

SUPREME COURT OF INDIA

State of U.P. & Ors.

Vs.

Surendra Pratap & Ors.

C.A.No.5102 of 2016

(Kurian Joseph and R.F.Nariman,JJ.,)

13.05.2016

JUDGMENT

Uday U.Lalit.J.,

SLP(Civil) No.7161 of 2011

1. Delay condoned. Leave granted.
2. This appeal by special leave is directed against the judgment and order dated 12.11.2009 passed by the High Court of Judicature at Allahabad allowing Writ Petition No.46843 of 2005 preferred by respondent Nos.1 and 2 herein.
3. After the enactment of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Act) imposing ceiling on vacant land in urban agglomerations, one Khairati who was Bhumidhar of Plot Nos.222 and 144 measuring area 25232.13 Sq. Meters at Village Rali Chauhan, Pargana, Tehsil & District Meerut, submitted a statement u/s 6 of the Act. On the basis of said statement, the Competent Authority after conducting necessary enquiry prepared a draft statement u/s 8(3) of the Act which was sent to the land holder inviting objections, if any. In due course, the Competent Authority proceeded to pass an order u/s 8(4) of the Act on 23.05.1983 confirming the draft statement declaring 25232.13 sq.mtrs. of land of said Khairati at Village - Rali Chauhan, Meerut as surplus land. No appeal was preferred against the order confirming the draft statement.
4. Thereafter, Notice u/s 9 of the Act along with final statement was issued by the Competent Authority which was received by the legal heirs of said Khairati. Later, notification u/s 10(1) of the Act was published in the Gazette on 14.12.1985. This was followed by notification u/s 10(3) of the Act which was published in the Official Gazette on 29.04.1986, upon publication of which, the surplus vacant land stood vested with the State Government free from all encumbrances.

5. The Competent Authority vide notice dated 31.03.1993 u/s 10(5) of the Act directed the land holders to hand over possession of the land in question to the Collector within 30 days of the receipt of the notice. Further, the Tehsildar, Meerut was also directed to take possession of the land. It appears that respondent No.1 who claimed to have purchased the land from the heirs of said Khairati on 03.10.1986 i.e. after the publication of notification u/s 10(3) of the Act, preferred objections before the competent Authority on 07.05.1994 against the issuance of notice u/s 10(5) of the Act.

6. On 20.08.1994, possession of the surplus vacant land was taken by Land Records Inspector, Meerut on behalf of the Tehsildar from respondent No.2 herein through its proprietor namely respondent No.1. Thereafter, the Competent Authority vide its order dated 30.06.1995 dismissed the objections preferred by respondent No.1 against the issuance of notice u/s 10(5) of the Act. While dismissing the objections, it was observed that the possession of the surplus land in question was already taken by the Tehsildar, Meerut on 20.08.1994.

7. After enactment of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as the Repeal Act), the respondent Nos.1 and 2 preferred Writ Petition No.46843 of 2005 in the High Court contending inter-alia that they were still in possession of the land in question and entitled to the benefit under the Repeal Act. The High Court accepted the contention and allowed their Writ Petition by its order dated 18.05.2010. The High Court was of the view that the expression “possession” used in clause (a) of sub-Section (2) of Section (3) of the Repeal Act meant actual physical possession and that there was nothing on record to indicate that actual physical possession was taken by the Competent Authority.

8. We have heard Mr. Irshad Ahmad, learned Additional Advocate General for the State in support of the appeal and Mr. Aarohi Bhalla, learned Advocate for respondent Nos.1 and 2. The record indicates that notification u/s 10(3) of the Act was published in the official gazette on 29.04.1986 and an appropriate notice u/s 10(5) of the Act was issued by the Competent Authority on 31.03.1993. These aspects of the matter are not disputed by respondent Nos.1 and 2 but in their submission, despite such notice u/s 10(5) of the Act, the possession was never taken over. The factum about taking over the possession finds clear mention in the possession certificate dated 20.08.1994. Further, the objections preferred by respondent Nos.1 and 2 were dismissed vide order dated 30.06.1995 which order also records the fact that possession of the land already stood taken over. In the premises, all requisite actions contemplated under the Act were taken in accordance with law well before the enactment of the Repeal Act and the surplus vacant land stood vested with the State Government of which the possession was also taken over. The Writ Petition preferred in the year 2005, therefore, had no stateable claim and the High Court was completely in error in accepting the submissions advanced on behalf of respondent Nos.1 and 2.

9. Moreover, in Civil Appeal Nos. 369-370 of 2016 (*State of U.P. and Ors. v. Adarsh Seva Sahakari Ltd.*) decided on 19.01.2016, this Court has observed that after the vesting of the surplus land with the State Government u/s 10(5) of the Act, if any transfer of the property in question is effected, such transfer would be void ab initio and the transferee would not be

entitled to challenge the alleged inaction on part of the State Government or the Competent Authority in not taking possession in compliance with the provisions u/s 10(5) of the Act.

10. In the aforesaid circumstances, the view taken by the High Court in the instant case is completely unsustainable. This appeal is, therefore, allowed and the Writ Petition preferred by the respondent Nos.1 and 2 herein stands dismissed with costs.