

SUPREME COURT OF INDIA

Mukarram Ali Khan

Vs

State of Uttar Pradesh and Others

(Arijit Pasayat and L. S. Panta, JJ)

13.07.2007

JUDGMENT

DR. ARIJIT PASAYAT, J.

1. Challenge in this appeal is the order passed by a learned Single Judge of the Allahabad High Court in Civil Misc. Writ Petition No. 6240 of 1987. The appellant had challenged the order dated 12.12.1986 (Annexure 4 to the writ petition) passed by the appellate authority under the Urban Land (Ceiling and Regulation) Act, 1976 (in short the 'Act') in U.L.C.(Misc.) Appeal No. 241 of 1985 on the ground that the issues are concluded by an earlier order passed in appeal against the draft statement under Section 6 by the competent authority. Though the said point was taken in the objection and mentioned in the writ petition but it was not pointed out that the appellate authority did not consider the same. In the absence of any such statement the High Court held that it cannot be presumed that the point was urged and the appellate authority had overlooked the same. Therefore, the High Court refused to interfere in the matter.

2. Though many points were urged in support of the appeal, the primary point urged was that possession has not been taken pursuant to orders passed by the authorities under the Act. An affidavit has been filed indicating that the possession of the land has not been taken and the land in question continues to be in possession of the appellant and his sons.

3. Learned counsel for the respondent-State and its functionaries on the other hand contended that the point regarding earlier adjudication was not urged before the High Court and therefore the High

Court has rightly decided that in the absence of any specific plea a new plea cannot be taken before it.

4. It is to be noted that the Act has been replaced under the Urban Land (Ceiling and Regulation) Act, 1999 (in short the 'Repeal Act'). Admittedly the State of Uttar Pradesh has since adopted the provisions of the Repeal Act by a resolution as required under Article 252(2) of the Constitution of India, 1950 (in short the 'Constitution'). Repealing Act has since come into force in the State of Uttar Pradesh with effect from 18.3.1999.

5. Section 4 of the Repeal Act reads as follows:

"4. Abatement of legal proceedings- 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 other authority shall abate; Provided that this section shall not apply to the proceedings relating to Sections 1!, 12, 13 and 14 of the principal Act insofar as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority."

6. In view of the affidavit filed by the appellant to which no objection has been filed, undisputed position is that the State has not taken the possession over the surplus land. Therefore, the proceedings have to be treated to have abated under Section 4 of the Repeal Act.

7. That being so, the appeal deserves to be allowed which we direct.