

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13230 of 2013

=====

1. Sheonath Prasad Son of Late Rama Shraya Singh
 2. Arun Kumar Son of Late Vishwanath Prasad
 3. Suresh Kumar Son of Late Ram Ekabal Singh
 4. Vinoy Kumar Son of Krishna Prasad
 5. Subhash Kumar Son of Krishna Prasad
 6. Sanjiv Kumar Son of Late Surendra Prasad
 All resident Of Village- Nasariganj, Biscuit Factory More,
 Kabristan Road, P.O.- Digha, P.S.- Danapur Dist.- Patna- 12, Patna

.... Petitioner/s

Versus

1. The State Of Bihar, through the Principal Secretary, Revenue and Land Reforms Department, Government Of Bihar, New Secretariate, Patna- 1
 2. The Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, New Secretariat, Patna
 3. The Additional Secretary, Revenue and Land Reforms Department, Government of Bihar, New Secretariat, Patna
 4. The Commissioner, Patna Division, Patna
 5. The Collector, District- Patna
 6. The Deputy Collector, In Charge, Urban Land Ceiling, Patna
 7. The Senior Deputy Collector, Revenue, Patna
 8. The Circle Officer, Danapur, Patna
 9. The Circle Inspector, Danapur, Patna

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. KAMALA KANT TIWARY

For the Respondent/s : Mr. ANJANI KUMAR

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

CAV JUDGMENT

Date: 21-04-2017

1. Heard learned counsel for the petitioners as well as learned counsel appearing for the State.

2. Petitioners have filed this writ petition for the deceleration of letter no. 2019 dated 25.7.2012 issued from Patna Collectariate (Revenue Branch) directing for removal of encroachment from the disputed lands, as illegal, arbitrary and furthermore, to restrain the



respondents not to interfere with right, title, interest and possession of the petitioners over the disputed lands and furthermore, to issue direction to respondents to accept the rent from petitioners in respect of the above stated lands.

3. Certain lands, recorded in the name of one Shyam Singh who happened to be predecessor-in-interest of petitioners, were taken into Urban Land (Ceiling and Regulation), Act, 1976 and accordingly, notification under section 6 of the aforesaid Act was issued in respect of 7.18 ½ acres of land situated in Mauza Sikandarpur P.S. Danapur. Accordingly, Urban Land Ceiling Case No. 12/1993 was registered before the Collector, Patna. The proceeding was taken up but the above stated Shyam Singh died during the pendency of the proceeding leaving behind his sons, namely, Ramashray Singh and Ram Ekbal Singh. The aforesaid ceiling case proceeded in absence of recorded tenant and order, under section 10(6) of the Act, 1976, was passed on 10.10.2002 mentioning in the order that the landholders refused to take notice issued under section 10(5) of the Act and by the aforesaid order, learned Collector directed the Circle officer, Danapur to create Jamabandi in the name of the government after ascertaining possession as ordered under section 10 (6) of the Act, 1976. Predecessor of the petitioners preferred Urban Land Ceiling Appeal no. 53/2003 before the Divisional Commissioner, Patna with limitation petition. During the pendency of the aforesaid appeal, Urban Land (Ceiling and Regulation), Act, 1976 was repealed and Urban Land (Ceiling and Regulation), Repeal Act, 1999 came into operation by virtue of notification issued from the State Government,



Revenue and Land Reforms Department as per resolution passed by Bihar Legislative Assembly and Council on 11.8.2006. Learned Divisional Commissioner, in view of sections 3 and 4 of the Repeal Act, 1999, remitted the matter back to the Collector, Patna to verify the possession of the notified lands and decide the issue of continuation of the case as per provision of the Urban Land (Ceiling and Regulation), Repeal Act, 1999 vide order dated 21.5.2007 which has been annexed as annexure 4 to this petition. Having receipt of the direction of the learned Commissioner, Patna, Deputy Collector (Incharge) Urban Land Ceiling, Patna asked from Circle officer to submit report about possession over the lands in question vide his letter no. 68 dated 20.11.2007 so that factual status in respect of possession could be informed to the Collector, Patna who happens to be the competent authority. Circle officer enquired the matter and found that the lands in question were in possession of the petitioners which has been evident from perusal of annexure 6 to the petition but again, Senior Additional Collector Revenue, Patna vide letter no. 805 dated 14.3.2012 directed the Circle officer, Danapur to personally inspect the status of the land and send report in the light of direction issued by the learned Commissioner, Patna in Urban Land Ceiling Appeal no. 53/2003. Having got the aforesaid letter of Senior Additional Collector, Patna, Circle officer Danapur himself along with other revenue officers went on the disputed lands and inspected the status of the lands and reported that the aforesaid lands were in possession of the petitioners vide his letter no. 1296 dated 10.5.2012 which is evident from perusal of annexure 8 to the petition but even



then, Collector, Patna treating petitioners as encroachers, directed the Circle officer, Danapur vide letter no. 2019 dated 25.7.2012 to evict them from the lands in question. The aforesaid impugned letter no. 2019 dated 25.7.2012 is annexed as annexure 9 to this petition.

4. Counter affidavit has been filed on behalf of the respondents mentioning therein that the lands in question were acquired under Urban Land (Ceiling and Regulation), Act, 1976 vide Urban Land Ceiling Case no. 12/1993 by the competent authority and Jamabandi was created in the name of the State Government and possession was taken under section 10(6) of the Act, 1976 when the land holders failed to give vacant possession of the aforesaid lands even after getting notice under section 10 (5) of the Act, 1976. It has specifically been pleaded at para 11 of the counter affidavit that the Collector vide letter no. 187 dated 14.11.2002 directed the Circle officer, Danapur to take possession over the lands in question and create Jamabandi in the name of the Government and in pursuant to the aforesaid order of the Collector, Patna, Circle officer, Danapur vide its memo no. 1448 dated 30.11.2002, directed the Halka Karamchari, namely, Parsuram Singh to take possession over the lands in question and create Jamabandi and thereafter, the aforesaid Halka Karamchari took possession over the lands in question and created jamabandi in the name of the State which is evident from perusal of annexure A and B to the counter affidavit. It has also been pleaded that Halka Karamchari submitted report to Circle officer, Danapur after taking possession which is evident from annexure D to the counter affidavit.



5. Petitioners filed reply to the aforesaid counter affidavit specifically, mentioning at para 10 of the reply that when this court stayed illegal action of the State, revenue authority got created annexure D to the counter affidavit and, as a matter of fact, neither petitioners nor their predecessor were ever dispossessed from the lands in question.

6. Supplementary counter affidavit has been filed on behalf of the respondents in which para 8 of the aforesaid supplementary counter affidavit, it has specifically been pleaded that the original record of Urban Land Ceiling Case no. 12/1993 was missing and not only original record but gazette notification in respect of the aforesaid case was also not traceable.

7. Learned counsel appearing for the petitioners submitted that learned Commissioner, Patna directed the Collector, Patna while disposing of Urban Land Ceiling Appeal no. 53/2003 on 21.5.2007 to verify the possession of the notified lands and decide the issue of continuation of the case as per provision of the Urban Land (Ceiling and Regulation), Repeal Act, 1999 and after that revenue authority twice reported that the lands in question were in possession of the petitioners but the learned Collector, ignoring the direction of the learned Commissioner, Patna, ordered for ejectment of the petitioners from the lands in question treating them as trespassers. He further submitted that the Urban Land (Ceiling and Regulation), Repeal Act, 1999 was adopted by the State of Bihar on 26.9.2006 i.e. during the pendency of Urban Land Ceiling Appeal no. 53/2003 and according to section 4 of the aforesaid Repeal Act, 1999, 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 any authority shall abate subject to the proviso annexed with section 4 of the aforesaid Repeal Act. He further submitted that learned Commissioner, Patna specifically directed learned Collector, Patna to verify the fact as to who is in possession of lands in question and to decide the issue of continuation of the case under the specific provision of the Repeal Act, 1999 but even then, learned Collector did not take note of this fact that the State had never come in possession of the suit land and ceiling proceeding initiated in respect of lands in question had already been abated in the light of section 4 of the Repeal Act, 1999.

8. Learned counsel appearing for the petitioners referred to the decision of **Dr. Anil Kumar Sinha vs. State of Bihar and others reported in 2007 (2) PLJR page 240** in which it has been held by this court that the provision of abatement of Repeal Act, 1999 would have an extensive application except in so far as lands which had already been taken over by the government.

9. On the other hand, learned counsel appearing for the State refuted the above stated submissions arguing that annexures A, B, C and D of the counter affidavit go to show that possession of the lands in question were taken by Halka Karamchari before coming into force of Repeal Act, 1999. He further submitted that the aforesaid annexures would show that symbolic possession was taken and Jamabandi in respect of lands in question was opened in the name of the State of Bihar. He further submitted that the State being a juristic



person is not required to take actual physical possession and symbolic possession is sufficient. He further submitted that even after dispossession from the lands in question, petitioners, again, encroached the aforesaid lands and, therefore, possession of the petitioners over the lands in question would be treated as encroachers and learned Collector rightly issued letter for ejectment of the petitioners from the lands in question.

10. It is admitted position that the proceeding under the Urban Land (Ceiling and Regulation), Act, 1976 was initiated in respect of the lands of the petitioners and Urban Land Ceiling Case no. 12/1993 was registered and the learned Collector vide order dated 09.10.2002 directed the Circle officer, Danapur to take possession of the lands in question and jamabandi in respect of lands in question be opened in the name of State of Bihar.

11. Admittedly, the aforesaid order dated 09.10.2002 was challenged before learned Commissioner, Patna in Urban Land Ceiling Appeal no. 53/2003 and during the pendency of the aforesaid appeal, Urban Land (Ceiling and Regulation), Repealing Act, 1999 was adopted by the State of Bihar on 26.9.2006 and accordingly, learned Commissioner, Patna directed learned Collector, Patna to verify the possession and decide the issue of continuation of Urban Land Ceiling Case no. 12/1993 in view of the provision of the aforesaid Repeal Act, 1999. Section 3 of the Repeal Act, 1999 clearly says that repeal of the Principal Act shall not affect the vesting of any vacant land under sub-section (3) of section 10, possession of which has been taken over by the State of Bihar or any person duly



authorized by the State of Bihar on its behalf or by the competent authority. Therefore, the aforesaid provision goes to show that if the possession of the land has not been taken by the State of Bihar, in view of section 4 of the Repeal Act, 1999, proceeding regarding the aforesaid land shall abate.

12. In the present case, petitioners claimed that State Government failed to take possession of lands in question and when Circle officer, Danapur as well as other revenue officials inspected the lands in question after direction of the Divisional Commissioner, Patna, petitioners were found in possession of lands in question. The above stated fact also goes to show that the State did not claim before the Divisional Commissioner, Patna at the time of passing order dated 21.5.2007 in Urban Land Ceiling Appeal no. 53/2003 that possession of lands in question had already been taken. Apart from this, when this court directed the State to file relevant documents to show this fact that the State had already taken possession of the lands in question, State failed to file any document except annexure D to the counter affidavit which was, admittedly, prepared during the pendency of this writ petition and, therefore, there is nothing on the record to show that possession of lands in question was taken by the competent authority after passing order under section 10(6) of the Act, 1976.

13. Furthermore, it is obvious from perusal of section 4 of the Repeal Act, 1999 that after coming into force of the aforesaid Repeal Act, all proceedings relating to any order made under the Principal Act pending immediately before commencing of this Repealing Act before any court, tribunal or other authority shall abate.



14. Learned Collector, Patna failed to take note of the aforesaid fact as well as direction given by learned Commissioner, Patna in his order dated 21.5.2007 passed in Urban Land Ceiling Appeal no. 53/2003 and without deciding the issue of possession as well as continuation of the proceeding, issued the impugned letter no. 2019 dated 25.7.2012 and, therefore, in my view, the act and action of the Collector, Patna is not in accordance with law and is liable to be quashed.

15. Accordingly, on the basis of the aforesaid discussions, letter no. 2019 dated 25.7.2012 issued by the Collector, Patna is, hereby, quashed and the matter is remitted back to the Collector, Patna to decide the matter afresh confining himself to the points raised by learned Commissioner, Patna in the light of order dated 21.5.2007 passed in Urban Land Ceiling Appeal no. 53/2003 keeping in mind the relevant provisions of the Repeal Act, 1999.

16. In the aforesaid manner, this writ petition stands disposed of.

shahid

(Hemant Kumar Srivastava, J)

AFR/NAFR	NAFR
CAV DATE	01.03.2017
Uploading Date	24.04.2017
Transmission Date	24.04.2017

