2026:AHC:222822-DB

A.F.R
Reserved On: 21.08.2026
Delivered On: 27.10.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 35471 of 2025

Kanpur Development Authority

…..Petitioner(s)

Versus

Hakkim Singh and 4 others

…..Respondent(s)

Counsel for Petitioner(s)	:	Abhinava Krishna Srivastava
Counsel for Respondent(s)	:	C.S.C., Digvijay Kumar Mishra, Shreya Gupta

Connected With:-

(1) Writ C No. 35353 of 2025 (Kanpur Development Authority Through its Vice Chairman Vs. Ram Avtar Pal (Deceased) and 7 others)

(2) Writ C No. 6679 of 2026 (Kanpur Development Authority Vs. Madan Mohan Singh and others)

Court No. - 40

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

1. Heard Shri M.C. Chaturvedi, learned Senior Counsel assisted by Shri Abhinava Krishan Srivastava, learned counsel for the petitioner and Shri Ashok Srivastava and Shri Digvijay Kumar Mishra, learned counsel for the respondents.

2. As the three writ petitions arise out of proceedings under the Urban Land (Ceiling and Regulation) Act, 1976, hereinafter

referred to as, the Act, 1976, and involve the same legal question, hence, all three writ petitions are being decided by this common judgment and order.

WRIT C No. 35353 of 2025.

3. The facts of the case are that the original tenure holder, despite notice under the Act, 1976, did not file a ceiling return. Consequently, the competent authority got a survey made and prepared a draft treatment, which was sent along with notice dated 05.07.1979 under Section 8(3) of the Act, 1976, through registered post. As the tenure holder did not file any objection to the notice, the order under Section 8(4) of the Act, 1976, was passed on 20.07.1983, by means of which 6,632.61sq m of land was declared as vacant surplus. Thereafter, the final statement under Section 9, dated 31.08.1985, was sent to the tenure holder. After the publication of the notification under Section 10(1) and Section 10(3) in the State Gazette, notice under Section 10(5) dated 21.04.1990 was issued. Subsequently, the possession of the land in dispute was taken on 12.11.1991 and handed over to the Kanpur Development Authority. The land in dispute was also recorded in the name of Kanpur Development Authority in the revenue records. The respondents at no point in time had challenged the proceedings initiated under the Act, 1976. In the meanwhile, the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as, ‘the Act, 1999’) came into force in the State of U.P. on 18.3.1999.However, it is only sometime in the year 2009 that the private respondents had filed an appeal under Section 33 of the Act, 1976, before the District Judge, Kanpur, against the order dated 20.07.1983 passed under Section 8(4) of the Act, 1976. In the appeal it was admitted that the original land holder had passed away on 21.02.1994 and also that the provisions of the Act, 1976 were not

applicable to the land in dispute. The learned District Judge, by means of the impugned judgment and order dated 24.12.2024, had disposed of the appeal while arriving at a finding that record does not support the contention of actual transfer of the land in dispute from the original tenure holder to the State,hence,the appeal is liable to be abated.

WRIT C No.35471 of 2025.

4. The facts of the case are that the original tenure holder, had filed a ceiling return consequently, the competent authority sent a notice under Section 8(3) dated 28.05.1979. However, as no objections were filed by the tenure holder, order under Section 8(4) was passed on 30.10.1982, thereby declaring 16676.46 sq m of land as vacant surplus. Thereafter, notice dated 16.11.1984 under Section 9 containing the final statement was issued through registered post. Subsequently, after publication of notices under Section 10(1) and Section 10(3) in the State Gazette, a notice dated 19.04.1990 was issued under Section 10(5) of the Act, 1976. The possession of the land in dispute was taken on 12.11.991 and handed over to the Kanpur Development Authority. The land in dispute was also recorded in the name of Kanpur Development Authority in the revenue records. The private respondents at no point in time had challenged the proceedings initiated under the Act, 1976. In the meanwhile, the Repeal Act,1999 came into force in the State of U.P. on 18.3.1999. However, it is only some time in the year 2011 that the private respondents had filed an appeal under Section 33 of the Act, 1976, before the District Judge, Kanpur, against the order dated 30.10.1982 passed under Section 8(4) of the Act, 1976. In the appeal it was admitted that notice under Section 11 of the Act, 1976 was served on the land holder on 10.12.2003. The learned District Judge, by means of the impugned judgment and order dated

24.12.2024, had disposed of the appeal while arriving at the finding that the record does not support the contention of actual transfer of the land in dispute from the original landholder to the State, hence, the appeal is liable to be abated.

WRIT C No. 6679 of 2026.

5. The facts of the case are that the original tenure holder had filed a ceiling return. Consequently, a draft statement, was sent through notice dated 09.02.1979 under Section 8(3) of the Act,1976. However, as no objections were filed by the tenure holder, an order under Section 8(4) was passed on 11.09.1979, declaring 9242.50 sq m of land as vacant surplus. Subsequently, notice under Section 9 dated 14.08.1978 containing the final statement was sent to the tenure holder through registered post. After publication of notifications under Section 10(1) and Section 10(3) in the State Gazette, a notice under Section 10(5) of the Act 1976 was issued on 28.10.1985. In pursuance thereto, the possession of the land in dispute was taken on 20.02.1986. Thereafter, the possession of the land in dispute was transferred to the Kanpur Development Authority. The tenure holder at no point in time had challenged the proceedings under the Act, 1976. In the meanwhile, the Repeal Act,1999 was enforced in the State of UP on 18.03.1999. It was only sometime in the year 2013, that the private respondents had filed an appeal under Section 33 of the Act 1976 before the District Judge, Kanpur against the order dated 11.09.1979 passed under Section 8(4) of the Act 1976. In the appeal it was admitted that the land holder came to know about the revenue entries in respect of the land in dispute in the name of the State on 16.05.2000. The learned District Judge, by means of the impugned judgment and order dated 24.12.2024, had disposed of the appeal with the finding that the record does not support the contention of actual transfer of the land

in dispute from the original tenure holder to the State Government ,hence, the appeal is liable to be abated.

6. Shri M.C. Chaturvedi, learned senior counsel appearing on behalf of the appellant while challenging the impugned judgments dated 24.12.2024 passed by the learned District Judge, has submitted that after the enforcement of the Repeal Act, 1999, in the State of U.P. on 18.03.1999, the Act, 1976 stood repealed. Further by virtue of Section 4, all proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of the repeal Act stood abated, and as such, the provisions of Section 4 would be squarely applicable to appeals filed under Section 33 of the Act, 1976. Further, Section 3 of the Repeal Act, 1999, contains the saving clause. Thus, the perusal of the scheme of the Repeal Act, 1999 itself shows that the pending appeals under Section 33 of the Act 1976 stood abated. Under the circumstances, there was no question of entertaining any appeal under Section 33 after the enforcement of the Repeal Act 1999.Thus, the proceedings under the Act, 1976, which stood terminated much prior to the coming into force of the Repeal Act, 1999, could not have been reopened by the learned District Judge under Section 33, when the Act 1976, itself still stood repealed. . Hence, the impugned judgments and orders passed by the learned District Judge were passed without jurisdiction. The learned counsel, in support of his contention, relies upon the judgment and order passed by a coordinate bench of this Court in Writ C No. 62283 or 2012 (State of UP versus Jagdish Chandra).

7. On the contrary, the learned counsel for the private respondents have essentially relied upon the findings of the learned District Judge in the impugned judgments. It is further contended that even after the enforcement of the Repeal Act,1999 the right to

appeal continued to remain available to the respondents in view of the provisions of Section 6(e) of the General Clauses Act, 1887. The right to appeal, being a substantial right, cannot be taken away except by a subsequent enactment if it so provides, expressly, or by necessary intendment, and not otherwise. It is also contended that it was the case of the appellants that the possession of the land in dispute had already been taken under the Act, 1976, and under such circumstances, the original enactment, that is, the Act, 1976, would continue to govern the matter in controversy. Under these circumstances, the proceedings under the Act, 1976, cannot be said to have been abated. It is also contended that the Apex Court repeatedly has held that a civil court has no jurisdiction to entertain disputes arising under the Act, 1976. Under the circumstances, the respondents could not have been left remediless, and as such, the only remedy available to the respondents lay under Section 33 of the Act, 1976. The learned counsel in support of his case has relied upon the judgment and order passed by a coordinate bench of this Court in **Writ C No. 48613 of 2009 (State of U.P. and another versus Nek Singh)**. Besides, it is also contended that the law relied upon by the appellant in the case of **Jagdish Chandra (supra)** does not lay good law.

8. We have considered the contentions made by the respective parties and are of the view that the only two questions required to be decided in the present writ petitions are as below:-

(A) Whether, after the enforcement of the Repeal Act, 1999, the right to file an appeal under Section 33 of the Act, 1976, against an order passed under Section 8 (4) of the Act, 1976 by the competent authority still survives, more so keeping in view the provisions of Section 4 of the Repeal Act, 1999 ?

(B) Whether the right to file an appeal under Section 33 of the Act, 1976, is saved under the provisions of Section 6 of the General Clauses Act, 1997 ?

9. Question No.(A) and Question No.(B) being interrelated, are being taken up together.

10. Before proceeding any further, it is necessary to look into the statutory scheme of the Act 1976, more so in the light of the provisions of the Repeal Act ,1999.

11. The Act, 1976, was enacted to provide for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land, and for matters connected therewith with a view to preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein, and with a view to bringing about an equitable distribution of land in urban agglomerations to serve the common good.

12. Under Section 6 of the Act, 1976, persons holding vacant land in excess of the ceiling limit were required to file a statement. Section 8 of the Act, 1976 pertained to the preparation of a draft statement as regards vacant land held in excess of the ceiling limit. Under Section 8(3), the draft statement was to be served upon the person concerned, together with a notice stating that any objection to the draft statement shall be preferred within 30 days of the service thereof. Under Section 8(4), the competent authority has to consider any objection received, if any from the person concerned and pass such orders as it deems fit after giving the objector a reasonable opportunity of being heard. Section 9 pertains to the final statement and provides that after disposal of objections, under Section 8(4), the competent authority shall make the necessary

alterations in the draft statement in accordance with the orders passed on the objections and shall determine the vacant land held by the person concerned in excess of the ceiling limit.

13. Section 10 pertains to acquisition of vacant land in excess of ceiling limit. Sub section (1) of Section 10 provides that after the service of statement under Section 9 on the person concerned, the competent authority shall cause a notification giving particulars of the vacant land held by such person in excess of the ceiling limit, stating that such vacant land is to be acquired by the concerned State Government; and the claims of all persons interested in such vacant land may be made by them personally or by their agents, giving particulars of the nature of their interest in such lands. The competent authority, thereafter, under subsection (2) of section 10, shall consider the claims of persons interested in the vacant land and shall determine the nature and extent of such claims and pass such orders as it deems fit. Sub-section (3) of Section 10 pertains to vesting absolutely of the vacant land in the State Government, free from all encumbrances, with effect from the date so specified. Sub-section (4) of Section 10 prohibits transfer by way of sale, mortgage, gift, lease, or otherwise, of any excess vacant land, and also alteration of the use of such vacant land during the period commencing on the date of publication of the notification under subsection (1) and ending with the date specified in the declaration made under subsection (3).

14. Subsections (5) and (6) pertain to transfer or possession of the vacant land vested in the State Government and read as under :-

"(5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or

to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice.

(6) If any person refuses or fails to comply with an order may under sub-section (5), the competent authority may taken possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary. ”

15. Section 11 pertains to payment of amount for vacant land acquired. Section 12 pertains to constitution of Urban Land Tribunal and appeal to Urban Land Tribunal against an order of the competent authority under Section 11 of the Act, 1976. Section 13 provides for a second appeal to the High Court from the decision of the Tribunal under Section 12. Section 14 provides for the mode of payment of amounts to the persons entitled.

16. Section 20 provides for power to exempt to the State Government, either on its own motion or otherwise to, any person who holds vacant land in excess of the ceiling limit, having regard to the location of such land , the purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do. Besides, the State Government, either on its own motion or otherwise, may exempt any person who holds vacant land in excess of the ceiling limit if it is satisfied that application of the provisions of Chapter III of the Act,1976 would cause undue hardship to such person. Further the State Government can withdraw by order, such exemption if it is satisfied that any of the conditions subject to which any exemption has been granted are not complied with.

17. Section 33 of the Act ,1976 pertains to an appeal, and the same reads as under:-

"33.(1) Any person aggrieved by an order made by the competent authority under this Act, not being an order under section 11 or an order under sub-section (1) of section 30, may, within thirty-days of the date on which the order is communicated to him, prefer an appeal to such authority as may be prescribed (hereafter in this section referred to as the appellate authority):

Provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the appeal authority shall, after giving the appellant an opportunity of being hearing, pass such orders thereon as it deem fit as expeditiously as possible.

(3) Every order passed by the appellate authority under this section shall be final."

18. Section 34 of the Act,1976 provides for revision before the State Government.

19. Subsequently, the Repeal Act,1999 was enforced. The statement of objects and reasons in the Repeal Act ,1999 are very relevant and read as under :-

"STATEMENT OF OBJECTS AND REASONS

The Urban Land (Ceiling and Regulation) Act, 1976 was passed with a laudable social objective, The main purpose was to prevent concentration of urban land in a few hands and to provide affordable housing to the Economically Weaker Sections. It has on the contrary pushed up land prices, practically brought the housing industry to a stop and provided opportunities for corruption. There is a widespread demand for removing this irritant to land assembly and construction activity. During the implementation of the Urban Land (Ceiling and Regulation) Act, 1976, there have been a spate of litigations giving rise to serious hurdles in taking over possession of land, by the State Governments. Public opinion is nearly unanimous that the Act has failed to achieve its objectives as expected.

2. Parliament has no power to repeal or amend the Act unless resolutions are passed by two or more State Legislatures as required under clause (2) of article 252. The Legislatures of Haryana and Punjab have passed resolutions empowering Parliament to repeal the Act in those States. The Act stands repealed in those States and in the

Union territories immediately after promulgation of the repeal Ordinance and subsequently if State Legislatures adopt this Repeal Act by resolution, then the Urban Land (Ceiling and Regulation) Act, 1976 will stand repealed in those States, from the date of its adoption.

3. The Urban Land (Ceiling and Regulation) Repeal Bill, 1998 was examined by the Standing Committee on Urban and Rural Development. The Committee felt that the land which is yet to be put to use for the original purposes stated in the Act, under possession of the Government should not be restored to previous owners as such restoration may lead to avoidable discrimination. The Committee also suggested that the repeal Bill should contain a provision for abatement of proceedings in the different courts. Keeping in view the recommendations of the Committee, this Bill is being introduced to replace the Urban Land (Ceiling and Regulation) Repeal Ordinance, 1999 (Ord. 5 of 1999) notified on 11.1.1999 so that the State Governments would be free to have their own legislation commensurate with their needs and experiences. Till this Act is repealed, States have no power to legislate on this subject.

4. The proposed repeal, along with some other incentives and simplification of administrative procedures, is expected to revive the stagnant housing industry. The repeal will facilitate construction of dwelling units both in the public and private sector and help achievement of targets contemplated under National Agenda for Governance. The repeal will not, however, affect vesting of any vacant land under sub-section (3) of section 10 of the Urban Land (Ceiling and Regulation) Act, 1976 the possession of which has been taken over by the State Governments. It will not affect payments made to the State Governments for exemptions. The exemptions granted under section 20 of the Act will continue to be operative. The amounts paid out by the State Governments will become refundable before restoration of the land to the former owners.

5. The Bill also seeks to facilitate land assembly and a flexible regime for administering urban land to suit the varying local conditions based on State level legislation or requirements.

NEW DELHI;

The 17th February, 1999"

20. The relevant sections of the Repeal Act, 1999, read as under:-

*"**1. Short title and application commencement.—***

(1) This Act may be called the Urban land (Ceiling and Regulation) Repeal Act, 1999.

(2) It applies in the first instance to the whole of the State of Haryana and Punjab and to all the Union Territories; and it shall apply to such other State which adopts this Act by resolution passed in that behalf under clause (2) of Article 252 of the Constitution.

(3) It shall be deemed to have come into force in the States of Haryana and Punjab and in all the Union territories on the 11th day of January, 1999 and in other State which adopts this Act under clause (2) of Article 252 of the Constitution on the date of such adoption; and the reference to repeal of the Urban Land (Ceiling and Regulation) Act, 1976 shall, in relation to any State or Union Territory, mean the date on which this Act comes into force in such State or Union Territory.

2. Repeal of Act 33 of 1976.—*The Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the principal Act) is hereby repealed.*

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.

5. Repeal and saving.—

(1)The Urban Land (Ceiling and Regulation) Repeal Ordinance, 1999 (Ord. 5 of 1999) is hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act."

21. Thus, from the perusal of the provisions of the Repeal Act, 1999, the following is evident:-

(A) The Act, 1976 stands repealed by virtue of Section 2.

(B) The saving clause is contained in Section 3. By virtue of Section 3(1)(a), the Repeal Act, 1999 shall not affect vesting of any vacant land under subsection (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority.

(C) By virtue of the provisions of clause (b) and clause (c) of subsection (1) of section 3, the validity of any order granting exemption under subsection (1) of section 20, or any action taken thereunder, notwithstanding any judgment of any Court to the contrary, and any payment made to the State Government as a condition for granting exemption under subsection (1) of section 20, shall not be affected by the enforcement of the Repeal Act, 1999.

(D) 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 authorized by the State

Government in this behalf or by the competent authority, and 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, meaning thereby that if any land has been vested in the State Government but it's possession has not been taken, then such land shall be restored on the refund of amount, if any paid towards compensation.

(E) All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of the Repeal Act, 1999, before any Court, tribunal, or authority, shall abate. The only exception being proceedings relating to sections 11, 12, 13, and 14 of the principal act, insofar as such proceedings are relatable to the land possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by competent authority. Thus, proceedings relating to payment of compensation in respect of the land acquired possession whereof has been transferred to the State Government shall not abate.

22. Hence, as far as the question of abatement of proceedings relating to any order made or purported to be made under the principal Act is concerned, the Repeal Act,1999 carves out two categories of land, the first category being any vacant land vested under subsection (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority and other category being any land deemed to have vested in the State Government under subsection (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 authorized by the State Government in this behalf or by the competent authority. The

Repeal Act,1999 shall not affect the lands falling in the first category, and the proceedings in respect of the same shall be held to be concluded. Whereas, as far as the second category is concerned, the proceedings relating to the same shall abate. The only other proceedings that would have been saved after the enforcement of the Repeal Act, 1999, are those provided under the proviso to Section 4, relating to Sections 11, 12, 13, and 14 of the Principal Act, insofar as such proceedings are relatable to the land possession of which has been taken over by the State Government. This is so, as to protect the interest of the landholders possession of whose land has already been taken by the State Government, but they are yet to be paid compensation for the same. Thus from the perusal of provisions of the Repeal Act, 1999 it appears that except for proceedings under Sections 11, 12, 13 and 14 of the Act, 1976 no other proceedings pending before any court, tribunal or authority shall survive.

23. Thus, from the above, it can be very well concluded that in cases where the land was deemed to have been vested, but possession has not yet been transferred on the date of enforcement of the Repeal Act 1999, proceedings in respect of the same shall abate in view of provisions of Section 4.

24. In the above background, we go on to consider the consequences of the Repeal Act 1999. Generally, when an act is repealed, it is treated as revoked or abrogated and removed from what is popularly known as the statute book. An express repeal will operate to abrogate an existing law unless there is some indication to the contrary, such as a saving clause. Even existing rights and pending litigation, both civil and criminal, may be affected, although it is not an uncommon practice to use the saving clause in order to preserve existing rights and to exempt pending litigation.

25. In Halsbury's Laws of England, 4th Edition, the word "repeal" has been defined as under:-

"To repeal an Act is to cause it to cease to be a part of the corpus juris or body of law. To repeal an enactment contained in an Act is to cause it to cease to be in law a part of the Act containing it. The general principle is that, except as to transactions past and closed, an Act or enactment which is repealed is to be treated thereafter as if it had never existed. However, the operation of the principle is subject to any savings made, expressly or by implication, by the repealing enactment, and in most cases it is subject also to the general statutory provisions as to the effects of repeal."

26. In this regard, the contention of the learned counsel for the private respondents is that the right to appeal, as provided under Section 33 of the Act, 1976, would be saved despite the enforcement of the Repeal Act, 1999, in view of the provisions of Section 6 of the General Clauses Act, 1897. Section 6 of the General Clauses Act, 1897, reads as under: -

"6. Effect of repeal- Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

27. Section 6(e) of the Act, 1897, provides that the repeal shall not affect any investigation, legal proceedings, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid and such investigation, legal proceedings, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed as if the repealing Act or regulation had not been passed. The learned counsel for the private respondents, in this regard, has vehemently argued that a right of appeal, being a substantive right, cannot be curtailed by the Repeal Act, 1999. Further in view of the provisions of the aforesaid clause of Section 6, not only can the appeal under Section 33 be instituted, but it can also be continued.

28. Before we proceed further in the matter, the provisions of Section 6 of the Act 1897 make it amply clear that the provisions thereof would be applicable, unless a different intention appears, in the repealing Act. Thus, what has to be determined is whether under the Repeal Act,1999 a different intention appears, so that the right to institute and to continue the proceedings of an appeal under Section 33 of the Act, 1976, stands extinguished, and all the pending appeals shall stand abated.

29. The Apex Court while taking into consideration the provisions of Section 6 of the General Clauses Act, 1897 in the case of **Qudrat Ullah v. Municipal Board, Bareilly (1974) 1 SCC 202** had held as under:

"18. Certain propositions are clear regarding the consequence of repeal of a statute. The general principle is that an enactment which is repealed is to be treated, except as to transactions passed and closed, as if it had never existed. However, the operation of this principle is subject to any savings which may be made, expressly or by implication, by the repealing enactment (vide Halsbury's Laws of England, Vol. 36 paragraph 714). The U. P. General Clauses Act (Act 1 of 1904) provides for the

consequences of a repeal under Section 6. The relevant parts of which may be reproduced here:

"6. EFFECT OF REPEAL. Where any (Uttar Pradesh) Act repeals any enactment hitherto made or thereafter to be made, then, unless a different intention appears, the repeal shall not-

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(e) affect any remedy, or any investigation of legal proceeding commenced before the repealing Act shall have come into operation in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punish-ment as aforesaid:

and any such remedy may be enforced and any such investigation or legal proceeding may be continued and concluded. and any such penalty, forfeiture or punishment imposed as if the repealing Act had not been passed."

If a contrary intention appears from the repealing statute, that prevails. It was pointed out to us that Section 2 of the later Act specifically states that:

"Nothing in this Act shall apply to-

(a) any building belonging to or vested in. ...any local authority.

Even so, we have to read this provision in conformity with Section 43 which repealed the Act viz. U. P. Act No. 3 of 1947. Section 43 (2) is the saving clause. If the repealing enactment, as in this case, makes a special provision regarding pending or past transactions it is this provision that will determine whether the liability arising under the repealed enactment survives or is extinguished. Section 6 of the General Clauses Act applies generally in the absence of a special saving provision in the repealing statute, for when there is one then a different intention is indicated. In any case where a repeal is followed by a fresh legislation on the subject, the Court has to look to the provisions of the new Act to see whether they indicate a different intention."

30. In this regard, we consider the law laid down by the Apex Court in the case of **Mahammadhusen Abdulrahim Kalota Shaikh**

vs. Union of India and others, (2009) 2 SCC 1 wherein the Apex Court, amongst others, decided the question relating to constitutional validity and also the interpretation of Section 2(3) and Section (5) of the Prevention of Terrorism Repeal Act, 2004, and had held as under :-

"34……

(a)……...

(f) If any Central Act is repealed, without making any provision for savings, the provisions contained in Section 6 of the General Clauses Act, 1897 will apply. But where the repealing Act itself contains specific provisions in regard to savings, the express or special provision in the repealing Act will apply. Section 6 of the General Clauses Act makes it clear that it will not apply when a different intention appears in the repealing statute. Where the provision relating to savings is excluded, the repeal will have the effect of complete obliteration of the statute. (Vide State of Orissa v. M.A. Tulloch & Co.13, Nar Bahadur Bhandari v. State of Sikkim and Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & ETI015.)

35. The repealing Act contains an exhaustive provision relating to savings in sub-sections (2) to (5) of Section 2. Therefore, the savings from repeal will be governed by Sections 2(2) to 2(5) of the repealing Act and not by Section 6 of the General Clauses Act, 1897.

36. Parliament in its plenary power, can make an outright repeal which will not only destroy the effectiveness of the repealed Act in future, but also operate to destroy all existing inchoate rights and pending proceedings. This is because the effect of repealing a statute is to obliterate it completely from the record, except to the extent of savings. If Parliament specifically excludes any saving clause in a repealing Act, or severely abridges the provision for saving, which it has the power to do, the effect would be that after the repeal of the statute, no proceeding can continue, nor can any punishment be inflicted for violation of the statute during its currency."

(emphasis added)

31. Further, the Apex Court in the case of **Sushila N Rungta Dead through LRs vs The Tax Recovery Officer and others,(2019) 11 SCC 795**, where proceedings arising under the Gold Control Act,

1968, were pending before the Apex Court, and in the meanwhile, the Gold Control Repeal Act, 1990, was enforced, while considering the effect of the Repeal Act,1990 had held as under:-

“3. While the stay order of this Court continued, the Gold (Control) Act itself was repealed. This was effected by two sections, namely-

"1. Short title. This Act may be called the Gold (Control) Repeal Act,1990.

2. Repeal of Act 45 of 1968. The Gold (Control) Act, 1968 is hereby repealed."

4. The Statement of Objects and Reasons for this Act is as follows:

"Gold control which regulated the domestic trade and movement of gold within the country was introduced on 9-1-1963 as part of the Defence of India Rules. Later on, the Gold (Control) Act, 1968 was enacted with the broad objectives of controlling the production, manufacture, supply. distribution, use and possession of and business in gold, ornaments and articles of gold. The said enactment was meant to supplement other preventive measures to make circulation of smuggled gold difficult and its detection casier by extending the control over gold beyond the stage of import.

2. Over the past 22 years, the results achieved under the Act have not been encouraging and the desired objectives for which the Act was introduced have not been achieved due to various socio-economic and cultural factors in the vast multitude of the country's population and the lack of administrative machinery. On the other hand, this regressive and purely regulatory Act has given rise to considerable dissatisfaction in the minds of the public as it has caused hardship and harassment to the artisans and small self-employed goldsmiths who have not been able to develop their skills and earn proper living on account of the rigours which this Act imposed upon them.

3. Taking these factors into consideration and the advice of experts who have examined issues related to this Act, it is proposed to repeal the Gold (Control) Act, 1968.

4. The Bill seeks to achieve the said object.

5……

6……..

7. Having heard the learned counsel for both sides, we are of the view that the Statement of Objects and Reasons makes it clear that over 22 years. the results achieved under the Act have not been encouraging and the desired objectives for which the Act has been introduced have failed. Following the advice of experts, who have examined issues related to the Act, the Objects and Reasons goes on further to state that this Act has proved to be a regressive measure which has caused considerable dissatisfaction in the minds of the public and hardship and harassment to artisans and small self-employed goldsmiths.

8. This being the case, we are of the opinion that the repeal simpliciter, in the present case, does not attract the provisions of Section 6 of the General Clauses Act as a contrary intention is very clearly expressed in the Statement of Objects and Reasons to the 1990 repeal Act. In this behalf, it would be apposite to refer to New India Assurance Co. Ltd. v. C. Padma[3], SCC para 10.

9. This Court noticed in C. Padma case that, in a parallel instance of simpliciter repeal, Parliament realised the grave injustice and injury that had been caused to heirs of LRs of victims of accidents if their petitions were rejected only on the ground of limitation. This being the case, this Court found that a different intention had been expressed and, therefore, Section 6-A of the General Clauses Act would not in that situation apply.

10. We find a similar situation in the present case. In point of fact, on going through the impugned judgment, it is clear that every time an amendment was made to the Defence of India Rules and / or repeal of the said Rules had taken place, there was always an inbuilt saving clause. In fact, Section 116 of the Gold (Control) Ordinance 6 of 1968 also made it clear that it went to the extent, in sub-section (2) thereof, by saving show-cause notices which, ordinarily, are not saved even if Section 6 were to apply (see. M.S. Shivananda v. Karnataka SRTC (1980) 1 SCC 149, following Director of Public Works v. Ho Po Sang)

11. This being the case, we are of the vierw that the show- cause notice dated 1-6-1971, which is the subject-matter of this appeal, no longer survives. In this view of the matter, the appeal is disposed of. ”

32. Thus the following position emerges in respect of applicability of the provisions of Section 6 of the General Clauses Act, 1897:

(1) If the Repeal Act itself contains specific provisions in regard to saving, the expression or special provisions in repealing Act will apply.

(2) Section 6 of the General Clauses Act ,1897makes it clear that it will not apply when a different intention appears in the repeal statute. Where the provision relating to saving is excluded, the repealing will have effect of complete obliteration of the statute.

(3) The statement of object and reasons of the Repeal Act can be taken into consideration while determining as to whether the provisions of Section 6 of the General Clauses Act, 1897 would be applicable.

(4) In case the repeal is followed by a fresh legislation on the subject, the Court has to look to the provisions of the new Act to see as to whether they indicate a different intention.

33. In the light of the above we consider the provisions of the Repeal Act, 1999 to determine as to whether any different intention has been expressed in the same or not.

34. The Statement of object and reasons of the Repeal Act, 1999 itself shows that the Act, 1976 has pushed up land prices practically brought the housing industry to stop and provided opportunities for corruption. There is a widespread demand to removing this irritant land assembly and construction activity. Public opinion is nearly unanimous that the Act has failed to achieve its objective as expected. Besides this the Standing Committee has also suggested that the Repeal Act should contain a provision for abatement of proceedings in different courts. Thus, it is evident from the statement of object and reasons of the Repeal Act, 1999 provides

that the Act, 1976 has failed to achieve the desired objective for which it had been framed.

35. Further the public opinion is also against the continuation of the Act, 1976. Thus, the intention to Repeal the Act, 1999 to abate the proceedings arising from the Act,1976 pending before different courts is clear. Hence, from the statement of object and reasons it is evident that there was no intention for enacting any new legislation and also to abate the various proceedings under the Act, 1976. Further Section 3 of the Act, 1976 also contains a saving clause wherein the Repeal Act, 1999 shall not affect the vesting of vacant land under sub-section (3) of Section 10 possession of which has been taken over by the State Government or any person duly authorized by the State Government or the competent authority.

36. At the same time, where the vesting of the vacant land under sub-section (3) of section 10, the possession has not been taken over by the State Government the said land shall be restored, the only condition being that if any amount has been paid, the same will be refunded to the State Government. Thus, the saving clause as contained in Section 3 of the repealing Act carves out two categories of land after vesting of land under Section 10 (3) where the possession has been taken by the State Government and where the possession of the vacant land has not been taken by the State Government.

37. Further under Section 4 of the Repeal Act all proceedings relating to any order made or purported to be made under the principal Act immediately before the commencement of the Act before any court, tribunal or authority shall abate. However, the said provision would not be applicable to proceedings relating to Sections 11, 12, 13 an 14 of the principal act insofar as the said

proceedings. Insofar as the said proceedings are relatable to the land possession of which has been taken by the State Government. Thus, any proceedings pending before the competent authority, court of tribunal under the Act, 1976 shall abate.

38. Under Section 6 (e) of the General Clauses Act, 1897 the repeal shall not affect any investigation, legal proceedings, or remedy in respect of any such right, privilege, obligation etc and any such investigation, legal proceedings, or remedy instituted continued to enforce an any such penalty, forfeiture or punishment may be imposed as if the repeal act or regulation has not been passed. Thus, it is beyond doubt that Section 4 of the Repeal Act, 1999 express an intendment contrary to the provisions of Section 6 of the General Clauses Act, 1897. The intention of the legislature is clear that all proceedings before any court, tribunal or other authorities under the Act, 1976 shall abate, which is not so under the provisions of Section 6 of the General Clauses Act,1897.

39. Hence, the intention of the legislature would not have been to give the right of appeal to the land holder while abating other proceedings under the Repeal Act, 1999. It is also settled that an appeal is nothing more than a continuation of original proceedings, hence, it can be very well concluded that the Repeal Act, 1999 clearly carves out a different intention from what is contained in Section 6 of the General Clauses Act, 1897. Under the circumstances it can be very well concluded that under the provisions of Section 4 of the Repeal Act, 1999, the proceedings of appeal under Section 33 of the Act, 1976 shall stand abated and cannot continue further, and also with the enforcement of the Repeal Act, 1999 by virtue of Section 2 thereof of the Act, 1976 stands repealed, which includes the provisions of Section 33.

40. It is next contended by learned counsel for private respondents that the right to appeal being a substantive right cannot be curtailed by Repeal Act, 1999. In support of his contention reliance has been placed upon the judgment of the Apex Court in the case of **Garika Pati Veeraya v. N. Sabbiah Choudhary and others (1957) 1 SCC 180** wherein the Apex Court in para 32 in respect of the proceedings of appeal had held as under:-

"32. From the decisions cited above the following principles clearly emerge:

32.1. That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

32.2. The right of appeal is not a mere matter of procedure but is a substantive right.

32.3. The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

32.4. The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the d date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

32.5. This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise."

41. Besides the learned counsel has also placed reliance upon the judgment of the Apex Court in the case of **Transmission Corporation of AP v. C.H. Prabhakar and others 2004 (5) SCC 551** wherein in para 18 the law laid down in the case of **Garika Pati Veeraya (supra)** has been reiterated.

42. In view of the contention so raised by the learned counsel for the private respondents we are in full agreement with the law so laid down by the Apex Court. Further the law so laid down itself

provides that the vested right of appeal can be taken away only by subsequent enactment, if it is so, provides expressly or by necessary intendment, and not otherwise.

43. In view of what has been held by us we are of the view that in view of Section 4 of the Repeal Act, the vested right of appeal as contained in Section 33 of the Act, 1976 has been taken away and all such appeals are to abate. Further with the enforcement of the Repeal Act, 1999 w.e.f. 18.03.1999, the Act, 1976 stands obliterated, and as such the question of filing an appeal after the enforcement of the Repeal Act, 1999 does not arise.

44. It is also contended on behalf of private respondent that in the absence of the provision of Section 33 of the Act, 1976 regarding right to appeal, the respondent would be left without a remedy in respect of arbitrary action of the State in respect of the vacant land whose possession continue with the land holder. In this regard a perusal of the Repeal Act, 1999 itself reveals that the vacant land whose possession has not been taken by the State are to be restored, on the refund of the amount, if any. Thus, the right of the land holders to continue to remain in possession of the vacant land, which was a subject matter of proceedings under the Act,1976 has been protected by means of the Repeal Act, 1999.

45. Under the circumstances, the land holder who have remained in custody of their land are entitled to protection their possession under remedies available under common law. This view of ours is further fortified by the judgment of the Apex Court in the case of **State of U.P. and another v. Ehsan (2024)14 SCC 269** wherein the Apex Court after considering the law laid down that ordinarily a suit to question the order passed and consequential notification issued under the Act, 1976 is not maintainable inasmsuch as the

Act, 1976 is a self-contained code and any order passed thereunder are subject to statutory appeal etc. For the same reason the suit may not lie to declare that surplus land, which has been notified as such under Section 10 (3) of the Act,1976 is free from ceiling for failure to take possession prior to enforcement of the Repeal Act. The Apex Court in this regard in the case of **State of U.P. and another v. Ehsan (supra)**, however, has considered instances when the suit would be maintainable and has held as under:

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

24….

25….

26. Before we proceed further on the aforesaid issue, it would be useful to examine whether at the time of filing the third writ petition, the original petitioner had an alternative remedy of a suit to seek appropriate relief for protecting his rights, if any, over the land in dispute. In this regard, we may observe that ordinarily a suit to question the orders passed, and consequential notifications issued, under the Ceiling Act, 1976 is barred, inasmuch as the Ceiling Act, 1976 is a self-contained Code and any orders passed thereunder are subject to statutory appeal, etc. For the same reason, a suit may not lie to declare that surplus land, which has been notified as such under Section 10(3) of the Ceiling Act, 1976, is free from ceiling for failure to take actual possession prior to enforcement of the Repeal Act, 1999. (See: State of M.P. v. Ghisilal13; State of W.B. v. David Mantosh14; and Saurav Jain v. A.B.P. Design15.)

30. No doubt, in a writ proceeding between the State and a landholder, the Court can, on the basis of materials/evidence(s) placed on record, determine whether possession has been taken or not and while doing so, it may draw adverse inference against the State where the statutory mode of taking possession has not been followed [See State of U.P. v. Hari Ram³]. However, where possession is stated to have been taken long

ago and there is undue delay on the part of landholder in approaching the writ court, infraction of the prescribed procedure for taking possession would not be a determining factor, inasmuch as, it could be taken that the person for whose benefit the procedure existed had waived his right thereunder (see State of Assam v. Bhaskar Jyoti Sarma). In such an event, the factum of actual possession would have to be determined on the basis of materials/evidence(s) available on record and not merely by finding fault in the procedure adopted for taking possession from the landholder. And if the writ court finds it difficult to determine such question, either for insufficient/inconclusive materials/evidence(s) on record or because oral evidence would also be required to form a definite opinion, it may relegate the writ petitioner to a suit, if the suit is otherwise maintainable.

35. In view of the discussion above and having regard to the following:

(a) that there was a serious dispute with regard to taking of possession of the surplus land;

(b) that there was a delay of about seven years in filing the first writ petition from the date when possession was allegedly taken by the State, after publication of the vesting notification;

(c) that no documentary evidence such as a khasra or khatauni of the period between alleged date of taking possession and filing of the first writ petition was filed by the original petitioner;

(d) that in the earlier two rounds of litigation, the High Court refrained from deciding the issue of possession of the surplus land even though that issue had arisen directly between the parties; and

(e) that infraction of the prescribed statutory procedure for taking possession cannot be the sole basis to discard the State's claim of possession, when it is stated to have been taken long before the date the issue is raised, we are of the considered view that the High Court should have refrained from deciding the issue with regard to taking of actual possession of the surplus land prior to the cut-off date specified in the Repeal Act, 1999. Instead, the writ petitioner should have been relegated to a suit.

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

46. Thus, in view of the above, the Apex Court has held that if the remedy of filing a writ petition is available to the land holder and if on the basis of material evidence available on record the writ Court finds it difficult to determine the question of possession it may relegate the writ petitioner to suit, if a suit is otherwise maintainable.

47. In this regard it is made clear that this Court in the case of **State of U.P and another v. Balbir Singh and others 2015 SCC Online All 9243** while considering the question as to whether the writ petition would be maintainable after abatement of proceedings under the principal Act with the enforcement of the Repeal Act,1999 and it was held as under:

"4.The first issue which arises for consideration is whether the writ petition would abate in view of section 4 of the Repeal Act, 1999.

5. Section 4 of the Repeal Act provides that all proceedings relating to any order made or purported to be made under Principal Act (except for proceedings relating to sections 11, 12, 13 and 14) pending before any Court, Tribunal or other authority, shall abate. The question is whether proceedings under Article 226 of the Constitution of India can be said to be proceedings relating to any order made or purported to be made under the Principal Act.

6. It is well settled that writ petition is not a continuation of the original suit or proceedings unlike an appeal or a revision. A writ petition under Article 226 of the Constitution of India are proceedings quite independent of the original controversy. The writ proceeding under Article 226 of the Constitution of India is not a continuation of suit or proceedings giving rise to it and their exists a clear distinction between an appeal or revision and a writ petition directed against orders passed therein. The Hon'ble Apex Court in the case of Ahmedabad Manufacturing and Calico Printing Co. Ltd. v. Ramtahel Remanand, has observed as under:

"A decision in a writ petition is not a decision about the merits of the rights of the parties in issue in the proceedings giving rise to it."

7. Writ petition being not a continuation of original proceedings unlike an appeal or revision, the order passed in such proceedings or in an appeal or revision arising

therefrom, therefore do not merge in the orders passed in writ petition. Thus, a proceeding under Article 226 of the Constitution of India cannot be held to be a proceeding relating to any order made or purported to be made under the Principal Act so as to result in its abatement under section 4 of the Repeal Act.

8. The view taken by us finds support from a Full Bench decision of this Court in the case of Udai Bhan Singh v. Board of Revenue The Full Bench was considering the import of section 5(2)(a) of U.P. Consolidation of Holdings Act providing for abatement of every proceeding for correction of records and every suit and proceeding in respect of declaration of rights or interest in any land in respect whereof a notification for consolidation operations has been issued under section 4(2)(1). It was held that section 5(2)(a) has no impact on writ petitions or Special Appeals arising out of them in which judgments and orders passed in suits or proceeding relating to declaration of rights in land covered by a notification under section 4 are in challenge and they will remain unaffected by the provision.

9. The power of judicial review being a vital principle of our Constitution, it cannot be abrogated without affecting the basic structure of the Constitution. Therefore, as far as the existence of power is concerned, it cannot be doubted that the power of High Court under Article 226 and that of the Hon'ble Apex Court under Article 32 of the Constitution, cannot be abridged, abrogated or diluted, even by the amendment of the Constitution, neither the power can be taken away by judge, pronouncements, nor by Legislative enactment or even by the amendment in the Constitution.

10. The aforesaid being the settled proposition of law, writ petition arising out of proceedings under the 1976 Act shall not abate in view of section 4 of the Repeal Act, 1999."

(emphasis added)

48. Hence, in view of the above, the contention of the respondents that the respondents would be remediless if the right to appeal under Section 33 is taken away with the enforcement of the Repeal Act, 1999 is devoid of merits.

49. As far as the judgment of the Co-ordinate Bench of this Court in **Writ C No. 48613 of 2009 (State of U.P and another v. Nek Singh)** decided on 19.05.2010 is concerned, it fails to consider the view previously taken by this Court that after enforcement of the

Repeal Act, 1999 the appeal under the Act, 1976 ought to have been abated and judgments passed after the repeal would be a nullity. A similar view has been held by the Co-ordinate Bench of this Court in the case of **State of U.P. v. Sitara, (2006) 100 RD 202**.

50. Further this Court in the case of Nek Singh (supra) has also failed to consider the view of the Apex Court in this regard, the Apex Court in the case of **Sulochana Chandrakant Galande v. Pune Municipal Transport and others, (2010) 8 SCC 467** while considering the provisions of the Repeal Act, 1999 had held that in a case where possession has been taken, the repeal of the Act would not confer any benefit to the owner of the land. In the said case it was held as under:-

"36. Undoubtedly, the 1976 Act, stood repealed by the 1999 Act. However, it has no bearing on this case for the reason that proceeding pending in any court relating to the 1976 Act, stood abated, provided the possession of the land had not been taken from the owner. Therefore, in a case, where the possession has been taken, the repeal of the Act would not confer any benefit on the owner of the land. (Vide Pt. Madan Swaroop Shrotiya Public Charitable Trust v. State of U.P. (2000) 6 SCC 325, Ghasitey Lal Sahu v. Competent Authority (2004) 13 SCC 452 and Mukarram Ali Khan v. State of U.P. (2007) 11 SCC 90"

51. Recently, the Apex Court in **Dalshukhbhai Bachchu Bhai Satasiya and others versus State of Gujarat and others, 2026 INSC 21**, while considering the provisions of the Repeal Act, 1999 and while relying upon the law laid down in the case of **State of Uttar Pradesh v. Hari Ram, (2013) 4 SCC 280** and in the case of **AP Electrical Equipment Corporation v. Tehsildar, 2025 SCC Online SC 447**,while considering the question of possession in the light of the provisions of the Repeal Act 1999, had held as under :-

"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."

52. Hence, it is the consistent view of the Apex Court that after the Repeal Act, 1999 all proceedings under the Act, 1976 shall stand abated. Further there is no question of maintaining a fresh appeal under Section 33, once, the Act, 1976 itself stands repealed. Further reliance placed upon in the judgment of **Nek Singh (supra)** on the judgments of the Apex Court in the Case of **Garika Pati Veeraya (Supra) and Transmission Corporation of A.P. (supra)** has already been argued by the learned counsel for private respondents and duly dealt with the paragraphs above, and would not be applicable in the present case.

53. In view of the above we are of the view that the law laid down by the Co-ordinate Bench of this Court in **Writ C No. 62283 of 2012 (State of U.P. and another v. Jagdish Chandra)** decided on 19.08.2013 lays down the correct law and is also in consonance with the earlier views of the Apex Court and the Co-ordinate Benches of this Court that proceedings of appeal under the Act, 1976 shall stand abated with the enforcement of Repeal Act, 1999, and no appeal under Section 33 of the Act, 1976 would be maintainable after the enforcement of the Repeal Act, 1999

54. There is another aspect of the subject matter in controversy. In Writ C No. 35353 of 2025 the possession of the land in dispute was taken on 12.11.1991 and the appeal was filed in the year 2009 challenging the order dated 20.07.1983 passed under Section 8(4) of the Act, 1976. Similarly in Writ C No. 35471 of 2025 the possession of the land in dispute was taken on 12.11.1991 and the appeal was filed in the year 2011 against the order dated 30.10.1982 passed under Section 8(4) of the Act, 1976 and in Writ C No. 6679 of 2026 the possession of the land in dispute was taken on 02.02.1986 and the appeal was filed in the year 2013 against the order dated 11.09.1979 passed under Section 8(4) of the Act, 1976.

55. Thus, in the three petitions the challenge to the proceedings under the Act, 1976 was raised after about 18 years, 20 years and 27 years respectively after the taking over of the possession of the land in dispute by the State. The limitation prescribed under Section 33 of the Act, 1976 is 30 days from the knowledge of the order under challenge. Thus, it can be held without doubt that the original land holder had acquiesced to the proceedings under the Act, 1976 having never questioned the same under the provisions of the Repeal Act, 1976. The remedy of appeal under Section 33 of the Act, 1976 was duly available to the original land holder at the time

when the proceedings under the Act, 1976 were underway. Further, as per showing of the petitioner the possession of the land in dispute having been taken long time ago and revenue entries mutated in the name of the State, it can very well we concluded that the original land holder had acquiesced to the proceedings, under the Act, 1976. Further the present appeals have been preferred/ contested by the successors of the original land holder, and as such the successors-private respondents have no personal knowledge about the proceedings under the Act, 1976. The land holders having kept quite for such a long duration of time impliedly abandoned their rights over the land in dispute. Thus, the land holders having acquiesced to the proceedings under the Act, 1976 renders the appeals as not maintainable.

56. The Apex Court in the case of **Chairman State Bank of India and another v. M.J. James, 2022 (2) SCC 301** while considering the question of delay amounting to acquiescence had held as under:-

"38. ……...Abandonment implies intentional act to acknowledge, as has been held in para 6 of Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P. Applying this principle of acquiescence to the precept of delay and laches, this Court in U.P. Jal Nigam v. Jaswant Singh after referring to several judgments, has accepted the following clucidation in Halsbury's Laws of England: (Jaswant Singh case29, SCC pp. 470-71, paras 12-13)

"12. The statement of law has also been summarised in Halsbury's Laws of England, Para 911, p. 395 as follows:

"In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

(i) acquiescence on the claimant's part; and

(ii) any change of position that has occurred on the defendant's part.

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has

become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches.'

13. In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?

39. Before proceeding further, it is important to clarify distinction between "acquiescence" and "delay and laches". Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain. In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. However, acquiescence will not apply if lapse of time is of no importance or consequence.

40. Laches unlike limitation is flexible. However, both limitation and laches destroy the remedy but not the right. Laches like acquiescence is based upon equitable considerations, but laches unlike acquiescence imports even simple passivity. On the other hand, acquiescence implies active assent and is based upon the rule of estoppel in pais. As a form of estoppel, it bars a party afterwards from complaining of the violation of the right. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction which is involved in laches. Acquiescence in this manner is quite distinct from delay. Acquiescence virtually destroys the right of the person. Given the aforesaid legal position, inactive acquiescence on the part of the respondent can be inferred till the filing of the appeal, and not for the period post filing of the appeal. Nevertheless, this acquiescence being in the nature of estoppel bars the respondent from claiming violation of the right of fair representation.

41. The questions of prejudice, change of position, creation of third-party rights or interests on the part of the party seeking relief are important and relevant aspects as delay may obscure facts, encourage dubious claims, and may prevent fair and just adjudication. Often, relevant and material evidence go missing or are not traceable causing prejudice to the opposite party. It is. therefore, necessary for the court to consciously examine whether a party has chosen to sit over the matter and has woken up to gain any advantage and benefit, which aspects have been noticed in Dehri Rohtas Light Railway Co. Lid. v. District Board, Bhojpur and State of Maharashtra v. Digambar's. These facets, when proven, must be factored and balanced, even when there is delay and laches on the part of the authorities. These have bearing on grant and withholding of relief. Therefore, we have factored in the aspect of prejudice to the appellants in view of the relief granted in the impugned judgment'.

42. The relief as granted certainly has serious financial repercussions and would also prevent the appellants from taking further action, which aspect has been noticed, though not finally determined in the impugned judgment. The studied silence of the respondent, who did not correspond or make any representation for nine years, was with an ulterior motive as he wanted to take benefit of the slip-up though he had suffered dismissal. The courts can always refuse to grant relief to a litigant if it considers that grant of relief sought is likely to cause substantial hardship or substantial prejudice to the opposite side or would be detrimental to good administration. This principle of good administration is independent of hardship, or prejudice to the rights of the third parties and does not require specific evidence that this has in fact occurred, though in relation to withholding relief some evidence may be required. Relief should not be denied for mere inconvenience but when the

difficulty caused to the decision maker approaches impracticability or when there is an overriding need for finality and certainty. "

57. In this regard the Apex Court on the question of delay in the case of **State of Assam v. Bhaskar Jyoti Saram and others 2015 (5) SCC 321** had held as under:-

"16. The issue can be viewed from another angle also. Assuming that a person in possession could make a grievance, no matter without much gain in the ultimate analysis, the question is whether such grievance could be made long after the alleged violation of Section 10 (5). If actual physical possession was taken over from the erstwhile 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 ther owner or the person in possession must be deemed to have waived his right uner Section 10 (5) of the Act. Any other view would, in our opinion, give a license 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 circumstances 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 work '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 itself or render it non est in the eyes of law did not fall for consideration in that case. In our opinion, what Section 10 (5) prescribed 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 erstwhiel 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 Sharma-erstwhile owner had not make 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."

58. The Constitution Bench of the Apex Court in the case of **Indore Development Authroity v. Manohar Lal 2020 (8) SCC129** while considering the law laid down in the case of **State of Assam v. Bhaskar Jyoti Sarma (supra)** has held as under:

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

59. Recently the Apex court in the case of **Dalsukhbhai Bachubhai Satasia and others vs State of Gujarat and others, AIR 2026 SC 475** in paragraph 20 had held 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"".

60. In view of the above the original land holder having acquiesced to the proceedings under the Act, 1976 it would no longer be open for the private respondents to have availed the remedy of appeal under Section 33 of the Act, 1976. However, this very relevant aspect of the matter in controversy has been

completely overlooked by the learned District Judge while deciding the appeal.

61. Before we part, we express our anguish over the manner in which the learned District Judge has dealt with the issue. A perusal of the impugned judgment and order reveals that the law laid down in the case of **Jagdish Chandra (supra)** by the Co-ordinate Bench of this Court was duly placed before the learned District Judge. The relevant part of the impugned judgment in this regard is being reproduced hereunder:

"(I) Out of the above five points, 1 to 4 have been answered by the Hon'ble High Court in Paragraph No.52 of the Jagdish Chandra (supra) case, relevant extracts of which are reproduced herein below:-

"(1)- An appeal U/s 33 of the Act, 1976 against an order passed by the Competent Authority declaring a land surplus U/s 8(4) of the Act, 1976 cannot be filed after Repeal Act, 1999.

(II)- The right of appeal U/s 33 of the Act, 1976 is not saved U/s 6 of the General Clauses Act, 1897 after the Repeal Act, 1999.

(III) – The appellate authority (District Judge) could not have entertained and decided the appeal U/s 33 of the Act, 1976 against the order passed by the Competent Authority under the Act, 1976 declaring a land surplus after the Repeal Act, 1999.

(IV)- The order passed by the appellate authority dated 13th August, 2012 is without jurisdiction. "

62. Thus, the learned District Judge despite being fully aware of the law laid down by the Co-ordinate Bench of this court in the case of **Jagdish Cahdra (supra)** has failed to assign any valid reason as to why it would not be applicable in the facts of the present case. Further the judgment in the case of **Nek Singh (supra)** was not even placed before the learned District Judge yet the learned District

Judge had held the appeal to be maintainable and had decided the same on merits.

63. The perusal of the records further reveals that the private respondents in support of their contention that the appeal was maintainable had relied upon the judgment of this Court in the case of **Manoj Kumar Parashar v. State of U.P. 2021 (2) AWC 2015**, which was a proceeding under Article 227 of the Constitution of India, challenging the order passed by District Judge in proceedings under Section 33 of the Act, 1976 thereby allowing the application for impleadment of the subsequent purchaser of the land in dispute. It is under such circumstances that this Court while dismissing the petition had directed the District Judge to decide the appeal expeditiously and positively within a period of six months. Thus, it is evident that the question of maintainability of the appeal under Section 33 was not even a subject matter in dispute in the said proceedings. Thus, the law enunciated in the said case by this Court was of no assistance to the private respondents.

64. Lastly the private respondents in the appeal so filed before the learned District Judge have themselves admitted that the provisions of the Act, 1976 were not applicable to the land in dispute. Thus, once the private respondents-appellants in the appeal themselves having admitted that the provisions of the Act, 1976 were not applicable to the land in dispute, an obvious corollary thereto would be that no appeal would be maintainable under Section 33 of the Act, 1976.

65. The perusal of the impugned judgment and order further reveals that the learned District Judge while arriving at a finding that the record does not support the contention of the actual physical transfer of the land in dispute from the original land holder to the

State Government, had held that the appeal is liable to be abated. However, no reason whatsoever has been assigned for arriving at a finding as to how the appeal stood abated. If the appeal has been held to be abated in view of the provisions of Section 4 of the Repeal Act, 1999, the same would have been the position at the time when the appeal was filed before the learned District Judge, thereby implying that the appeal itself was not maintainable at the time the same was filed. Hence, even otherwise for the sake of arguments, if the contention of the learned counsel for private respondents that the appeal was maintainable under Section 33 of the Act, 1976 even after the enforcement of the Repeal Act, 1999 is taken to be correct, then the learned District Judge ought not to have abated the appeal but would have allowed the same. Thus, the impugned judgment and order itself is self contradictory and in violation of the provisions of the Repeal Act, 1999 as nothing survived in the Act, 1976 after the enforcement of the Repeal Act, 1999 except what has been provided in the saving clause of the Repeal Act, 1999 which does not include remedy of appeal under Section 33 of the Act, 1976.

66. Under the circumstances, the writ petitions are allowed and the impugned judgments and orders dated 24.12.2024 passed by the District Judge, Kanpur in the three connected writ petitions are set aside. No order as to costs.

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

October 27, 2026
Nadeem

Digitally signed by :-
NADEEM AHMAD
High Court of Judicature at Allahabad