

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 3254 of 2006**

1. Dayaram, S/o Shri Parena, aged about 39 yrs., R/o C.G. Nagar, Tikra Para Raipur, District Raipur.
2. Ramji Pandey, S/o Sitaram Pandey, aged about 60 yrs., R/o C.G. Nagar, Tikra Para, Raipur, District Raipur (CG) **---- Petitioners**

Versus

1. State Of Chhattisgarh, Through the Secretary, Land Revenue Department, DKS Bhawan, Raipur (CG)
2. The Competent Authority Urban Land Limit, Raipur, District Raipur (CG)
3. The Collector, Raipur, District Raipur (CG)
4. Municipal Corporation Raipur Through its Commissioner, Municipal Corporation, Raipur District Raipur (CG)
5. Babulal, S/o Bhagela, aged about 56 yrs., R/o Tikra Para, Near Sheetla Mandir, Raipur, Tahsil & District Raipur (CG)
6. Arvind Singh Thakur, S/o Virendra Bhuval, aged about 26 yrs., R/o Ram Nagar, Raipur, Tahsil & District Raipur (CG) **--Respondents**

For Petitioners	:	Mr. Awadh Tripathi, Advocate
For State/Respondents 1,2 & 3	:	Mr. Dhiraj Wankhede, G.A.
For respondent No.4	:	Mr. Sourabh Sharma, Advocate
For respondent No.5	:	Ms. Supriya Upasne, Advocate
For respondent No.6	:	None appears

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****23.04.2018**

Heard.

1. By this petition, under Article 226/227 of the Constitution of India, the petitioners call in question correctness and validity of order dated 07.04.2006 passed by the competent authority under the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short "the Act of 1999") whereby the competent authority has directed return of the land to respondent No.5.
2. Quintessential facts, giving rise to this petition, are that the respondent

No.5, earlier, was holding the land in dispute in his ownership and title. Proceeding under the Urban Land (Ceiling and Regulation) Act, 1976 (for short "the Act of 1976") were initiated in respect of the land in dispute by the competent authority in the year 1976-77 under case No.143/A/90C(1) 76-77. The competent authority drew proceeding under the Act and passed an order under Section 10(5) of the Act on 04.09.1980.

3. In the year 1984, State came out with an enactment which provided for allotment of plots to landless persons, known as मध्यप्रदेश नगरीय क्षेत्रों के भूमिहीन व्यक्ति (पट्टाधृति अधिकारों का प्रदान किया जाना) अधिनियम, 1984 (Act No.15 of 1984).

4. In order to provide '*patta*' (lease) under the aforesaid Act, to slum dwellers and landless persons in the city of Raipur, proceedings were drawn by the Corporation and it allotted lands to various persons including the petitioner. According to the petitioner, he was allotted the disputed plot by the Corporation under the statutory scheme of the Act of 1984. The petitioner paid Rs.2,90,020/- towards allotment of a plot admeasuring 1252 sq.ft of land. An application for grant of building permission was also obtained by the petitioner on 26.02.1993 and the petitioners claim to have constructed a house. A letter of authority was also issued by the Corporation in favour of the petitioners on 01.09.95.

5. The parliament promulgated the Urban Land (Ceiling and Regulation) Repeal Act, 1999 which provided for abatement of proceedings relating to any order made or purported to be made under the Act of 1976, in certain contingencies.

6. Respondent No.5, at this stage, moved an application on 23.12.2002 before the competent authority, purporting to be an application under Section 3(2) of the Repeal Act of 1999 for return of his land on the statement that the Government has not taken over the possession of the land in dispute from him nor any compensation has been paid, therefore, he is entitled to protect his possession over the subject land. On this application, the competent authority initiated proceeding which culminated in issuance of impugned order dated 07.04.2006 giving rise to this petition.

7. Learned counsel for the petitioners would submit that vesting of the land

in dispute had already taken place long before the Repeal Act was brought into force in the year 1999. He would submit that not only ceiling proceedings had come to an end in the year 1983-84, the lands were allotted by the Collector to the Corporation for being granted lease to landless persons under the Act of 1984 wherein proceedings were drawn, allotment of the land in dispute had taken place in favour of the petitioner, he was granted possession, he applied for building permission and constructed the house over there and started living. Therefore, on the date of coming into force of Repeal Act of 1999, the possession of the land was already taken and allotted to other persons. As such, there was no question of any abatement of proceeding but the competent authority acting perfunctorily, without making proper enquiry, without affording any opportunity of hearing to the petitioners, proceeded to pass impugned order ignoring that the possession of the land was taken long back, it was allotted by the Collector to the Corporation and the Corporation, in turn, allotted the land by way of lease to the petitioners. Therefore, the impugned order is illegal and unsustainable in law.

8. Learned counsel for the State would submit that the proceedings under the Repeal Act of 1976 may have been initiated and orders and notifications as contemplated under Section 10 of the Repeal Act may have been passed by the competent authority from time to time but as the competent authority was satisfied that possession of the land in dispute was not taken, it was liable to be reverted to the holder of the land consequent upon abatement of proceeding perforce Section 4 of the Repeal Act of 1999. Learned counsel for the State would submit that the authority has recorded its satisfaction in his order that the possession was not taken away from the holder of the land. He would further submit that as long as proceeding up to taking possession are not complete, it cannot be said that there were no proceedings pending and therefore, upon coming into force of the Repeal Act, 1999, the proceedings abated meaning thereby that no proceeding could not be drawn under the Act and the property shall stand divested and possession liable to be returned to the original holder of the land.

9. The Municipal Corporation, however, has taken a stand contrary to the State by submitting that the land in dispute were allotted to the Corporation by the Collector way back on 19.04.1984 and after transfer of those lands by way of allotment by the Collector, the disputed plots along with other parcel of land allotted to the Corporation vide order dated 19.04.1984, were granted by way of lease to number of landless persons including the petitioner and possession

was also handed over to them. He would further submit that not only the lands were allotted but even construction were allowed to be made. He would further submit that in fact, no notice was issued by the competent authority to the Corporation otherwise the Corporation would have placed before the competent authority all relevant records which clearly prove that consequent upon allotment of land by the Collector to the Corporation and thereafter allotment of land by the Corporation to the petitioner, possession of the disputed plot was taken long back and on the date the Repeal Act came into force, the petitioner was having a house erected on the land in dispute.

10. Learned counsel appearing for respondent No.5 would support the impugned order passed by the competent authority by submitting that under the provision of the Repeal Act, the proceeding which includes proceedings of taking possession would stand abated. According to learned counsel for respondent No.5, the petitioner or the Corporation or even the State has not come with any material to demonstrate that prior to coming into force of the Repeal Act, 1999, possession was taken therefore, foregone conclusion would be that proceedings stand abated, therefore, there is no illegality in the order. It is also submitted that in so far as proceeding under the Act of 1976 or Repeal Act, 1999 are concerned, the petitioner or for that matter, the Corporation was not necessary party and the only necessary party was the original holder of land on whose application, due enquiry was made and order passed by the competent authority. Lastly, it is submitted that the petitioner seeks to raise seriously disputed question of fact which may not be gone into the writ petition, therefore, for that reason also, this petition is liable to be dismissed.

11. I have heard learned counsel for the parties and perused the documents placed on record.

12. Even the impugned order dated 07.04.2006 reveals that proceeding under the Act of 1976 were drawn in respect of the land of respondent No.5 and various notifications were issued and orders passed under Section 10 of the Repeal Act.

13. However, there is serious dispute with regard to the fact whether the possession was taken over or not. While stand of respondent No.5 has been that possession was not taken over, the averments and documents of the petitioner and respondent Corporation are that not only possession was taken but the land was allotted by the Collector to the Corporation and in turn, the

Corporation allotted the land in dispute to the petitioner who was a landless person, in proceeding drawn under the Act of 1984. I also find that there is a letter of authority issued in favour of the petitioner by Corporation way back on 01.09.95. The petitioner has placed on record order of regularization of his construction passed by the Joint Director, Town & Country Planning, Raipur on 26.05.2004. Number of receipts of payment of various taxes have been placed on record by the petitioners. The petitioners have also placed on record the building permission dated 26.02.1993 under which he claims to have constructed a house. The demand letter of the Corporation issued on 04.9.1991 also shows that the petitioner was required to pay premium towards grant of lease in respect of land admeasuring 1252 sq.ft. The petitioner has placed on record document to show that he had paid Rs.2,90,020/- to the Corporation.

14. Not only the petitioner but the Corporation has also come out with an emphatic stand that the lands were allotted to the Corporation and in turn, it was allotted by the Corporation to the petitioner.

15. If I look into the impugned order passed by the Competent authority, I find that the competent authority has not made an elaborate and proper enquiry on this aspect. It is also found that the only Raipur Development Authority was issued notice. It appears that the competent authority had an impression that as the land is falling within the planning area of the development authority, that alone would be authority to submit report whereas, on facts, it is found that it is the Corporation which was allotted the land and which has granted lease. Without there being any definite material with regard to aspect of possession, the competent authority has passed the impugned order. Whether or not proceedings would abate would essentially depend upon determination of seriously disputed question of fact as to whether and if so, when the possession of the land in dispute was taken.

16. In view of the above consideration, interest of justice would demand that proper enquiry should be made in the matter. The impugned order is therefore, set aside and the matter is remitted to the competent authority or in case the office of competent authority is not in existence, the Collector, Raipur who shall make a detailed factual enquiry into the aspect of possession. The enquiry is required to be made after giving due opportunity of hearing to the petitioner as also to the Municipal Corporation Raipur as also respondent No.5 & 6. The Corporation and Revenue authority shall submit all necessary records in their

possession before the enquiry authority so that the authority is possessed of the complete records to take a decision in the matter.

17. Since an interim order was passed in favour of the petitioner, at its inception on 05.07.2006 directing parties to maintain status quo, therefore, till the final orders are passed in the proceedings as directed by this Court, the same interim order shall continue and the parties shall maintain status quo as it exists today.

18. The petition is accordingly allowed. No costs.

Sd/-
(Manindra Mohan Shrivastava)
Judge