**Court No. - 3**

**Case :-** WRIT - C No. - 19328 of 2019
**Petitioner :-** Matadeen
**Respondent :-** State Of U.P.Thru Prin.Secy.Housing And Urban Devlopment And Ors
**Counsel for Petitioner :-** M.K. Dixit,Ashish Kumar Pathak,Deep Kumar Misra,Varun Pratap Singh
**Counsel for Respondent :-** C.S.C.

**Hon'ble Vivek Chaudhary,J.**
**Hon'ble Manish Kumar,J.**

1. Heard learned counsel for parties.

2. The present writ petition has been preferred with the following main prayers:-

*"I. A writ order or direction in the nature of Certiorari thereby quashing the order of Amaldaramad dated 25.01.2008, entered on 07.06.2008 in the Khata Khatauni No. 00386 pertaining to the year 1426 to 1431 Fasli of Village - Sarsawan, Tahsil Lucknow (now Sarojni Nagar) District Lucknow, as contained in Annexure No.1 to this writ petition.*

*II. A writ order or direction in the nature of Certiorari thereby quashing the impugned order dated 12.03.1990 passed by opposite party No. 3, in case no. 7880 U/s 10(5) of Land Ceiling and Regulation Act 1976, after summoning the same from the office of the opposite party No. 3.*

*III. A writ order or direction in the nature of Mandamus commanding the opposite parties not to interfere in the peaceful physical possession of the petitioner over the land gata No. Gata No. 1067 Kha, 1068Kha, & 1103 Gha situated in Village - Sarsawan, Tahsil Lucknow (now Sarojni Nagar) District Lucknow declared as Surplus land under the Urban Land Ceiling and Regulation Act 1976 by the competent authority i.e. the opposite party No.3.*

*IV. A writ, order or direction in the nature of Mandamus commanding the opposite parties to correct the entry in the revenue record with respect to the land in question."*

3. Brief facts of the case are that entire property of Khata Khatauni No.00386 pertaining to year 1426-1431 fasli area

4251.89 square meter situated at Village Sarsawan, Tehsil Sarojni Nagar, District Lucknow is recorded in the name of Matadeen, the original tenure holder who was its Bhumidhar with transferable rights. A notice under Section 8(3) of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as 'Act, 1976') was issued in respect of aforesaid land and as per the opposite parties, Matadeen did not respond, therefore, the said land measuring 4251.89 square meters was declared surplus. Thereafter on 30.6.1990, a notification under Section 10(1) of the Act, 1976 was issued. Thereafter on 10.8.1991, notification under Section 10(3) of the Act, 1976 was published. Matadeen was directed to handover possession of the said land on 12.3.1992 as claimed by opposite parties, in view of Section 10(5) of the Act, 1976. Thereafter, the said land, as per opposite parties, was transferred to Lucknow Development Authority in view of Government Order dated 11.12.1996 and Section 10(6) of the Act, 1976. In fact in the counter affidavit of the State though it is mentioned that Matadeen was asked to handover possession of the land, but it is nowhere mentioned that he did handover or surrender his possession to the State authorities voluntarily or that it was forcibly taken. No proof of such handing over or taking over of possession has been annexed by the opposite parties in the counter affidavit. Only a copy of notice under Section 10(5) of the Act, 1976 has been annexed which by itself does not prove handing over or taking over of actual possession.

4. On 11.03.1999, the Urban Land (Ceiling and Regulation) Repeal Ordinance, 1999 was issued which was adopted by the State Legislature of U.P. under Article 252(2) of the Constitution of India on 18.03.1999. This Ordinance was replaced by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Act No. 5 of 1999) (hereinafter referred to as the 'Repeal Act, 1999') by which the Act, 1976 was repealed. As per Section 5(2) of this Act, 1999, notwithstanding repeal of the Ordinance of 1999, anything done or action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of the Act, therefore, the adoption dated 18.03.1999 by State of U.P. holds good for the Act, 1999 also.

5. Sections 3 & 4 of the Act, 1999 read as under:-

*"**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 there under, not with standing 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 & 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."*

6. These provisions of the Repeal Act, 1999 were considered by Hon'ble the Supreme Court in the case of ***State of U.P. vs Hari Ram [(2013) 4 SCC 280]*** and it was inter alia held that vesting under Sub Section (3) of Section 10 meant vesting of title absolutely and not possession, though nothing stands in the way of a person voluntarily surrendering or delivering possession. It further held that it was mandatory for the State to issue a notice under Section 10 (5) of the Act, 1976 directing the petitioner/land holder to deliver possession to the State, failing which it was mandatory for the State to take forceful possession under Section 10(6) of the Act, 1976. It went on to hold as under:-

*"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.State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the land owner 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."*

7. Thus, vesting of land under Section 10(3) of the Act, 1976 does not mean actual physical possession and such vesting also does not by itself render the possession of tenure holder illegal.

8. Thus the crux of the issue is whether in the case at hand, actual/de facto possession was taken or voluntarily given prior to coming into force of Repeal Act,1999 or not. If not, then the benefit of the Repeal Act will be available to the petitioner. If it has been taken, then it will not be available.

9. Now the mode/procedure for taking possession was discussed by this Court in the case of ***Yasin vs. State of U.P. and Ors. [(2014) 4 ADJ 305 (DB)]***. Paragraphs 15 & 16 of the said judgment reads as under:-

*"15. In the light of the aforesaid, the Court has to see as to whether actual physical possession had been taken by the State or not either under Sections 10(5) or 10(6) of the Act. The procedure for taking possession has been provided under the Directions of 1983, which has been issued by the State Government while exercising its power under Section 35 of the Act.Paragraph 3 of the Directions is extracted here under:*

*'3. Procedure for taking possession of vacant land in excess of Ceiling Limit .--(1) The Competent Authority will maintain a register in Form No. ULC -1 for each case regarding which notification under sub-section (3) of Section 10 of the Act is published in the gazette.*

*(2) An order in Form No. ULC-II will be sent to each land holder as prescribed under sub-section (5) of Section 10of the Act and the date of issue and service of the order will be entered inColumn8 of Form No.ULC-1.*

*(3) On possession of the excess vacant land being taken in accordance with the provisions of sub-section (5) or sub-section (6) of Section 10 of the Act, entries will be made in a register in Form ULC-III and also in Column 9 of the Form No.*

*ULC-I. The Competent Authority shall, in token of verification of the entries, put his signature in Column II of Form No. ULC/1and Column10 of Form No. ULC-III.'*

*16. From the aforesaid, it is clear that Competent Authority is required to maintain a register under U.L.C.-I,which is required to indicate the date of notice issued under Section10(5) of the Act and the date of service of notice as well as the date of taking the possession and the signature of the Competent Authority. Form no. U.L.C.-II is with regard to issuance of notice under Section 10(5). The format indicates that in addition to the notice that had to be sent to the tenure holder an intimation is also required to be sent to the Collector with a request to take possession under sub-section (6) of Section 10 of the Act. Form no. U.L.C.-III is a register for the land of which possession has been taken under Sections 10(5)or10(6)of the Act. The Competent Authority is also required to place his signature endorsing the date of taking possession."*

10. The directions of 1983 referred in the above quoted judgment have been issued under Section 35 of the Act, 1976.

11. The Division Bench in the case of ***Yasin*** (supra) after considering various decisions of Hon'ble Supreme Court on the mode of possession also observed that normal mode of taking possession is drafting a panchnama in the presence of panchas and taking possession and giving delivery of possession to the beneficiaries, if any.

12. There is no such pleading in the counter affidavit nor any documents annexed to demonstrate the taking over of possession in terms of the aforesaid procedure prescribed. In fact, even bereft of the aforesaid procedure, there is no such averment in the counter affidavit of the State that de facto/actual possession was taken over by it of the land in question. It is also not the case that the actual possession was voluntarily delivered by the tenure holder.

13. On a perusal of the Form issued under Section 10 (5) of the Act, it shows the name of Matadeen, the original tenure holders, but, there is nothing in the record to establish that at any point of time, the original tenure holder had ever given physical possession voluntarily as per Section 10(5) of the Act.

14. There is no documentary proof at all in the light of Division Bench judgments of this Court in the cases of ***Yasin*** (supra) and ***Babu and Ors. vs. State of U.P. thru. Secy., Urban Land Ceiling, Lucknow & Ors. (Misc. Bench No. 1960 of 2019)*** to

show voluntary surrender of possession by original tenure holder or forcible de facto possession by the State.

15. The Competent Authority is required to maintain a register under U.L.C.-I, which is required to indicate the date of notice issued under Section10 (5) of the Act,1976 and the date of service of notice as well as the date of taking the possession and the signature of the Competent Authority. Form No. U.L.C.-II is with regard to issuance of notice under Section 10(5). The format indicates that in addition to the notice that had to be sent to the tenure holder, an intimation is also required to be sent to the Collector with a request to take possession under sub-Section (6) of Section 10 of the Act. Form No. U.L.C. -III is a register for the land of which possession has been taken under Section 10 (5) or 10 (6) of the Act, 1976. The Competent Authority is also required to place his signature endorsing the date of taking consideration. In this case, no such record is available which could help the opposite parties. No memo of possession is annexed to the counter affidavit. Even the date of taking actual possession has not been mentioned in the counter affidavit.

16. The petitioner has specifically pleaded in paragraph 17 of the writ petition that possession of the land was never taken. It reads as under:-

*"17. That as possession has not been taken from the petitioner till today and Urban Ceiling Act has been repealed by the State Government/competent authority i.e. opposite parties have no jurisdiction to pass an order for making entry in the name of the State Government regarding the land in question."*

17. Aforesaid Paragraph 17 of the writ petition have been replied by the State in Paragraph 10 of its counter affidavit, as under:-

*"10. That the contents of para 16 & 17 of the writ petition are not admitted as stated in view of the averments made hereinabove in para 6 of the present affidavit which are not being reiterated for the sake of repetition."*

18. Similar averments have been made in para 19 of the writ petition, which is as under:-

*"19. That as no notice under section 10(5) and 10(6) has ever been served upon the petitioner for taking possession of the land in question, so the order which has been entered in the revenue record of 1426 to 1431 Fasli is illegal, arbitrary and without jurisdiction."*

19. The aforesaid para has been replied in para 12 of the counter affidavit, which is being quoted herein below:-

*"12. That the contents of para 19 to 21 of the writ petition are not admitted as stated in view of the averments made hereinabove in para 6 of the present affidavit which are not being reiterated for the sake of repetition."*

20. Possession of the tenure holder or petitioner cannot be termed as illegal merely because of vesting of the land in the State in view of the decision of Hon'ble Supreme Court in the case of ***Hari Ram*** (supra), as has already been held in the case of ***Babu & Ors.*** (supra). The record produced by learned Standing Counsel shows that no physical possession has been taken as per law.

21. On a perusal of the other paragraphs of the counter affidavit, we do not find any pleading and proof referred in its support to establish actual physical possession having been delivered to or taken by State authorities. The possession and transfer, which have been referred in the counter affidavit of the State, are only on paper. The original records in this regard which were produced before us also do not contain any proof of such actual possession having been taken or delivered voluntarily.

22. In view of the above, the land owner or holder can claim benefit of Sections 3 & 4 of the Repeal Act,1999.

23. As regards, the contention of learned counsel for the respondent that the petition has been filed belatedly, this is also irrelevant as the petitioner is still in possession of the land and its possession was never actually taken by the State. This aspect has also been considered by a Division Bench judgment of this Court in the case of ***Babu and Ors.*** (supra). The relevant extract of the said judgment is quoted herein below:

*"16. As regards the contentions of Sri Sarin that the challenge was delayed, we are of the opinion that as the actual physical possession still continues with the petitioners and it was not taken by the State, there is no question of delay in seeking the relief as aforesaid. The decision relied by Sri Sarin, which are reported in 2015 (5) SCC 321 State of Assam Versus Bhaskar Jyoti Sharma and others, 2017 (7) ADJ 362 Dhani Ram Verus State of U.P. and others and 2015 (7) ADJ 630 Shiv Ram Singh Vs. State of U.P. and others do not apply to the facts of the case. In the case of Bhaskar Jyoti (supra) the fact was that the actual physical possession had been taken over from the erstwhile land owner on 07.12.1991, therefore in this context the plea raised about taking over the possession illegally was*

*held to be highly belated. Here the facts are very different. The possession still continues with the petitioners and there is nothing to show that it was taken by the State. As regards the case of Shiv Ram Singh (supra) here also the allegation was of dispossession from land without due notice under Section 10(5)and as it was a belated plea, therefore, the same was not acceptable. In the case of Dhani Ram (supra) a notification under Section 4 of the Act, 1976 was challenged belatedly,which is not the case here. Therefore, none of these decisions supports the case of the opposite parties."*

24. Against the judgment dated 30.07.2021 in the case of ***Babu & Others*** (supra), an S.L.P. bearing No. 4160/2022 was preferred by the ***State of U.P. & Ors. vs. Babu and Ors.***,which was dismissed by Hon'ble the Supreme Court vide its order dated 14.03.2022.

25. As there is nothing on record to establish voluntary surrender of land by Matadeen under Section 10(5) or forcible actual/de facto possession by the State of U.P. under Section 10(6) therefore, the Repeal Act, 1999 is clearly attracted and the petitioner is entitled to the benefit of Sections 3 and 4 of the Repeal Act, 1999.

26. Once we have arrived at the conclusion that actual physical possession was never taken by the State then in view of the Repeal Act, 1999, all proceedings under the repealed Act, 1976 and orders passed therein stood abated as on 18.03.1999/22.03.1999 when the Act, 1999 came into force. The Act, 1976 itself ceased to be operative from the said date.

27. In view of the above discussion, the petition is ***allowed***. We direct the concerned revenue authorities to delete the endorsement contained in the remarks column of the Khatauni, regarding land being surplus under the Ceiling Act, copy of which is annexed as Annexure 1 and restore the name of the petitioner in respect of the land in question in the revenue record, so far as his share therein is concerned. This is without prejudice to the rights of any third person who may have a claim against the petitioner.

**[Manish Kumar,J.] [Vivek Chaudhary,J.]**

**Order Date :-** 6.11.2023
Sachin

Digitally signed by :-
SACHIN MEHROTRA
High Court of Judicature at Allahabad,
Lucknow Bench