

Mangalsen

v.

State of U.P. and Ors

(Supreme Court Of India)

HON'BLE JUSTICE G. S. SINGHVI HON'BLE JUSTICE S. J. MUKHOPADHAYA

C. A. No. 2763 of 2012 (Arising out of SLP (C) No. 14028 of 2011) | 12-03-2012

1. Leave granted.

2. Whether the proceedings initiated by the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'the 1976 Act') determination of the surplus land of the Appellant abated with the coming into force of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short, 'the 1999 Act') because possession of the surplus land had not been taken is the question which arises for consideration in this appeal filed against order dated 15.2.2011 passed by the Division Bench of the Allahabad High Court in Writ Petition No. 23229/2008.

3. The Appellant is the owner of land comprised in Khasra Nos. 296, 534, 535 and 559, Village Haru Nagla, Pargana and Tehsil Bareilly. After enforcement of the 1976 Act in the State of Uttar Pradesh, he filed a declaration Under Section 6(1) of that Act. The Competent Authority prepared draft statement and issued notice Under Section 8(3) proposing to declare 7337.39 square meters as surplus land. The Appellant filed objections dated 16.12.1981 in the form of an affidavit along with copy of an application made by him Under Section 20 for grant of exemption on the ground that he and his family is solely dependent on the agricultural operations being undertaken by them. After considering the same, the Competent Authority passed order dated 18.5.1982 Under Section 8(4) and confirmed the draft statement. However, the concerned officer stayed the acquisition proceedings on the premise that the application filed by the Appellant Under Section 20 of the 1976 Act was pending consideration.

4. The order passed by the Competent Authority Under Section 8(4) of the 1976 Act was followed by notifications dated 24.8.1982 and 17.7.1985 issued Under Section 10(1) and 10(3) respectively. By the second notification, it was declared that the surplus land will be deemed to have vested in the State. On 20.2.1986, the Competent Authority issued notice to the Appellant Under Section 10(5) requiring him to handover possession of the surplus land within 30 days with an indication that if he fails to do so, proceedings will be initiated Under Section 10(6). It is not clear from the record whether or not the notice was served upon the Appellant, but this much is evident that after a long time gap of three years and four months, Tehsildar, Bareilly prepared Possession Certificate (Dakhalnama) dated 30.1.1990 to show that possession of the surplus land had been taken in the presence of one Horilal. After another 10 years, the Competent Authority issued notice Under Section 11(8) of the 1976 Act for the purpose of determining the compensation payable in respect of the surplus land.

5. The Appellant filed Writ Petition No. 23229/2008 for quashing order dated 18.5.1982. He pleaded that even though the Competent Authority had passed an order Under Section 8(4), possession of the surplus land continued with him and it was only in April, 2008 that an attempt was made by the revenue officials to dispossess him compelling him to approach the Court. He further pleaded that Dakhalnama dated 30.1.1990 does not bear his signatures and the land was still in his possession. Another plea taken by the Appellant was that the provisions of the 1976 Act could not have been invoked by the Competent Authority because he was using the land for agricultural purposes and the application filed by him Under Section 20 of that Act was still pending.

6. In the written statement filed on behalf of the Respondents it was pleaded that the Appellant was guilty of laches inasmuch as he had approached the Court after 26 years of the passing of order Under Section 8(4) of the 1976 Act. They also pleaded that the writ petition was liable to be dismissed because the Appellant had failed to avail the statutory alternative remedy of appeal available Under Section 33 of the 1976 Act. The Respondents controverted the Appellant's assertion that he was still in possession of the surplus land and pleaded that after the issue of notification Under Section 10(3) of the 1976 Act, the Competent Authority had taken possession on 30.1.1990.

7. The Division Bench of the High Court adverted to the factual matrix of the case, noticed Sections 3 and 4 of the 1999 Act, referred to the judgment of this Court in *Mukarram Ali Khan v. State of UP*. (2007) 11 SCC 90 and the judgment of the Division Bench of the High Court in *Babu Chand v. State of U.P.* 2009 (75) ALR 873 and declined to entertain the Appellant's prayer by making the following observations:

From a perusal of the record it appears that after due Notification Under Section 10(1) dated 6.4.1985 and declaration Under Section 10(3) on 6.11.1985 a notice for possession under Section 10(5) of the Act was issued on 20.2.1986 and an authorization to the Tehsildar by the competent authority was also given in this regard on 17.7.1985 itself (sic). So the procedure prescribed Under Section 10 of the Principal Act has been fully complied with. The possession has been taken without any resistance by the Petitioner, obviously under the cover of Dakhalnama (possession memo) signed by a witness and authorized officer concerned on 30.1.1990.

Therefore, we are of the considered view that according to the procedure prescribed the circle has been completed and the proceeding for declaration of the excess land and taking over possession, deemed as well as actual physical possession also stood concluded much before the Repeal Act came into force.

8. Shri Ranjit Kumar, learned senior Counsel appearing for the Appellant argued that the proceedings held under the 1976 Act will be deemed to have abated because even though order dated 18.5.1982 was passed Under Section 8(4), the physical possession of the surplus land continued with his client and he has been cultivating the same. Learned senior Counsel invited our attention to the certified true copy of Khasra of the year 1398 Fasli to show that the Appellant had cultivated 2 parcels of land in 1991 and argued that the Division Bench of the High Court committed serious error by holding that the Appellant is not entitled to the benefit of the 1999 Act because possession of the surplus land had been taken on 30.1.1990. Shri Ranjit Kumar pointed out that the Possession Certificate (Dakhalnama) does not bear the signatures of the person who is said to have delivered the possession and argued that the document prepared by the revenue officials after 3 years and 4 months of the issue of notice Under Section 10(5) could not have been relied upon by the High Court for recording a finding that possession of the surplus land had been taken in

1990, more so, because the Respondents did not produce any evidence to show that the Appellant unauthorisedly occupied the land after 30.1.1990. Learned senior Counsel then argued that the exercise undertaken by the revenue officials for preparing the Possession Certificate should be treated as farce because notice issued by the Competent Authority Under Section 10(5) was not served upon the Appellant. Shri Ranjit Kumar also referred to the concluding paragraph of order dated 18.5.1982 and submitted that possession of the surplus land could not have been taken by the Respondents because the application filed by the Appellant Under Section 20 of the 1976 Act had not been decided till 30.1.1990 or any time thereafter.

9. Shri S.R. Singh, learned senior Counsel appearing for the Respondents supported the impugned order and argued that the Appellant cannot claim the benefit of the 1999 Act because with the issue of notification Under Section 10(3) of the 1976 Act, the surplus land automatically vested in the State. Learned senior Counsel argued that the Appellant's challenge to order dated 18.5.1982 was highly belated and the High Court did not commit any error by refusing to nullify the proceedings held by the Competent Authority under the 1976 Act. Shri Singh submitted that possession of the surplus land was taken after issuing notice to the Appellant Under Section 10(5) of the 1976 Act and he cannot take advantage of the delay which occurred in the taking of possession of the surplus land. Learned Counsel then submitted that the Appellant appears to have unauthorisedly taken possession of the surplus land after 30.1.1990, i.e., the date on which Possession Certificate was prepared by the revenue officials and argued that such an illegal act cannot clothe him with a right to seek relief under Article 226 of the Constitution.

10. In the context of the submissions/ argument made by the Learned Counsel for the parties, we repeatedly asked learned senior Counsel for the Respondents to show when the notice issued under Section 10(5) was served upon the Appellant and whether any intimation was given to him by the revenue officials that they were intending to take possession of the surplus land on 30.1.1990. We also asked the learned senior Counsel whether any evidence is available with the Respondents to prima facie prove that the Appellant had illegally taken possession of the surplus land after 30.1.1990. In reply, Shri S.R. Singh very fairly stated that the record made available by the Respondents do not contain any evidence to prove that the notice issued Under Section 10(5) have been

served upon the Appellant or that he had illegally occupied the surplus land after 30.1.1990.

11. In our view, the Division Bench of the High Court should have called upon the Respondents to produce evidence to show that the notice issued by the Competent Authority Under Section 10(5) had been served upon the Appellant and also explain the long time gap of 3 years and 4 months between the issue of notice under Section 10(5) and preparation of the Possession Certificate and also produce some evidence to show that the Appellant had illegally/unauthorisedly taken possession of the surplus land after 30.1.1990. Unfortunately, the Division Bench of the High Court did not undertake that exercise and dismissed the writ petition by erroneously assuming that possession of the surplus land had been taken, on 30.1.1990.

12. A reading of the xerox copy of the Possession Certificate, which has been placed on record along with the counter affidavit filed on behalf of Respondent Nos. 1 and 2, shows that signatures of the same person appear at two places. We have tallied these signatures with the Appellant's signatures on the Vakalatnama and are satisfied that neither of the two signatures on the Possession Certificate are of the Appellant. This gives sufficient credibility to the Appellant's assertion that he had not given possession of the surplus land on 30.1.1990 and continued to cultivate the same.

13. In view of the above discussion, we hold that possession of the surplus land had not been taken on 30.1.1990 or anytime thereafter and with the coming into force of the 1999 Act, the proceedings held by the Competent Authority under the 1976 Act abated.

14. We may add that the manner in which the Competent Authority and the Respondents exercised power under the 1976 Act leaves much to be desired. Till the stage of issuing notification Under Section 10(1), the concerned authority had acted with sufficient promptness but, thereafter, everybody went into slumber. The notification under Section 10(3) was issued after a gap of almost 3 years. The notice Under Section 10(5) was issued after another 7 months but was not served upon the Appellant. The Possession Certificate was prepared after a time gap of 3 years and 4 months and notice Under Section

11(8) was issued after more than one decade. Not only this, the application filed by the Appellant Under Section 20 was not decided till the filing of the writ petition in the year 2008.

15. In the result, the appeal is allowed, the impugned order is set aside and it is declared that with the coming into force of the 1999 Act, the proceedings held by the competent authority under the 1976 Act, in relation to Appellant's land, stood abated. The parties are left to bear their own costs.