2026:AHC:192347-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 1605 of 2016

Sheel Kumar and 3 others

…..Petitioner(s)

Versus

State of U.P. and 2 others

…..Respondent(s)

Counsel for Petitioner(s)	:	Jai Singh, Surendra Nath Dubey
Counsel for Respondent(s)	:	Abhinava Krishna Srivastava, C.S.C.

In Chamber **Reserved**

HON'BLE SARAL SRIVASTAVA, J.
HON'BLE SIDDHARTH NANDAN, J.

(Per: Siddharth Nandan 'J')

1. Heard Sri Jai Singh, learned counsel for the petitioners, Sri S.N. Shukla, learned Standing Counsel for the respondent nos.1 to 3, and Sri Abhinava Krishna Srivastava, learned counsel for respondent no.4.

2. The present writ petition has been filed seeking quashing of the order dated 04.07.2015, by way of which the application of the petitioners dated 28.04.2015 for abatement of the proceedings relating to Case No. 2678 (State of U.P. Vs. Pancham Lal) and restoration of the entries in the revenue record was rejected; with the further prayer not to interfere with the physical possession of the petitioners in respect of Plot Nos. 741/0.072 Hectare, 652/0.031 Hectare, 840/0.102 Hectare, 1011/0.169 Hectare, 869/0.031 Hectare, 876/0.020 Hectare, 877/0.174

Hectare and 882/0.010 Hectare, situated at Akbarpur Bangar, Pargana and District Kanpur Nagar, and Plot Nos. 531/0.174 Hectare, 607/0.450 Hectare, 698/0.409 Hectare, 1053/1 and 1053/2/0.175 Hectare, and 777/0.225 Hectare, situated at Mauja Bairi Akbarpur Kachhar, Pargana and District Kanpur.

3. The contention of the counsel for the petitioners is that the petitioners are the owners of 2/3rd share in the plots in question. It has further been asserted that Sri Pancham Lal, Jai Narain and Sri Sita Ram were the original tenure-holders; and that, after the death of Sri Pancham Lal, 1/3rd share was inherited by Devi Prasad and, after his death, petitioners nos. 1 and 2 are his legal heirs. Petitioners nos. 3 and 4 are the legal heirs of Jai Narain Lal.

4. The case set up by the petitioners is that after the death of Sri Devi Prasad, who was the eldest male member of the family, on 27.06.2014; when an inquiry was made, the petitioners came to know that from the land measuring 10499.97 sq. M, the land in question, has been declared surplus in pursuance to the proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the “Act, 1976”) and had vested in the State.

5. The petitioners also came to know that Devi Prasad, being the eldest male member of the family, was looking after the entire property and had also filed Misc. Appeal No. 457/07 of 2005 (Devi Prasad and Others Vs. State of U.P. and Others) against the order passed by the authorities under the Act, 1976; however, the same had already been dismissed on 28.04.2012.

6. Thereafter, an application dated 28.04.2015 was filed with a prayer to abate all the proceedings relating to the orders passed by the competent authority in Case No. 2678 (State of U.P. Vs. Pancham Lal) under the Act, 1976, seeking the benefit of Section 3 of the Repeal Act, 1999, and for restoration of the entries in the revenue records. However, the said application was rejected vide order dated 07.07.2015, and accordingly, the present writ petition has been filed.

7. From a perusal of the records and the averments made in the affidavit, the admitted facts are that Pancham Lal and Jai Narain had filed returns under Section 6(1) of the Act, 1976, and thereafter, an order dated 26.02.1979 was passed by the competent authority under Section 8(4) of the Act, 1976.

8. Thereafter, the final statement under Section 9 of the Act, 1976, was issued and, consequently, a notification under Section 10(1) of the Act, 1976, followed by its publication in the Official Gazette under Section 10(3) of the Act, 1976, was made on 05.09.1981, whereafter the land in question vested in the State Government free from all encumbrances. After publication of the notification under Section 10(3) of the Act, 1976, a notice under Section 10(5) of the Act, 1976, was also issued to the tenure-holder on 14.10.1981 for handing over possession of the land in question.

9. After the expiry of 30 days, when possession was not handed over, proceedings under Section 10(6) of the Act, 1976, were undertaken, and possession of the land in question was taken on 30.08.1984 after conducting Munadi in the presence of two witnesses. The Dakhalnama has been brought on record along with the counter-affidavit filed on behalf of the State.

10. Learned Standing Counsel contends that the father of petitioners nos. 1 and 2, i.e., Devi Prasad, had full knowledge of the ceiling proceedings, but he did not object to the same during his lifetime, and it was only subsequent to the Repeal Act, 1999, that the Misc. Appeal under Section 33 of the Act, 1976, was filed, which was not maintainable and was also dismissed subsequently on 24.08.2012.

11. He further submits that a perusal of Sections 3 and 4 of the Repeal Act, 1999, clearly indicates that the benefit of repeal of the Principal Act shall not affect the vesting of any vacant land under Section 10(3) of the Act, 1976, 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. Moreover, if possession has

not been taken over by the State Government, the said land can only be restored subject to the refund of the amount paid by way of compensation. However, such possession is to be considered as on the date of coming into force of the Repeal Act, 1999, i.e., 18.03.1999.

12. He further submits that it is the admitted case of the petitioners that no objection was filed by the original tenure-holders against the taking over of possession on 30.08.1984, as evidenced by the Dakhalnama, and that the present writ petition has been filed in the year 2016, i.e., after 32 years from the date of taking over possession.

13. It has further been averred in the counter-affidavit filed by the State that the land in question has been transferred to the Kanpur Development Authority for its supervision and preservation.

14. A counter-affidavit has also been filed by the Kanpur Development Authority, wherein a categorical statement has been made that the plots in dispute have been utilized under the housing scheme, namely, Maharishi Dayanand Vihar, and have been used for development works such as roads, drainage, a water supply tank, electricity poles, etc.

15. The issues which arise for consideration before this Court are twofold: firstly, whether the relief claimed by the petitioners after 32 years from the date of taking over of possession and vesting of the property in the State can be granted or not; and secondly, whether, when the original tenure-holders did not object to their dispossession as far back as on 30.08.1984, the petitioners can be permitted to dispute the notice under Section 10(5) or the procedure under Section 10(6) of the Act, 1976, or whether the taking over of possession would acquire legitimacy by sheer lapse of time and the person in possession would be deemed to have waived his rights under Section 10(5)/10(6) of the Act, 1976.

16. As far as the first issue regarding the claim by the petitioners, after 32 years from the date of taking over of possession and vesting of the property in the State, is concerned, the only explanation given by the petitioners is that, when an inquiry was made with respect to the revenue

records after the death of Sri Devi Prasad, i.e., on 27.06.2014, the petitioners came to know about the proceedings under the Act, 1976, and the filing of the appeal under Section 33 of the Act, 1976.

17. The aforesaid explanation cannot be accepted in view of the fact that it is the specific case of the respondent-State that the Dakhalnama was prepared after taking over the possession of the land in question on 30.08.1984, and further that the land in question was transferred to the Kanpur Development Authority.

18. The counter affidavit filed by the Development Authority also indicates that the plots in question have been utilized under the housing scheme, namely Maharishi Dayanand Vihar.

19. In view of the aforesaid, the explanation for approaching this Court after a period of 32 years from the date of taking over of possession and vesting of the property in the State Government cannot be accepted, and no relief can be granted.

20. This Court has also examined the second issue relating to whether, in the absence of any objection by the original tenure-holder or the legal heirs in possession as on the date of coming into force of the Repeal Act, 1999, i.e., 18.03.1999, the possession of the State would acquire legitimacy by sheer lapse of time and the person in possession would be deemed to have waived his right under Section 10(5)/Section 10(6) of the Act, 1976.

21. This Court in the recent decision in the case of **Kumbha Karan vs. State of U.P. and others**[1] has already held that, in the absence of seeking an appropriate remedy against the dispossession, by the original tenure-holder or the legal heirs in possession, as on date of coming into force of the Repeal Act, 1999 i.e. 18.03.1999 and in the absence of any explanation for not challenging the taking over of possession at an earlier stage, no relief in the nature of a writ of mandamus can be granted. It has further been held that entries in the revenue records cannot, by themselves, be treated as proof of possession. Though a

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presumption regarding possession may be drawn on the basis of revenue entries, the same must be corroborated by other evidence.

22. In the present case, admittedly, the original tenure-holders had never objected to their dispossession as far back as in the year 1984, and it was only in the year 2005 that they preferred a Misc. Appeal under Section 33 of the Principal Act, which was otherwise not maintainable in view of the Repeal Act, 1999. No other evidence pertaining to the physical possession of the petitioners is available on record. On the contrary, the Dakhalnama dated 30.08.1984 is on record, and various documentary evidences have also been filed along with the counter-affidavit of the Development Authority, demonstrating its possession and the implementation of the housing scheme, along with photographs, layout plans, etc.

23. In view of the pleadings of the parties, evidences on record and lackadaisical approach of the petitioners in approaching this Court, tips the scale in favour of the State and a case is made out in this regard and accordingly also in view of the ratio laid down by the Apex Court in the case of **State of Assam vs. Bhaskar Jyoti Sharma and others**[2], this Court has no hesitation in holding that the forcible taking over of possession by the State would acquire legitimacy by shear lapse of time and it shall be deemed that the original tenure-holders have waived their right under Section 10(5) and read with Section 10(6) of the Act, 1976.

24. In view of the aforesaid facts and circumstances, and considering that the original tenure-holder had never objected to the proceedings under the Act, 1976 and their dispossession on 30.08.1984, again the petitioners cannot be permitted to agitate the issue after more than 32 years from the date of dispossession, as from the record it is evident that the original tenure-holder was aware of the proceedings but chose not to file any objection and it was only in the year 2005 that they instituted a Misc. Appeal No.457/07 of 2005 (Devi Prasad and others vs. State of U.P. and others) and which was also dismissed on 24.08.2012.

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2. 2015 (5) SCC 321

25. The question of dispossession or the objection to the procedure adopted under the Act, 1976 vis-a-vis notice under Section 10(5) of the Act, 1976 or forcible possession under Section 10(6) of the Act, 1976 cannot be looked into in absence of the same being not objected by the original tenure holder, within a reasonable time of such dispossession. The said view is also fortified by the decision of the Apex Court in the case of **Dalsukhbhai Bachubhai Satasia and Others v. State of Gujarat and others**[3], the relevant para 20 of which is reproduced herein below:-

> *"20. We are inclined to agree with this view of this Court in AP Electrical regarding the effect of Bhaskar Jyoti Sarma on the dictum in Hari Ram. In the former, de facto possession had actually been transferred to the State Government. Albeit, this was done by force in contravention of the requirement to mandatorily issue notice under Section 10(5) of the ULC Act. In this regard, this Court held that if the objection regarding the non-compliance with Section 10(5) is not made within a "reasonable time", then the right to so object is "waived"."*

26. In view of the aforesaid writ petition lacks merit and is dismissed. However, no order as to costs.

(Siddharth Nandan,J.) **(Saral Srivastava,J.)**

August 14, 2026
piyush

3. 2026 SCC Online SC 25

Digitally signed by :-
PIYUSH KUMAR
High Court of Judicature at Allahabad