hari Ram (supra) holds the field even as on date. The statements of law in Hari Ram (supra) are absolutely correct.*

35. If two decisions of this Court appears inconsistent with each other, the High Courts are not to follow one and overlook the other, but should try to reconcile and respect them both and the only way to do so is to adopt the wise suggestion of Lord Halsbury given in *Quinn v. Leathem*, [1901] A.C. 495 and reiterated by the Privy Council in *Punjab Cooperative Bank Ltd. v. Commr. of Income Tax, Lahore* AIR 1940 PC 230:

“.... every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions, which may be found there, are not intended to be expositions of the whole law, but governed or qualified by the particular facts of the case in which such expressions are to be found.” and follow that decision whose facts appear more in accord with those of the case at hand.”

20. We are inclined to agree with this view of this Court in *AP Electrical* regarding the effect of *Bhaskar Jyoti Sarma* on the dictum in *Hari Ram*. 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".

20.1. However, the facts of *Hari Ram* (and indeed, the present case) are different insofar as de facto possession was not transferred, by force or otherwise. Therefore, the question is not whether an actual transfer of possession by force is vitiated by a delay in raising objections to the transfer. Rather, the question is whether actual possession has been transferred at all, if no process of transfer has been conducted under the various provisions of Section 10 of the ULC Act. Therefore, the dictum in *Hari Ram* stands undisputed by the judgment in *Bhaskar Jyoti Sarma*.

20.4. We find that this view is in accordance with the prior dictum of this Court in *Hari Ram*, and agrees with the same. At this juncture, we find it appropriate to briefly go through certain other pronouncements of this Court, all of which are aligned on the necessity of serving notice on the possessor under Section 10(5); the difference between vesting and possession’ the difference between de jure and de facto possession and the effect of the Repealing Act.”

29. We have already held in paragraphs above that the notice under Section 10(5) was never served upon the landholder, and the possession of the land in dispute was also not transferred to the respondents . Besides, the entries in the revenue records continued to remain in the names of the predecessors of the petitioners and, thereafter, that of the

petitioner. It is only for the first time, in pursuance of the order dated 20.09.2021, that the entries in the revenue record in respect of land in dispute were recorded in the name of the State . In the meantime, the petitioner had filed Writ C No. 7484 of 2021 (Munna Lal vs. State of UP and others), and the same was disposed of vide the judgment and order dated 15.06.2021. It is only in pursuance of the directions of this Court as contained in the judgment and order dated 15.06.2021 that the Competent Authority - respondent no. 3 has passed the impugned order dated 18.10.2023, which is under challenge in the present petition.

30. Thus, in view of the above, it cannot be held that there has been delay on the part of the petitioners in approaching this Court in view of the fact that the petitioners continued to remain in possession of the land in dispute prior to and after the enforcement of the Repeal Act, 1999 and revenue entries also remained in the name of the petitioners and the petitioners approached this Court when the revenue entries were sought to be mutated in the name of the State.

31. Hence, in view of above as far as the question of the respondent having de facto possession of the land in dispute, the burden lay upon the respondent to prove the same. However, we are afraid that the respondents have utterly failed to discharge the burden. Besides the respondents have also failed to establish that there has been a voluntary surrender of vacant land, hence, under the circumstances, the petitioners are very well within their rights to claim the benefit of the Repeal Act, 1999.

32. We are of the view that the question involved in the present case is whether actual possession has been transferred at all to the respondents or not and not that of delay in approaching this Court, further if no process of transfer has been conducted under the various provisions of Section 10 of the Act, 1976 and the respondents have also failed to establish their possession over the land in dispute, then in such a case, the law relied upon by us in the case of **Hari Ram (supra), A.P.**

**Electricial Equipment Corporation (supra) and Dabukhbahi Bachubhai Sateria (supra)** would be applicable in the present case.

33. Thus, in view of the above the present writ petition is allowed and the proceedings of Ceiling Case No. 486/2480/5523/81-82 (State Vs. Ram Nichor son of Ram Das) are held to be abated and a direction is issued to the respondent no.2 to expunge the entries in the name of State in the revenue records in respect of the land in dispute and to restore the entries in the revenue records the way they existed prior to the order dated 20.09.2021 of the Competent Authority-respondent no.3, the direction so issued should be complied within three months from the production of certified copy of this judgment and order.

34. No order as to costs.

**(Sudhanshu Chauhan,J.) (Saral Srivastava,J.)**

**August 17, 2026**

Nadeem