

Court No. - 17

Case :- WRIT - C No. - 3000048 of 2010

Petitioner :- Kunwar Singh S/O Balkhandi Prasad

Respondent :- Sarkar U.P. Thru Collector/D.M. Lucknow And Anr.

Counsel for Petitioner :- Shri Prakash Chaudhary, Vinod Kumar Singh

Counsel for Respondent :- C.S.C., Vinod Kumar Singh-Ii

Hon'ble Alok Mathur, J.

1. Heard Sri Vinod Kumar Singh, learned counsel for the petitioner as well as learned Standing Counsel for the respondents.

2. By means of present writ petition the petitioner has challenged the order dated 19.12.1987, whereby in exercise of powers under Section 10(3) of the Urban Land (Ceiling & Regulation) Act, 1976 (*hereinafter referred to as "the Act, 1976"*), the land of petitioner has been declared to be surplus.

3. It has been submitted by learned counsel for the petitioner that subsequently the Parliament enacted Urban Land (Ceiling and Regulation) Repeal Act, 1999 (*hereinafter referred to as "the Repeal Act, 1999"*), wherein the Act, 1976 has been repealed and in the Act, 1999 saving clause under Section 3(2) provides as under :-

"(a) Any land is deemed to have been 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

(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 returned to the State Government."

4. According to Repeal Act, 1999, in case possession of the land which has been declared surplus under the Act, 1976, has not been taken by the State Government, same was liable to be restored and amount, if any, received as compensation would have to be returned to the State Government.

5. It has been further submitted by learned counsel for the petitioner that possession over the petitioner's land has not been taken by the State Government and no amount has been paid to the petitioner's father or to the petitioner and further that petitioner is in possession of the said land and he is entitled to the benefit of Repeal Act, 1999.

6. It is next submitted by counsel for the petitioner that provisions of Repeal Act, 1999 were duly considered by the Hon'ble Apex Court in the case of **State of U.P. Vs. Hari Ram (Civil Appeal No. 2326 of 2013 alongwith other connected appeals), (2013) 4 SCC 280**, where it was held that the Act provides for forceful dispossession but only when a person refused or fails to comply with an order under sub Section (5) of Section 10. Sub Section (6) of Section 10 again speaks of "possession" which says, if any person refuses or fails to comply with the order made under sub-Section (5), the competent authority may take possession of the vacant land to be given to the State Government and for that purpose, force, as may be necessary - can be used. Sub-Section (6), therefore, contemplates a situation of a person refusing or fails to comply with the order under sub-section (5), in the event of which the competent authority may take possession by use of force. Forcible dispossession of the land, therefore, is being resorted to only in a situation which falls under sub-section (6) and not under sub-section (5) of Section 10. Sub-Sections (5) and (6), therefore, take case of both the situations i.e. taking possession by giving notice, that is, "peaceful dispossession" and on failure to surrender or give delivery of possession under Section 10(5), then "forcible dispossession" under sub-section (6) of Section 10 is resorted.

7. Learned Standing Counsel on the other hand has opposed the writ petition by submitting that once land is vested under Section 10(3) of the Act, 1976, then same is deemed to have defacto being in possession of the State Government and once the land is notified in the official Gazette then it will be deemed to have been vested in the State.

8. Heard learned counsel for the parties and perused the record.

9. Considering the rival contentions at the anvil of the pronouncement of the Apex Court in the case of **State of U.P. Vs. Hari Ram (supra)** it becomes clear that possession has to be "actual physical possession" and not possession merely on records of the State. Section 10(5) of the Act, 1976 provides that the State Government may by notice in writing or any person who is in possession of the land, deliver the possession to the State Government and in Clause 6, it has been provided

that in case any person refuses/fails to comply with the order, the State can take possession of the land.

10. The Apex Court has discussed the effect of Repeal Act, 1999 in para 42 of the case of **State of U.P. Vs. Hari Ram (supra)**. Para 42 of the said judgment is quoted herein below :-

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

11. The controversy in the present case revolves around the question as to whether actual physical possession of the said land which has been declared surplus under the Act, 1976 has been taken over by the State or not. The State was directed to file supplementary affidavit clarifying the aforesaid aspect of the case and specifically with regard to the fact as to whether actual physical possession of the disputed property has been taken over by the State. In the affidavit filed by the State it has been stated that the lands of the petitioner were declared surplus by means of order dated 21.12.1987 and notification was also published in the Official Gazette on 14.05.1988. It has further been stated that the petitioner did not assail the validity of order dated 21.12.1987. In para 11 of the affidavit it has been stated that notice dated 16.01.1997 under Section 10(5) of the Act, 1976 was issued for delivery of possession of the land and copy of the same was sent to the Collector, Lucknow but no objections were filed by the original tenure holder. From the affidavit it is clear that neither the petitioner has handed over voluntary possession of the said land nor was any forcible possession taken as per provisions of sub-section (6) of Section 10 of the Act, 1976.

12. In case no objections have been filed by the petitioner under Section 10(5) of the Act, 1976 then it was open for the State to take forcible possession over the disputed land in exercise of power under Section 10(6). Even according to the supplementary affidavit filed by the State, no such possession

was taken.

13. As stated by the Apex Court in the case of **State of U.P. Vs. Hari Ram (supra)** it is clear that in case the State Government could not take over possession over the disputed land, then the tenure holder is entitled to get the benefit of Section 4 of the Repeal Act, 1999. It has also been observed by this Court that actual physical possession of the said land has not been taken by the State Government.

14. Accordingly, this Court is not inclined to agree with the arguments raised by learned Standing Counsel who has failed to demonstrate that actual physical possession has been taken by the State Government, or, the tenure holder has voluntarily handed over the possession prior to coming into force of Repeal Act, 1999. Consequently, Section 4 of Repeal Act, 1999 would apply with full force in the present case.

15. The impugned order dated 19.12.1987 is set aside. The land is directed to be released in favour of petitioner forthwith.

16. Writ petition is **allowed**.

Order Date :- 11.12.2023

A. Verma

(Alok Mathur, J.)