

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 603 of 2010**

1. Shyam Lal S/o Manglu, aged about 89 years.

2(a) Narendra Sahu S/o Late Dashrath Sahu, aged about 42 years.

2(b) Suresh Sahu S/o Late Dashrath Sahu, aged about 40 years.

2(c) Devki Bai W/o Baldau Sahu, aged about 25 years.

2(d) Devkumari W/o Mohit Sahu aged about 23 years.

All R/o village Mowa, Tehsil and District Raipur, Chhattisgarh.

2(e) Ishwari Bai W/o Punit Sahu, aged about 21 years, R/o village Mandhar, Tehsil Dharsiwan, District Raipur, Chhattisgarh.

3(a) Ramcharan Sahu age 56 years, S/o Late Dasru Sahu R/o Mowa Raipur, Chhattisgarh

3(b) Smt. Laxmi Bai Sahu aged about 45 years, W/o Lakhan Lal Sahu R/o village Minwa, P.O. Dharsiwa, Raipur, Chhattisgarh.

3(c) Smt. Bhagyavati Sahu, aged about 43 years, W/o Vinod Sahu, R/o village Mohdi, P.O. Dharsiwa, Raipur, Chhattisgarh.

3(d) Manoj Sahu aged about 40 years, S/o Late Dasru Sahu R/o Mowa, Raipur, Chhattisgarh.

3(e) Ramesh Sahu aged about 37 years, S/o Late Dasru Sahu, R/o Mowa, Raipur, Chhattisgarh.

3(f) Smt. Rameshwari Sahu, aged about 34 years, W/o Yashwant Sahu, R/o village Fingeshwar, PO Rajim, District Gariyaband Chhattisgarh.

---- Appellants

Versus

1. State of Chhattisgarh, Through The Secretary, Revenue & Rehabilitation Department, DKS Bhawan, Raipur Chhattisgarh.

2. The Commissioner, Raipur Division, Raipur, Chhattisgarh.

3. The Competent Authority, Under the Provisions of Urban Land (Ceiling and Regulation) Act, 1976 Additional Collector, Raipur, District Raipur, Chhattisgarh.

4. The Tehsildar (Nazul) Raipur, District Raipur, Chhattisgarh.

---- Respondents

Writ Petition (227) No. 203 of 2011

1. Shyam Lal S/o Manglu, aged about 89 years.

2(a) Narendra Sahu S/o Late Dashrath Sahu, aged about 42 years.

2(b) Suresh Sahu S/o Late Dashrath Sahu, aged about 40 years.

2(c) Devki Bai W/o Baldau Sahu, aged about 25 years.

2(d) Devkumari W/o Mohit Sahu aged about 23 years.

All R/o village Mowa, Tehsil and District Raipur, Chhattisgarh.

2(e) Ishwari Bai W/o Punit Sahu, aged about 21 years, R/o village Mandhar, Tehsil Dharsiwan, District Raipur, Chhattisgarh.

3(a) Ramcharan Sahu age 56 years, S/o Late Dasru Sahu R/o Mowa Raipur, Chhattisgarh

3(b) Smt. Laxmi Bai Sahu aged about 45 years, W/o Lakhan Lal Sahu R/o village Minwa, P.O. Dharsiwa, Raipur, Chhattisgarh.

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3(e) Ramesh Sahu aged about 37 years, S/o Late Dasru Sahu, R/o Mowa, Raipur, Chhattisgarh.

3(f) Smt. Rameshwari Sahu, aged about 34 years, W/o Yashwant Sahu, R/o village Fingeshwar, PO Rajim, District Gariyaband Chhattisgarh.

---- Petitioners

Versus

1. State of Chhattisgarh, Through The Secretary, Revenue & Rehabilitation Department, DKS Bhawan, Raipur Chhattisgarh.

2. The Competent Authority, Additional Collector under the Provisions of Urban Land (Ceiling and Regulation) Act, 1976 Raipur, District Raipur, Chhattisgarh.

3. The Collector, Raipur, District Raipur Chhattisgarh.

4. The Tehsildar (Nazul) Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Appellants/Petitioners : Shri Kishore Bhaduri and Shri Ashish Surana, Advocates.

For Respondent/State : Shri J.K.Gilda, Advocate General with Shri UNS Deo, Government Advocate.

Hon'ble The Chief Justice,
Hon'ble Shri Justice P. Sam Koshy.

Judgment on Board

Per Navin Sinha, Chief Justice

12/05/2015

1. This order shall dispose both Writ Appeal No. 603 of 2010 and Writ Petition (227) No. 203 of 2011.
2. The writ appeal arises from order dated 19.10.2010 in Writ Petition No. 1803 of 2000. The Learned Single Judge held that whether possession of the lands in question had been taken by the authorities or not before repeal of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter called 'the Act') on 10.3.2000 was a question of fact. Liberty was granted to the Appellants for making an application before the Competent Authority under the Act who was required to decide the issue. Pursuant thereto, the Competent Authority passed an order on 3.1.2011 holding that the possession stood taken before repeal and which is the subject matter of challenge in Writ Petition (227) No. 203 of 2011.
3. Learned Counsel for the Appellants submitted that there was no occasion for the Learned Single Judge to direct the Appellants for approaching the Competent Authority as there was enough documentary evidence available on record in support of the fact that possession of the lands had not been taken by the Respondents before the Act was repealed on 10.3.2000. Even according to the Respondents, notice under Section 10(5) of the Act to handover possession within 30 days was signed on 22.12.1988 and sought to be served on the Appellants on 30.12.1988 alleged to have been refused. The possession could therefore have been taken only after expiry of 30 days reckoned from the date of service. Contrary to the same, possession was shown by the Respondents to have been taken on 20.1.1989 and 17.1.1989 before expiry of thirty days. If possession was taken before expiry of 30 days prescribed in the

law, it was illegal. If the Appellants did not voluntarily handover possession, the authorities were required to give a fresh notice fixing date and time for taking possession under Section 10(6) of the Act. There is no material that this procedure was followed.

4. Learned Counsel next submitted that the authorities were fully aware and conscious of the fact that they had not taken possession of the lands in accordance with law much less physical possession of the same on the aforesaid dates and therefore on 10.2.2000, the Competent Authority ordered on the file that if possession had not been taken by the Tahsildar (Nazul) it should be taken immediately. The file again contains noting dated 21.2.2000 that notice may be issued to the Appellants with regard to taking of possession. The noting at the bottom that the Appellants had encroached in 1996-1997 upon the already acquired lands is not sustainable in view of the fact that possession had never been taken in accordance with law in the year 1989. It was next submitted that notice was then issued to the Appellants on 28.2.2000, fixing the date for appearance with regard to the possession on 6.3.2000. Thereafter, there is no material brought on record by the Respondents to demonstrate taking over of the possession of the lands before 10.3.2000, the day the Act was repealed.

5. Referring to the order dated 3.1.2011 passed by the Competent Authority pursuant to the order in Writ Petition No. 1803 of 2000, it is submitted that the Appellants raised several facts to urge that they were in physical possession of the lands and that the authority had never taken possession, which has been casually dealt with on conjectures and surmises without any details of the dates when notice under Section 10(5) of the Act was issued, expiry of the 30 days period, the date of fresh notice under Section 10(6) of the Act followed by the date on which possession was taken. The conclusion that

possession stood taken on 17.1.1989 and 20.1.1989 is completely erroneous and is also contrary to the records of the Respondents themselves. It was lastly submitted on behalf of the Appellants that the possession alleged to have been taken in the year 1989 was wholly unauthorised for the additional reason that under the Act, it was the Tahsildar (Nazul), who alone was competent to take possession whereas according to the Respondents, possession on the aforesaid date was taken by the Naib Tahsildar which is *per se* therefore illegal for that additional reason.

6. Learned Additional General opposing the writ application as well as the appeal could not satisfy the Court from the records that the possession had been taken by the Tahsildar (Nazul) and not by the Naib Tahsildar. Learned Advocate General next submitted that possession had been taken by the authorities under the Act as far back as January, 1989. If the Appellants forcibly intruded into the lands as an encroacher, it is not open for them to contend that possession had not been taken. It was lastly submitted that if possession stood taken in January 1989, any fresh notice issued erroneously in the year 2000 cannot defeat the factum of possession already taken earlier much before the Act was repealed.

7. We have considered the submissions on behalf of the parties and are satisfied that both the writ appeal and writ petition have to be allowed. It stands established that even if notice was served on 30.12.1998 for handing over of possession under Section 10(5) of the Act, the Respondents purported to take possession even before expiry of 30 days. There is no material on record also that pursuant to any failure by the Appellants to hand over the possession notice was issued under Section 10(6) of the Act, mentioning the date and time when possession would be taken.

8. The endorsement dated 10.2.2000 in the concerned file that if possession had not been taken, it should be taken immediately leaves nothing to the imagination that at least till that date, possession had not been taken. There is nothing on record to demonstrate the taking of possession in a manner permitted by the law before 10.3.2000, the day the Act was repealed.

9. Even the claim for possession having been taken on 17.1.1989 and 20.1.1989 is not sustainable for the reason that it was so done by the Naib Tahsildar while under the relevant notification issued by the Government dated 12.2.1979, it was only Tahsildar (Nazul) who was competent to do so.

10. The conclusions in the order dated 3.1.2011 are cryptic not supported by any discussion of necessary documents and relevant dates with regard to taking of possession and is therefore also held to be unsustainable. The order dated 3.1.2011 is set aside as also the order under appeal dated 19.10.2010. The Appellants continue to be the lawful owner and in occupation of the lands.

11. The writ appeal and the writ application, are both allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE