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Reserved on 24.10.2019
Delivered on 06.11.2019

Court No. - 21

Case :- WRIT - C No. - 36346 of 2014

Petitioner :- Ikrar And 5 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Madhusudan Dixit

Counsel for Respondent :- C.S.C., Satyendra Pratap Singh, Sri S.P. Singh

Hon'ble Pradeep Kumar Singh Baghel, J.

Hon'ble Rohit Ranjan Agarwal, J.

(Delivered by Hon'ble Rohit Ranjan Agarwal, J.)

1. Present petition has been filed assailing the order dated 5.5.2014 passed by Collector, Saharanpur rejecting the representation of petitioners, as well as for seeking direction upon the respondents not to interfere in possession over Khasra No.12M and 19M measuring 11479.47 sq.mtr situated in Village Fatehpur Jat, District Saharanpur and also for direction to correct revenue records, and record names of petitioners over the land declared vacant in proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 (for short "Act No.33 of 1976").

2. Brief facts which emerges from the material on record, are that petitioners who are 6 in numbers are sons of late Iqbal, who filed statement under Section 6(1) of the Act, stating that plot no.12 and 19 were his agricultural land and was outside the purview of Act of 1976. Notices under Section 8(3) of the Act was issued on 17.8.1978 stating that out of total area of land measuring 13479.47 sq. mtr., 11479.47 sq. mtr. was being declared surplus leaving behind 2000 sq. mtr. in khasra no.12M and 19M in village- Fatehpur Jat. On 26.10.1978, the competent authority declared the aforesaid land as vacant.

3. Notification under Section 10(1) was made on 29.11.1978 and under Section 10(3) on 20.02.1990. Notices u/s. 10(5) were issued on 15.04.1993, however, according to petitioners, the said notices were never

served upon them. It is further averred that father of the petitioners till his death, sowed his crop over the land, which is evident from khasra of year 2010-11 and was in complete physical possession over the land. It has further been stated that no notice u/s. 10(6) of the Act was issued by respondents for forceful dispossession of their late father, nor he was dispossessed from the land in question, and they are in complete actual physical possession over the land in dispute till date.

4. Petitioners filed Writ Petition No. 3367 of 2007 before this Court, which was disposed of on 31.03.2010, with a direction to the petitioners to file a representation before respondent no.2, who shall pass appropriate orders in accordance with law after giving opportunity of hearing. The representation was decided on 05.05.2014 by respondent no.2, who held that the possession of land had already been taken by Tehsildar, Sadar on 31.07.1993 and the land in question is recorded in the name of State Government in revenue records since 21.08.1993, and further on 19.02.2002, the land was transferred to Saharanpur Development Authority. The order of respondent no.2 is under challenge in present petition.

5. Respondent-State filed a counter affidavit stating that the possession of land has been taken on 31.07.1993 and the name of State Government has been recorded in the revenue records. Further, the possession memo has been brought on record as CA-2.

6. During the pendency of above writ petition, an Impleadment Application No.6 of 2019 was filed for impleading Saharanpur Development Authority as one of the respondent. On 22.04.2019, the amendment application was allowed and necessary correction in the array of parties was made. The matter was listed on 15.05.2019, thereafter on 16.05.2019. On 20.05.2019, learned Standing Counsel produced the original records of the case before the Court. This Court after perusal of the records passed following order:-

“Learned Standing Counsel has produced the original record.

We have perused the same.

The possession memo bears only signature of Tehsildar and Lekhpal, Chandrapal Sharma, there is no signatures of the petitioners and witnesses.

It is urged by learned counsel for petitioners that the Tehsildar is not appropriate Authority to take the possession of the land in view of Rules 1983.

Learned Standing Counsel has not disputed the said fact.

Our attention has been drawn to the impugned order passed by the District Magistrate dated 5th May, 2014, wherein it is mentioned that after issuance of notice dated 15th April, 1993 under Section 10 (5) of the Act, the Tehsildar Sadar has taken possession of the land on 31st July, 1993.

On 17th July, 2014, all the respondents were granted four weeks time to file counter affidavit.

The State has filed its counter affidavit, which is taken on record.

The Saharanpur Development Authority has been impleaded on 22.04.2019 in the interest of justice six weeks time is granted to file counter affidavit.

Put up this case in the additional cause list before this Bench as a part heard on 19th July, 2019.

The original records are returned to learned Standing Counsel. ”

7. Counsel for the Saharanpur Development Authority was granted six weeks time to file counter affidavit. When the matter was again listed on 19.07.2019, Counsel for the Saharanpur Development Authority was not present and the case was adjourned. Again, the matter was listed on 27.09.2019 and as a last opportunity, six weeks and no more time was granted to the counsel for Development Authority to file counter affidavit and the matter was posted peremptorily for 24.10.2019. On the said date again Counsel for the Saharanpur Development Authority was not present, neither any counter affidavit was filed on behalf of the Development Authority, thus we had no option but to proceed and decide the matter.

8. Counsel for the petitioners submitted that after coming of the Repeal Act, proceedings under the Urban Ceiling Act in view of Section 3 stood abated. As no actual possession has been taken in terms of sub-

section 5 of Section 10 and sub-section 6 of Section 10 of the Act, 1976. He further submitted that no notice under sub-section 5 of Section 10 was served on the petitioners, nor the tenure holders have handed over the possession to Collector, which is evident from the material on record. He further submitted that from pleadings of respondent-State in their counter affidavit, it is clear that no recourse to sub-section 6 of Section 10 has been taken for forcible possession by the State. Moreover, State has failed to point out any document in the original record showing taking over the physical possession.

9. He further invited the attention of the Court to the *Dakhalnama*, which has been brought on record by the State in their counter affidavit as well as in the original records, which shows that possession was taken over by Tehsildaar, which is not an appropriate authority to take possession of the land in view of Rules, 1983 and further it does not bear the signature or thumb impression of the tenure holder. This fact clearly demonstrates that petitioners have not handed over possession voluntarily to the State pursuant to notice issued under sub-section 5 of Section 10 of the Act, 1976, as such proceedings stood abated as tenure holders are still in possession over the land.

10. Sri Dixit had further relied upon judgment of Apex Court in cases of *State of U.P. Vs. Hari Ram, 2013 (4) SCC 280* and *Banda Development Authority Vs. Moti lal Agarwal and Others, 2011 Law Suit (SC) 411* and judgment of this Court in *State of U.P. & Another Vs. Nek Singh, 2010 Law Suit (Alld.) 3581*, *Ram Chandra Pandey vs. State of U.P. & Others, 2010 (82) ALR 136*, *Ehsan Vs. State of U.P. & Others, Writ C No.21009 of 2012*, *Lalji Vs. State of U.P. & Others, 2018 (5) ADJ 566*, *Yaseen & Others Vs. State of U.P. & Others, 2014 (4) ADJ 305 (DB)*, *Mohammad Suaif & Another Vs. State of U.P. & Others, Writ C No.12696 of 2009 decided on 07.05.2019*, *Mohammad Islam & Another Vs. State of U.P. & Others, Writ C No.15864 of 2015* decided on

04.12.2017, *State of U.P. Vs. Ruknuddin & Others, Writ C No.54830 of 2011* decided on 03.10.2018.

11. Learned Standing Counsel defending the action of State Government as well as order passed by Collector, Saharanpur on 05.05.2014, submitted that possession of surplus land was taken on 31.07.1993, pursuant to notice under sub-section 5 of Section 10 issued on 15.04.1993, which was duly served upon wife of the tenure holder by process server on 24.08.1993, and name of the State Government was mutated in revenue records over the vacant piece of land. Subsequently, on 19.02.2002, land in question was transferred in favour of Saharanpur Development Authority, as such, claim of petitioner that pursuant to Repeal Act, proceedings stood abated, cannot be accepted as possession was duly taken in accordance with law and vacant piece of land was transferred in favour of Saharanpur Development Authority.

12. We had summoned the original records as there was a serious dispute with regard to taking of physical possession of the surplus land.

13. We have perused the original records. From perusal of possession memo dated 31.07.1993, it is clear that the Tehsildar, Saharanpur and Chandrapal Sharma, Lekhpal has taken the possession of the land on 31.07.1993 but possession memo does not bear the signature of the person, who has transferred the land, nor of any witness.

14. We have heard Sri Madhusudan Dixit, learned counsel for the petitioners, learned Standing Counsel for respondent nos.1, 2 & 3 and have perused the material on record.

15. It is not in dispute that proceedings under Act No.33 of 1976 was initiated against father of petitioners in year 1978 for declaring surplus land. It is also not in dispute that notices u/s. 10(1) and 10(3) were issued. Notice under sub-section 5 of Section 10, which is alleged to have been issued on 15.04.1993, according to petitioners was not served upon the tenure holder, while State has categorically submitted that it was served

upon wife of the tenure holder through process server on 24.08.1993. However, as per the State, possession was taken on 31.07.1993 by the Tehsildar Saharanpur, alongwith Lekhpal copy of dakhnama has been brought on record, which demonstrates the fact that it does not bear the signature or thumb impression of the person, who has transferred the possession, nor of any witness, while it only bears the signature of the person receiving the possession.

16. Collector, Saharanpur, while passing the order impugned had held that possession has been taken over by the Tehsildar pursuant to notice under Section 10(5) of the Act on 31.07.1993, thus it is an accepted fact that the possession over the vacant land has been taken over by the Tehsildar and not by the appropriate authority as envisaged under the Uttar Pradesh Urban Land Ceiling (Taking of Possession, Payment of Amount and Allied Matters) Directions, 1983 (Directions issued by the State Government under Section 35 of the Act, 1976), which is reproduced below:-

“The Uttar Pradesh Urban Land Ceiling (Taking of Possession, Payment of Amount and Allied Matters) Directions, 1983 (Directions issued by the State Government under Section 35 of 1976 Act):

"In exercise of the powers under Section 35 of the Urban Land (Ceiling and Regulation) Act, 1976 (Act No.33 of 1976), the Governor is pleased to issue the following directions relating to the powers and duties of the competent authority in respect of amount referred to in Section 11 of the aforesaid Act to the person or persons entitled thereto:

1. Short title, application and commencement.-- *These Directions may be called the Uttar Pradesh Urban Land Ceiling (Taking of Possession, Payment of Amount and Allied Matters) Directions, 1983*

(2) The provisions contained in this direction shall be subjected to the provisions of any directions or rules or orders issued by the Central Government with such directions or rules or orders.

(3) They shall come into force with effect from the date of publication in the gazette.

2. Definitions.--* * *

3. Procedure for taking possession of vacant land in excess of ceiling limit.--*(1) The competent authority will maintain a register in*

Form No.ULC -1 for each case regarding which notification under sub-section (3) of Section 10 of the Act is published in the gazette.

4. (1) * * *

(2) An order in Form No. ULC-II will be sent to each land holder as prescribed under sub-section (5) of Section 109 of the Act and the date of issue and service of the order will be entered in Column 8 of Form No. ULC-I.

(3) On possession of the excess vacant land being taken in accordance with the provisions of sub-section (5) or sub-section (6) of Section 10 of the Act, entries will be made in a register in Form ULC-III and also in Column 9 of the Form No. ULC-1. The competent authority shall in token of verification of the entries, put his signatures in Column 11 of Form No. ULC-1 and Column 10 of Form No. ULC-III.

Form No. ULC-1

Register of notice under Sections 10(3) and 10(5)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Sl. No.	Sl. No. of register of receipt Sl. No. of register of taking possession	Case Number	Date of Notification under Section 10(3)	Land to be acquired village Mohali	Date of taking over possession	Remarks	Signature of competent authority			

Form No. ULC-II

Notice order under Section 10(5)

[See clause (2) of Direction (3)]

In the court of competent authority

U.L.C.....

No..... Date

Sri/Smt..... T/o

In exercise of the powers vested under Section 10(5) of the Urban Land (Ceiling and Regulation) Act, 1976 (Act No.33 of 1976), you are hereby informed that vide Notification No..... dated

under Section 10(1) published in Uttar Pradesh Gazette dated following land has vested absolutely in the State free from all encumbrances as a consequence Notification under Section 10(3) published in Uttar Pradesh Gazette dated Notification No..... dated With effect from you are hereby ordered to surrender or deliver the possession of the land to the Collector of the District Authorised in this behalf under Notification No.324/II-27- U.C.77 dated February 9, 1977, published in the gazette, dated March 12, 1977, within thirty days from the date of receipt of this order otherwise action under sub-section (6) of Section 10 of the Act will follow.

Description of vacant land

<i>Location</i>	<i>Khasra No. identification</i>	<i>Area</i>	<i>Remarks</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>

Competent Authority

.....

No.

Dated.....

Copy forwarded to the Collector with the request that action for immediate taking over of the possession of the above detailed surplus land and its proper maintenance may, kindly be taken an intimation be given to the undersigned along with the copy of certificate to verify.

Competent Authority

.....

17. Thus, possession taken by the Tehsildar is against the directions issued by the State Government u/s. 35 of the Act, 1976, which envisages that it is the Collector, who is competent and authorized to take possession.

18. The Supreme Court in case of Hari Ram (Supra) had laid down detailed procedure for taking possession of the surplus land. The Supreme Court distinguished between voluntary surrender made under sub-section 3 of Section 10, peaceful dispossession under sub-section 5 of Section 10 and forceful dispossession made under sub-section 6 of Section 10, relevant paragraphs are extracted here as under:-

“30. Vacant land, it may be noted, is not actually acquired but deemed to have been acquired, in that deeming things to be what they are not. Acquisition, therefore, does not take possession unless there is an indication to the contrary. It is trite law that in construing a deeming provision, it is necessary to bear in mind the legislative purpose. The purpose of the Act is to impose ceiling on vacant land, for the acquisition of land in excess of the ceiling limit thereby to regulate construction on such lands, to prevent concentration of urban lands in hands of few persons, so as to bring about equitable distribution. For achieving that object, various procedures have to be followed for acquisition and vesting. When we look at those words in the above setting and the provisions to follow such as sub-sections (5) and (6) of Section 10, the words "acquired" and "vested" have different meaning and content. Under Section 10(3), what is vested is de jure possession not de facto, for more reasons than one because we are testing the expression on a statutory hypothesis and such an hypothesis can be carried only to the extent necessary to achieve the legislative intent.

Voluntary surrender

31. The "vesting" in sub-section (3) of Section 10, in our view, means vesting of title absolutely and not possession though nothing stands in the way of a person voluntarily surrendering or delivering possession. The Court in Maharaj Singh v. State of U.P.¹³, while interpreting Section 117(1) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 held that "vesting" is a word of slippery import and has many meaning and the context controls the text and the purpose and scheme project the particular semantic shade or nuance of meaning. The Court in Rajendra Kumar v. Kalyan¹⁴ held as follows: (SCC p. 114, para 28)

"28. ...We do find some contentious substance in the contextual facts, since vesting shall have to be a "vesting" certain. 'To "vest", generally means to give a property in.' (Per Brett, L.J. Coverdale v. Charlton¹⁵ : Stroud's Judicial Dictionary, 5th Edn. Vol. VI.) Vesting in favour of the unborn person and in the contextual facts on the basis of a subsequent adoption after about 50 years without any authorization cannot however but be termed to be a contingent event. To 'vest', cannot be termed to be an executor devise. Be it noted however, that 'vested' does not necessarily and always mean 'vest in possession' but includes 'vest in interest' as well."

32. We are of the view that so far as the present case is concerned, the word "vesting" takes in every interest in the property including de jure possession and, not de facto but it is always open to a person to voluntarily surrender and deliver possession, under Section 10(3) of the Act.

33. Before we examine sub-section (5) and sub-section (6) of Section 10, let us examine the meaning of sub-section (4) of Section 10 of the Act, which says that during the period commencing on the

date of publication under sub-section (1), ending with the day specified in the declaration made under sub-section (3), no person shall transfer by way of sale, mortgage, gift or otherwise, any excess vacant land, specified in the notification and any such transfer made in contravention of the Act shall be deemed to be null and void. Further, it also says that no person shall alter or cause to be altered the use of such excess vacant land. Therefore, from the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made in sub-section (3), there is no question of disturbing the possession of a person, the possession, therefore, continues to be with the holder of the land.

Peaceful dispossession

34. Sub-section (5) of Section 10, for the first time, speaks of "possession" which says where any land is vested in the State Government under sub-section (3) of Section 10, the competent authority may, by notice in writing, order any person, who may be in possession of it to surrender or transfer possession to the State Government or to any other person, duly authorized by the State Government.

35. If de facto possession has already passed on to the State Government by the two deeming provisions under sub-section (3) to Section 10, there is no necessity of using the expression "where any land is vested" under sub-section (5) to Section 10. Surrendering or transfer of possession under sub-section (3) to Section 10 can be voluntary so that the person may get the compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-section (5) to Section 10 to surrender or deliver possession. Sub-section (5) of Section 10 visualizes a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession.

Forceful dispossession

36. The Act provides for forceful dispossession but only when a person refuses or fails to comply with an order under sub-section (5) of Section 10. Sub-section (6) to Section 10 again speaks of "possession" which says, if any person refuses or fails to comply with the order made under sub-section (5), the competent authority may take possession of the vacant land to be given to the State Government and for that purpose, force - as may be necessary - can be used. Sub-section (6), therefore, contemplates a situation of a person refusing or fails to comply with the order under sub-section (5), in the event of which the competent authority may take possession by use of force. Forcible dispossession of the land, therefore, is being resorted only in a situation which falls under sub-section (6) and not under sub-section (5) to Section 10. Sub-sections (5) and (6), therefore, take care of both the situations, i.e. taking possession by giving notice that is "peaceful dispossession" and on

failure to surrender or give delivery of possession under Section 10(5), than "forceful dispossession" under sub-section (6) of Section 10."

19. Similar issue in regard to peaceful and forceful possession in terms of sub-section 5 and 6 of Section 10 of the Act cropped up before the Apex Court, which was considered by it in case of ***Gajanan Kamlya Patil Vs. Addl. Collector & Comp. Auth. & Ors, JT 2014 (3) SC 2011***, which followed the earlier decision in case of Hari Ram (supra). In yet another case, in Special Leave Petition (C) No.17799 of 2015 (supra), the Apex Court held after perusing the original records that possession was not taken by the competent authority or his authorized representative by following procedure laid down under Section 10(5) and Section 10(6) of the Act, 1976 declined to interfere in the order impugned.

20. A Division Bench of this Court in case of Nek Singh (supra), Ruknuddin (supra), Ramchandra Pandey (supra), and Ehsan (supra) was also of the view that possession had been taken from tenure holder without complying provision of Section 10(5) and 10(6) of the Act, 1976.

21. Pertinently, in respect of Saharanpur Development Authority, same issue was considered in case of ***Rati Ram Vs. State of U.P. and Others, 2018 (4) ALJ 338***, wherein this Court held as under:-

"8. The 'Dakhalnama' a certified copy whereof has been produced before us does not even bear the signatures of any attesting witness. We find this to be a lapse and patent illegality the benefit whereof has to be given to the land holder in view of the Division Bench judgment in the case of Mohd. Islam and 3 others v. State of U.P. and 2 others, Writ Petition No. 15864 of 2015 decided on 4th December, 2017. It was also a case of District- Saharanpur. We extract paragraph Nos. 44 to 47 of the said judgment which are as under:

"44. Since, in the present case, neither factum of taking actual physical possession by Competent Authority under Ceiling Act has been fortified by placing any document nor factum of possession of Development Authority at any point of time has been shown, therefore, argument advanced by learned Standing Counsel on the basis of State of Assam (supra) will not help.

45. Viewed from the above exposition of law we find in the present case that no such exercise of issuing notice under

Section 10(6) of the Act, 1976 and thereafter execution of memo on the spot had taken place which is mandatory for ceiling authorities as admittedly the original tenure-holder and then his successors had never voluntarily surrendered the possession of land. In the absence of voluntary surrender of possession of surplus land, the authorities were required to proceed with forcible possession. The document of possession memo would not by itself evidence the actual taking of possession unless it is witnessed by two independent persons acknowledging the act of forcible possession. As discussed above in the earlier part of this judgment we are not able to accept the alleged possession memo worth calling a document as such in the absence of certain requisites, nor does it bear the details of witnesses who signed the document. It bears mainly signatures of Chackbandi Lekhpal, a person taking possession and then the document has been directed to be kept on file. This is no way of taking forcible possession nor, a document worth calling possession memo. A mere issuance of notification under Section 10(3) and notice under Section 10(5) regarding delivery of possession does not amount to actual delivery of possession of land more especially in the face of the fact that the tenureholder had in fact not voluntarily made surrender of possession of surplus land and no proceeding under Section 10(6) had taken place.

46. Since, we have held that possession memo dated 20.06.1993 is not a possession memo and is a void document for want of necessary compliance under Section 10(6) of the Act, 1976, the petitioners are entitled to the benefit under Section 4 of the Repeal Act, 1999 that came into force w.e.f. 20.03.1999.

47. We may also place on record that respondents claim that possession of land in question was handed over to Saharanpur Development Authority pursuant to Government Order dated 29.12.1984 but here also we find that no material has been placed on record to show that any such actual physical possession was handed over to Saharanpur Development Authority and the said authority is in de facto possession of land in dispute. Except bare averment made in the counter-affidavit respondent have not chosen to place anything on record to support the stand that de facto possession over land in dispute is that of Saharanpur Development Authority. Therefore even this stand has no legs to stand and is rejected.”

22. This Court in ***Writ C No. 31072 of 2009, Gayur and Another Vs. State of U.P. and Others***, decided on 20.08.2019 faced with a similar situation, wherein respondent-State had only produced the memo of possession/dakhalnama and there was no other material to indicate that

land was legally transferred to the Saharanpur Development Authority, held that the ceiling proceeding stood lapse and petitioners were entitled for land in question, which has been declared surplus land held as under:-

“Keeping in the mind the principle laid down by the Supreme Court and this Court, as indicated in the authorities referred hereinbefore, we find that in the counter affidavit the State has taken a very general and vague stand about the possession. In Paragraph-4 of the counter affidavit of the State the only averment made in this regard is that the process server personally served the notice under Section 10(5) of the Act, 1976 on 20th November, 1987. It is also averred therein that "It is further stated that after adopting all proceeding according to law on the aforesaid declared surplus land the possession of the State Government has been taken on 31.11.1987". It is not mentioned in the counter affidavit that the petitioners have given voluntary possession after receiving the notice under Section 10(5) of the Act, 1976. From the original record it was evident that there was no material to show that the petitioners have given voluntary possession to the State authorities after receiving the notice under Section 10(5). If they had not given the voluntary possession then the only course open to the authorities was to take forceful possession under Section 10(6) of the Act, 1976. There is no material on the record or averment made in the counter affidavit to show that the forceful possession was taken from the petitioners under Section 10(6) of the Act, 1976. In the counter affidavit filed on behalf of the State, the name of the officer, who has taken the possession, is not disclosed. However, in the counter affidavit filed by the Saharanpur Development Authority it is stated that the Tehsildar has taken the possession. As mentioned above, the only document which is on the record to indicate taking over the possession is a memo dated 31st November, 1987. The said date has been mentioned in several paragraphs of the counter affidavits of the State and the Saharanpur Development Authority. The said document does not inspire any confidence. There are only thirty days in the month of November. So, apparently 31st November is a wrong date. As held by the Supreme Court in Hari Ram (supra) and the directions issued by the State Government in the Directions, 1983 as well as the Government Order dated 29th September, 2015, we find that the possession has not been taken in terms of the Directions, 1983 and the Government Order. The Revenue Inspector and the Lekhpal are not authorized to take possession as held in a large number of cases mentioned above.

As regards the stand of the State that the possession has been handed over to the Saharanpur Development Authority, we find that except the memo of possession/ Dakhalnama, there is no other material to indicate that the possession was legally handed over to the Saharanpur Development Authority. Pertinently, in the Dakhalnama it is recorded that the land is agricultural. We find merit in the submission of the petitioners that agricultural land cannot be

declared surplus. But this issue was not raised seriously, hence we are not recording any finding on this issue. In the counter affidavit filed by the Saharanpur Development Authority the alleged possession is stated to have been taken on 29th January, 2002 but no detail has been mentioned regarding the construction, which has been raised. As regards the claim of the respondents that possession of the land was handed over to the Saharanpur Development Authority, we find that the proceedings stood abated in terms of section 4 of the Repeal Act, therefore, any subsequent transfer is non est. ”

23. In case, in hand, only notice under Section 10(5) of the Act was issued to petitioners, but no voluntary possession was given by them, as is evident from original record to the State authorities. If, voluntary possession was not given, then only recourse open to the authorities, was to take forcible possession under Section 10(6) of the Act, 1976. There is no material on record or averment made in the counter affidavit, nor it is case of the State functionaries that forcible possession was taken from petitioners under Section 10(6) of the Act, 1976. In the counter affidavit, name of the officers, who have taken possession, has not been disclosed, and it is only stand of the State that possession was taken by Tehsildar. While, from perusal of original memo of possession/dakhalnama, it is evident that possession was taken by Tehsildar and one Chandrapal Sharma, Lekhpal, and there is no signature of any attesting witness.

24. Thus, in view of judgment of the Apex Court in Hari Ram (supra) and directions issued by State Government in Directions, 1983 as well as Government Order dated 29.09.2015, we find that possession has not been taken in terms of the Directions, 1983 and Government Order. The Tehsildar and Lekhpal are not authorized person to take possession as held in large number of cases mentioned above.

25. In addition to above, as discussed above, there is no material on record to demonstrate that actual possession was handed over to the Saharanpur Development Authority on 19.02.2002 after possession having been taken by the State authorities, as claimed according to memo of possession/dakhalnama dated 31.07.1993 by the Tehsildar, who is not a

competent authority or a person authorized to take possession in terms of Directions, 1983 and Government Order of 2015.

26. Further, the Development Authority has also not filed any counter affidavit despite being given sufficient opportunity, nor their Counsel turned up during the course of argument. The only stand taken by State functionaries are that notice u/s. 10(5) was served on wife of tenure holder by process server on 24.08.1993, except the said fact, the State had failed to establish that actual physical possession over the vacant piece of land was taken, as the memo of possession/dakhalnama clearly demonstrates that there is no signature of the person delivering the possession, nor of any attesting witness, which is in teeth of the procedure laid down in case of Hari Ram (supra) except this fact no averment in the counter affidavit nor any submission on behalf of the State has been made.

27. Collector, Saharanpur also, while deciding the representation of the petitioners has relied upon the possession taken by the Tehsildar in the year, 1993 and possession subsequently being transferred through Saharanpur Development Authority in the year 2002, except this, he has failed to adjudicate on the issue as to how Tehsildar was authorized or competent to take possession in terms of the Directions, 1983, which had been issued by the Government u/s. 35 of the Act, 1976 and has statutory flavour.

28. In view of the above, we are of the considered opinion that if possession has not been taken in terms of Section 10(5) and 10(6) of the Act, 1976, petitioners are entitled for the benefit under Section 3 and 4 of the Repeal Act.

29. For the reasons stated above, we find that the ceiling proceedings stood lapse and petitioners are entitled for the land in question, which has been declared surplus. The order impugned dated 05.05.2014 is hereby quashed and writ petition stands **allowed**.

30. Petitioners may apply before the authorities for expunging name of State Government from the revenue records and mutating their names.

Order Date :- 06.11.2019

S. Singh