



2026:AHC:191553-DB

Reserved on 03.08.2026

Delivered on 14.09.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 39811 of 2011

Dilshad Hussain

.....Petitioner(s)

Versus

State of U.P. and Others

.....Respondent(s)

Counsel for Petitioner(s) : Pradeep Kumar Rai

Counsel for Respondent(s) : C.S.C., Chetan Chatterjee, P.K. Singh

Court No. - 40

HON'BLE SARAL SRIVASTAVA, J.

HON'BLE SUDHANSHU CHAUHAN, J.

(Per; Hon'ble Sudhanshu Chauhan, J.)

1. Heard Sri Pradeep Kumar Rai, learned counsel for the petitioner and Sri Mohan Srivastava, learned Standing Counsel for the State-respondents.

2. The present writ petition has been filed being aggrieved by the order dated 24.07.2009 passed by the Collector, Saharanpur-respondent no.2, by means of which the possession and title over the land in dispute have been found to be that of the Saharanpur Development Authority-respondent no.4 and not that of the petitioner. Besides, a direction has also been sought to expunge the entries in the revenue records in the name of the State and also to restrain the respondents from interfering with the peaceful possession of the land in dispute.

3. The present controversy arises from proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the Act, 1976"). The land in dispute is comprised in erstwhile Khasra Nos. 147 and 158/2, measuring 1881.02 square metres, situated in Village Shekhpura Kadeem, Pargana, Tehsil and District Saharanpur.

4. The facts involved in the controversy are that the mother of the petitioner, Smt. Muneeva Khatoon, wife of Irshad Hussain, had filed a

ceiling return under Section 6(1) of the Act, 1976, registered as Ceiling Case No. 2877/1976. Subsequently, a notice under Section 8(3) was issued and in pursuance thereof, the competent authority passed an order dated 18.10.1978, declaring 1881.82 square metres of land as vacant surplus land. However, the said order was made subject to the outcome of the application filed by the original landholder under Section 20 of the Act, 1976. Subsequently, the notification under Sections 10(1) and 10(3) of the Act, 1976, was published in the State Gazette on 06.01.1979 and 28.08.1985 respectively. In the meanwhile, the land in dispute came under consolidation operations and Khasra Nos. 147 and 158/2 were renumbered as Khasra No. 784. Subsequently, after the demise of the original landholder, Muneeva Khatoon, the name of the petitioner was recorded in CH Form 23 as a legal heir on 15.07.1996. Thereafter, the notice under Section 10(5) was issued on 17.03.1998. Further the contention of the respondents is that the land in dispute was thereafter transferred to the Saharanpur Development Authority-respondent no.4.

5. It is alleged by the learned counsel for the petitioner that, as the petitioner continued to remain in possession of the land in dispute after the coming into force of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as “the Repeal Act, 1999”), hence, the petitioner filed an appeal before the District Judge against the order dated 18.10.1978 passed under Section 8(4) of the Act. However, the said appeal was dismissed vide order dated 02.08.2002. Consequently, the petitioner approached this Court by filing Writ-C No. 51288 of 2002 (Dilshad Hussain Vs. District Judge and others), and the aforesaid writ petition was disposed of vide order dated 25.02.2009, directing respondent no.2 to make a spot inspection and conduct an inquiry as to whether the petitioner was in actual physical possession and, if it was found so, the petitioner should not be disturbed and the land should not be treated as vacant land. It is in pursuance of the order dated 25.02.2009 that respondent no.2 has passed the order dated 24.07.2009, which is under challenge in the present writ petition.

6. It is contended on behalf of the petitioner that the petitioner and his predecessor were in actual physical possession of the land in dispute at the time of enforcement of the Repeal Act, 1999. The proceedings under

the Act, 1976, were initiated on account of the fact that an application under Section 20 of the Act, 1976, was pending for disposal before the State and no decision had been taken on the same, as would be evident from the order dated 18.10.1978 passed under Section 8(4) of the Act, 1976. The land in dispute came under consolidation proceedings and Khasra Plot Nos. 147 and 158(2) were renumbered as Khasra No. 784 and subsequently recorded in the name of the petitioner in CH Form 23, which itself demonstrates that the proceedings under the Act, 1976, were only paper proceedings. Further, the recording of the name of the petitioner during the consolidation proceedings reveals that the petitioner was in possession of the land in dispute. Respondent no.2, in the impugned order dated 24.07.2009, himself has admitted that the land in dispute was recorded in the name of the State/Competent Authority, Urban Ceiling, on 05.11.2007. The aforesaid fact is also evident from CH Form No. 23, wherein the order for correcting the revenue entries was passed by the Competent Authority on 27.10.2007 and thereafter the entries were recorded in the name of Competent Authority, Urban Ceiling. It is also contended that the notices under Sections 10(5) and 10(6) of the Act, 1976, were never served upon the petitioner or his predecessors at any point of time hence, the alleged possession of the respondents over the land in dispute is only a paper possession.

7. Lastly, it is contended that respondent no.2, even in the impugned order dated 24.07.2009, duly admits that the crop of Jwar/Chari belonging to the petitioner was standing over the land in dispute at the time of inspection. Hence, it is beyond doubt that the petitioner was in possession of the land in dispute and the same was never transferred to the respondents.

8. Per contra, it is contended on behalf of the State that the notice under Section 8(3) was duly served upon Smt. Muneeva Khatoon on 08.09.1978. It is also stated that the notice under Section 10(5) of the Act, 1976, was issued on 17.03.1998 and the same was served through refusal on 23.03.1998. Further, it is stated that, in pursuance to the notice under Section 10(5), the respondents came into possession of the land in dispute. It is also contended that, the petitioner had filed a belated appeal bearing Appeal No. 14 of 2002 before the District Judge, and the same

was dismissed on 02.08.2002. Besides, possession of the land in dispute was handed over to the Saharanpur Development Authority-respondent no.4 on 27.11.2002. Hence, it is contended that the proceedings under the Act, 1976, stood concluded much prior to the coming into force of the Act, 1999.

9. We have perused the records of the case. It is admitted between the parties that no proceedings under Section 10(6) of the Act took place. Further, a perusal of the service report dated 23.03.1998 in respect of the notice issued in pursuance of the notice under Section 10(5) dated 17.03.1998 reveals that the same was returned unserved in view of the fact that Smt. Muneeva Khatoon had passed away about three years prior thereto and the notice was addressed to Smt. Muneeva Khatoon. Besides, there is nothing on record to demonstrate that any fresh notice under Section 10(5) was issued to the legal heirs of the deceased landholder. Hence, we can very well conclude that there was no effective service of notice under Section 10(5) upon the petitioner, landholder.

10. The respondents also do not dispute the fact that the application under Section 20 of the Act, 1976, had been filed by Smt. Muneeva Khatoon and the order dated 18.10.1978 was also passed keeping in view the aforesaid fact. However, the respondents had failed to submit any reply in respect of the final outcome of the application under Section 20 of the Act, 1976. It is also duly admitted that the revenue entries in the name of the State in respect of the land in dispute came for the first time on 05.11.2007, while Writ-C No. 51288 of 2002 filed by the petitioner was pending before this Court.

11. In view of the above, we can very well conclude that there was no effective service of notice under Section 10(5) of the Act, 1976, which was mandatory under law, no possession memo was also issued under the provisions of Section 10(5). Further, no proceedings under Section 10(6) also took place. The respondents, in their counter affidavit, although allege that possession of the land in dispute was taken on 27.03.1998, there is no dakhlanama/possession memo brought on record to demonstrate as to how and when possession of the land in dispute had been taken.

12. Lastly, a perusal of the impugned order dated 24.07.2009 reveals that it has been held that, during the local inspection, the crops of jwar and chari had been found to be standing over the land in dispute. However, respondent no.2 has held that the height of the crop of jwar and chari is about 4 to 5 feet, whereas, at the time of inspection, the height of the crop was only 1-2 inches, and as such, it was evident that the crop had been sown recently, and the possession of the petitioner is illegal.

13. We are of the view that the finding of respondent no.2 in this regard is totally erroneous in view of the fact that the crop of jwar/chari is sown during the monsoon season. The local inspection was carried out on 09.06.2009, which was just prior to the onset of monsoon. Hence, it is beyond doubt that the crop would have been sown around the time of the inspection. Even the witnesses present at the time of inspection had stated that the crop had been sown by the petitioner.

14. Thus, in view of the above, there is nothing on record to establish that possession of the land in dispute was taken by the respondents prior to the enforcement of the Repeal Act, 1999. Besides, prima facie, the petitioner continued to remain in possession of the land in dispute at the time of enforcement of the Repeal Act, 1999, and thereafter. Further, it is duly settled that the burden lies upon the State to prove that possession of the land in dispute stood transferred at the time of enforcement of the Repeal Act, 1999, which burden the State has failed to discharge in the present case.

15. Hence, it can be concluded that there is no mandatory service of notice under the provisions of Section 10(5) of the Act, 1976; no Dakhlanama/possession memo was issued showing that possession of the land in dispute was taken on 27.03.1998 no proceedings under Section 10(6) of the Act had taken place; and lastly, there being nothing on record to establish that possession of the land in dispute stood transferred to the State-respondents, while the petitioner was found to be in possession at the time of inspection. Thus, we are of the view that the present case is squarely covered by the law laid down by the Apex Court in the case of ***State of U.P. v. Hariram*, 2013 (4) SCC 280, *A.P. Electrical Equipment Corporation v. Tehsildar and others*, 2025 SCC OnLine SC 447, and *Dalsukhbhai Bachubhai Satasia and others v. State of Gujarat and***

others, AIR 2026 SC 475.

16. Under these circumstances, the present writ petition is **allowed** and the order dated 24.07.2009 passed by respondent no.2-Collector, Saharanpur, is set aside. Further, respondent no.2 is directed to expunge the entries in the name of the State/Competent Authority, Urban Ceiling, in the revenue records in respect of the land in dispute and to restore the same in the name of the legal heirs of the original landholder.

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

September 14, 2026

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