

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2153 OF 2012

State of M.P. . . .Appellant

versus

GhisilalRespondent

JUDGMENT

R.SUBHASH REDDY, J.

1. This Civil Appeal is preferred by the appellant - State of Madhya Pradesh, aggrieved by the judgment and order dated 08.11.2006 passed in Second Appeal No.129 of 2006. By the aforesaid order, the High Court has dismissed the Second Appeal, preferred by the appellant herein

confirming the judgment and decree passed by the learned IV Additional District Judge, Bhopal, in Civil Appeal No.37-A/2005 dated 23.07.2005 and the judgment and decree dated 24.12.2004 passed by the learned XIIth Civil Judge, Class - II, Bhopal, in Civil Suit No.138-A/2004.

2. Necessary facts, in brief, are as under:

3. The agricultural land bearing Survey Nos.171 to 184, 214, 217 and 284 admeasuring 17.18 acres situated at Village Bag Sevania, Tehsil Huzur, District Bhopal, was recorded in the name of Late Padam Singh as a Bhoomi Swami. In the aforesaid land, late Padam Singh was having 1/4th share. As the said land was covered by the Urban Land (Ceiling and Regulation) Act, 1976 (for convenience sake, hereinafter referred to as 'ULC Act'), late Padam Singh has filed declaration as contemplated under the provisions of the ULC Act. The competent authority has determined an extent of 16000.32 square meters of land as vacant land

and the same was declared surplus. Consequent to passing of final orders by the competent authority, a notification under Section 10(1) of the ULC Act was issued on 16.09.1983 and the notification as contemplated under Section 10(3) of the ULC Act was published in the Madhya Pradesh Gazette, Part - III dated 20.01.1984.

4. It is the case of the appellant herein that after following the necessary procedure contemplated under the ULC Act, possession of the surplus land was taken. Thereafter, the revenue entries were corrected showing the State as owner to the extent of the surplus land declared by the competent authority. It is also the case of the appellant that as the possession was already taken prior to coming into force of the Urban Land (Ceiling and Regulation) Repeal Act 1999 (for convenience sake, hereinafter referred to as 'Repeal Act'), the said land was allotted for the

purpose of constructing dwelling houses to the poor.

5. The respondent herein had filed suit for declaration and permanent injunction on 09.09.2003, claiming himself to be the sole heir and adopted son of Late Padam Singh. The relief in the suit reads as under:

"1) That the surplus land of 16000.32 square meters which has been declared surplus, declaration be exempted under the Urban Land (Ceiling and Regulation) Act, 1976 because possession has not been taken.

2) That the defendant be restrained from interfering with the possession of the respondent."

6. The Trial Court i.e., XII Civil Judge, Class - II, Bhopal, by the judgment and decree dated 24.12.2004, decreed the suit on the ground that possession has not been taken, before the Repeal Act has come into force. Trial court also granted consequential relief restraining the appellant herein from interfering with the possession of the

respondent. As against the judgment and decree passed by the trial Court, the matter was carried by way of first appeal, by the appellant, before the IV Additional District Judge, Bhopal and the Appellate Court has dismissed the appeal by the judgment and decree dated 23.07.2005. As against the same, the appellant has carried the matter by way of Second Appeal before the High Court. The Second Appeal is also dismissed by the impugned judgment and decree dated 08.11.2006.

7. The aforesaid impugned judgment is questioned in this appeal mainly on the ground that after necessary notifications were issued under Section 10 of the ULC Act, appellant has taken possession and utilised the subject land for construction of houses for the poor by spending huge amounts. It is the case of the appellant that the respondent has not questioned the orders passed by the competent authority declaring the land as surplus land, it is not open to seek declaration by the

respondent - plaintiff as prayed for. A specific ground was raised in the grounds of appeal that after taking possession, land was recorded in the name of the Government and the surplus land was allotted to Bhopal Development Authority for the benefit of slum dwellers and the said Authority has already constructed 100 (hundred) houses on the land by spending about Rs.1.50 Crores by the time the appeal was preferred to this Court. It is also the case of the appellant that relief as sought in the suit is a belated attempt, though such suit is not maintainable in law.

8. We have heard Mr. Saurabh Mishra, learned Additional Advocate General appearing for the appellant - State, and Mrs. Pragati Neekhra, learned counsel for the respondent, at length.

9. It is contended by the learned counsel for the appellant that though the suit as framed is not maintainable at all, the Courts below have not only entertained the suit but also granted decree

contrary to the various orders and notifications issued under the provisions of the ULC Act, 1976. It is submitted that when possession was already taken and the land is recorded in the name of the Government, trial court has erroneously decreed the suit of the respondent and confirmed on appeal on the premise that possession is not taken. It is submitted that in fact, not only possession of the subject land is taken and recorded in the name of the Government, but the same is also allotted to the Bhopal Development Authority for construction of houses for the poor and substantial amount is spent for construction of houses. It is submitted that in any event, the declaration as prayed for, is not at all maintainable when the orders passed by the competent authority have become final and possession of the land was taken prior to coming into force of the Repeal Act. The learned counsel for the appellant, in support of his arguments, has placed reliance on the judgments of this Court

in the cases of *State of Assam v. Bhaskar Jyoti Sarma and others*¹, *Indore Development Authority v. Manoharlal and others*² and *Competent Authority, Calcutta, under the Urban Land (Ceiling and Regulation) Act, 1976 and another v. David Mantosh and others*³.

10. On the other hand, Mrs. Pragati Neekhra, learned counsel for the respondent, has vehemently opposed the case of the appellant and submitted that when the original declarant died before possession is taken, without issuing any fresh notice to the only legal heir of the original declarant, it was not open to the appellant authorities to take possession consequent to the orders passed under the ULC Act. It is submitted that in any event, if the suit filed as prayed for is not maintainable, this Court may mould the relief by issuing appropriate directions. The learned counsel, in support of her arguments, has

¹ (2015) 5 SCC 321

² (2020) 8 SCC 129

³ (2020) 12 SCC 542

placed reliance on the judgments of this Court in the cases of ***Vidya Devi v. State of Himachal Pradesh and others***⁴, ***Mangalsen v. State of Uttar Pradesh and another***⁵, ***Gaiw Dinshaw Irani and others v. Tehmtan Irani and others***⁶ and ***State of Uttar Pradesh v. Hari Ram***⁷.

11. Having heard the learned counsel for the parties, we have perused the impugned judgment and other material placed on record.

12. As evident from the copy of the plaint, which is placed on record, the respondent filed the suit for declaration and permanent injunction. The prayer in the suit reads as under:

“(A) A decree be passed in favour of the plaintiff and against the defendant to the effect that 16000.32 square meters of surplus declared land out of the disputed land of the ownership of the plaintiff the description whereof has been given in Para 1 is free from the provisions of Urban Land Ceiling Act, 1976 because the

⁴ (2020) 2 SCC 569

⁵ (2014) 15 SCC 332

⁶ (2014) 8 SCC 294

⁷ (2013) 4 SCC 280

possession whereof was not received by the government till the date the Repeal Act became effective.

(B) A permanent injunction be passed in favour of the plaintiff and against the defendant thereby directing the defendant not to interfere in the peaceful possession of the plaintiff."

13. It is not in dispute that the land in question is in the Urban Agglomeration and covered by the ULC Act, 1976. As such, original owner late Padam Singh has filed declaration under the provisions of the ULC Act and after conducting necessary inquiry, final orders were passed by the competent authority declaring 16000.32 square meters of land as surplus land. It is also clear from the material placed on record that consequent to final orders passed by the competent authority, notifications under Section 10(1) and 10(3) of the ULC Act were issued. Although, it is the case of the respondent - plaintiff that possession was taken without issuing notice, as such it cannot be considered as valid taking over of possession, but

it is evident from the copy of the *panchnama*, the respondent, who claims to be the legal heir of late Padam Singh, is also a signatory as a witness to the same. Though the respondent - plaintiff was a witness to the *panchnama* for taking over possession, a belated attempt was made by filing the present suit by the respondent without even questioning the orders passed by the competent authority under the Act, declaring the land in question as a surplus land. The trial court as well as appellate court fell in error in recording a finding that possession was not taken, inspite of taking possession by conducting *panchnama* for which respondent is a signatory. In the judgment relied on by the learned counsel for the appellant in the case of ***Indore Development Authority***², this Court while dealing with the provisions of the Land Acquisition Act has held that when the possession of the land is taken by drawing a *panchnama*, that amounts to taking physical possession of the land. It is further held that

anybody claiming possession thereafter has to be treated as a trespasser and has no right to possess the land which vests with the State free from all encumbrances. In view of the stand of the appellant, of taking over possession of the land by conducting *panchnama* for which respondent is a signatory, it is difficult to believe the stand of the respondent that possession was not taken. In view of the stand of the respondent that possession is with the respondent, this Court called for a report from the District Judge. Pursuant to the same, report dated 14.04.2021 was sent by the learned Principal District and Sessions Judge, Bhopal, Madhya Pradesh to this Court. It is evident from such report that the appellant has taken possession of the land and the same was allotted to the Bhopal Development Authority and the same was utilised for construction of about 400 houses for needy slum dwellers by spending huge amount. Thus, it is

clear that possession of the land was not only taken but same is utilised for a public purpose.

14. The Urban Land (Ceiling and Regulation) Act, 1976 is a self-contained Code. Various provisions of the Act make it clear that if any orders are passed by the competent authority, there is provision for appeal, revision before the designated appellate and revisional authorities. In view of such remedies available for aggrieved parties, the jurisdiction of the civil courts to try suit relating to land which is subject-matter of ceiling proceedings, stands excluded by implication. Civil court cannot declare, orders passed by the authorities under the ULC Act, as illegal or *non est*. More so, when such orders have become final, no declaration could have been granted by the civil court. In this regard reference may be made to the judgment of this Court in the case of **Competent Authority, Calcutta, under the Urban Land (Ceiling and**

Regulation) Act, 1976³. We are totally in agreement with the aforesaid view taken by this Court.

15. In this case, it is clear from the orders passed by the competent authorities, that the original declarant was holding excess land to the extent of 16000.32 square meters. When the orders passed by the competent authority and consequential notifications issued under Section 10(1) and 10(3) of the ULC Act have become final, it was not open for the respondent to file a suit seeking declaration, as prayed for. As we are of the view that jurisdiction of the civil courts is barred by necessary implication, trial court fell in error in entertaining the suit, as filed by the respondent and even the first appellate court and second appellate court have not considered the various grounds raised by the appellant in proper perspective.

16. Although it is contended by the learned counsel appearing for the respondent to mould the relief, it is trite principle that where the suit is filed with particular pleadings and reliefs, it is to be considered with reference to pleadings on record and the reliefs claimed in the suit only. The judgments relied on by the learned counsel for the respondent would not render any assistance to support the case of the respondent. As we are in agreement with the view taken by this Court earlier in the case of ***Competent Authority, Calcutta, under the Urban Land (Ceiling and Regulation) Act, 1976***³ this appeal is to be allowed by setting aside the judgment and decree passed by the trial court as confirmed by the appellate court on the ground that such suit itself was not maintainable.

17. For the aforesaid reasons, the Civil Appeal is allowed. The impugned judgment and decree dated 24.12.2004 in Civil Suit No.138-A/2004

passed by the learned XII Civil Judge, Class - II, Bhopal, as confirmed by the first appellate Court vide judgment and decree dated 23.07.2005 in Civil Appeal No.37-A/2005 and the High Court vide judgment and order dated 08.11.2006 in S.A. No.129 of 2006, is set aside. Consequently, the suit filed by the respondent before the learned XII Civil Judge, Class-II, Bhopal stands dismissed, with no order as to costs.

.....J
(R. SUBHASH REDDY)

.....J
(HRISHIKESH ROY)

NEW DELHI;
November 22, 2021