

**A.F.R.**  
**RESERVED**

**Court No. - 21**

**Case :-** WRIT - C No. - 13520 of 2018

**Petitioner :-** Pal Singh And 4 Others

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

**Counsel for Petitioner :-** Madhusudan Dikshit

**Counsel for Respondent :-** C.S.C.

**Hon'ble Pradeep Kumar Singh Baghel,J.**

**Hon'ble Piyush Agrawal,J.**

**(Delivered by Hon'ble Piyush Agrawal, J.)**

By means of the present petition, the petitioners seek a writ of mandamus declaring the entire proceedings, initiated against the petitioners under the Urban Land (Ceiling & Regulation) Act, 1976 as abated in view of the Urban Land (Ceiling & Regulation) Repeal Act, 1999.

The brief facts of the case on record are that the petitioners claim that an area of 8041.08 square meters of Khasra Nos. 271 Mi, 272 Mi, 277 Mi, 289 Mi, 279 Mi, 290 Mi, 291 Mi, 392 Mi, 330 Mi and 331 Mi situated in Village - Shekhpura Kadeem, District Saharanpur and Khasra No. 61 situated in Village - Chakpuragpur be exempted from the ceiling proceedings as the petitioners claim to be the owners of the said land.

The proceedings under Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as, 'the Act of 1976') were initiated against the petitioner's predecessor. Thereafter, the father of the petitioners filed statement under section 6(1) of the Act of 1976. As the land was agricultural land and does not come under section 2(o) of the Act of 1976, i.e., the 'vacant land', the proceedings of ceiling were dropped on 29.09.1986. Thereafter, again the ceiling proceedings were initiated against the father of the petitioners. On 29.09.1987, the Mahayojana (Master Plan) was introduced in Saharanpur Nagar Basti and on the basis of the

old returns, draft statement under section 8(3) of the Act of 1976 was issued on 15.03.1991, in which the total land/building of the tenure holder measuring 11,397.23 square meters and thereafter, a total area of 8041.08 square meters from Khasra Nos. 271 Mi, 272 Mi, 277 Mi, 289 Mi, 279 Mi, 290 Mi, 291 Mi, 392 Mi, 330 Mi and 331 Mi situated in Village - Shekhpura Kadeem, District Saharanpur and Khasra No. 61 situated in Village - Chakpuragpur was proposed to be declared surplus. It is averred that by *ex parte* order dated 12.06.1998 under section 8(4) of the Act, the land in question was declared surplus.

Thereafter, notification under section 10(1) of the Act of 1976 and notification under section 10(3) of the Act of 1976 were sent for publication in the official Gazette on 26.03.1993 and 21.08.1993 respectively. After the publication of the notification, notice under section 10(5) of the Act of 1976 was issued to the tenure holder on 27.01.1994, calling upon the tenure holder to voluntarily surrender their surplus vacant land of 8246.00 square meters. This notice is alleged to be served upon the tenure holders personally by process server.

On 29.03.1998, the State claims that *Parwana Amal Daramad* was issued and the name of the State Government was recorded in the revenue records pursuant to the notice under section 10(5) of the Act of 1976. Thereafter, the surplus land was handed over to the Saharanpur Development Authority on 19.02.2002 and since then, the land in question is in the custody of Saharanpur Development Authority.

It is averred that the petitioners are still in physical possession of the land in question, which has been declared surplus. It is further averred that no notice under section 10(5) of the Act of 1976 was issued to the petitioners and the petitioners have never signed any document regarding delivery of possession and in view of section 10(6) of the Act of 1976, no forcible possession was taken by the State Government from the petitioners and actual tenure holder, i.e., the father of the

petitioners. It is further averred that the petitioners have not received any compensation of the land in dispute which has been declared surplus. It is further averred that the State Government is alleged to have transferred the land in question in favour of Saharanpur Development Authority on 19.02.2002, much after the coming into force of the Urban Land (Ceiling & Regulation) Repeal Act, 1999 (hereinafter referred to as, 'the Act of 1999'). It is clear from the record that the land is agricultural land which shows that at the time of handing over the possession to the Saharanpur Development Authority, the land was not of urban land, but it was agricultural land. It is further averred that in terms of section 2(o) of the Act of 1976, the urban land is defined which does not include the land which is mainly used for the purposes of agriculture. As per section 2(q) of the Act of 1976, the "vacant land" is defined as the land not being the land mainly for the purposes of agriculture.

A counter affidavit has been filed on behalf of the State – respondents, in which it is contended that due process of law as prescribed under the relevant Act has been followed and only thereafter, the physical possession of the land has been taken in an absolutely legal manner. It has been further averred in the counter affidavit that after publication of notification in the Gazette under sections 10(1) and 10(3) of the Act of 1976, the land vested in the State Government. Thereafter, notice under section 10(5) of the Act was issued on 17.01.1994, which was duly served upon the tenure holder and the possession of the surplus land was taken on 27.03.1998 after adopting all procedures as per the law. Thereafter, the aforesaid surplus land was handed over to the Saharanpur Development Authority on 19.02.2002 for implementation of the Master Plan. In support of the submission, the possession letter dated 27.03.1998 has been annexed along with the counter affidavit to justify the taking over the possession much before the enforcement of the repeal Act of 1999.

We have heard Shri Madhusudan Dikshit, learned counsel for

the petitioners and learned standing counsel for the State – respondents and perused the material on record.

Learned counsel for the petitioners submits that the State Government has failed to establish that actual possession has been taken in terms of sections 10(5) and 10(6) of the Act, 1976. It is further submitted that the tenure holder has not handed over the possession of the declared surplus land to the Collector in terms of the notice under section 10(5) of the Act, which is evident from the material on record. He further submits that no proceedings, whatsoever, have been initiated against the tenure holder in terms of section 10(6) of the Act of 1976 as no pleading has been taken by the answering respondents in their counter affidavit that forcible possession has been taken over under section 10(6) of the Act of 1976. He further submits that in view of the said fact, the entire proceedings initiated against the petitioners stood abated in terms of section 3 of the Act of 1999 and the expression “deemed to have been acquired” or “deemed to have been vested” are not applicable in view of the aforesaid fact as the State has failed to establish that the actual possession has been taken over in view of sections 10(5) and 10(6) of the Act.

Learned counsel for the petitioner further submits that it is not the case of the respondents that the tenure holder has voluntarily surrendered the possession of the land in question. Thus, it was imperative that the possession should have been taken in terms of section 10(6) of the Act of 1976 and there is no pleading in the affidavit filed by the respondents that forcible possession was taken from the tenure holder and the land in question has been transferred in favour of the Saharanpur Development Authority on 19.02.2002 (as mentioned in paragraph no. 3 of the counter affidavit). It is further argued by the learned counsel for the petitioners that the possession memo does not bear the signatures of the tenure holder at the time of delivery of possession of the land in question. The said fact itself shows that the original tenure holder has not given possession voluntarily

pursuant to the notice under section 10(5) of the Act. Learned counsel for the petitioners further submits that in view of the fact that the land in question is still in possession of the petitioners and no compensation, whatsoever, has been paid, therefore, the proceedings stood abated when the repeal Act of 1999 came into force.

Sri Dikshit has placed reliance on the judgments of the Supreme Court in the case of *State of Uttar Pradesh v. Hari Ram* (2013) 4 SCC 280; *State of U.P. and another v. Vinod Kumar Tripathi and others* (Special Leave Petition (C) No. 16582 of 2014 decided with Special Leave Petition (C) No. 38922 of 2013, on 19th January, 2016); and the judgments of this Court in *State of U.P. and another v. Nek Singh* 2010 LawSuit (All) 3581; *Ram Chandra Pandey v. State of U.P. and others* 2010 (82) ALR 136; *Ehsan v. State of U.P. and another* (Writ C No. 21009 of 2012, decided on 08.10.2018); *Lalji v. State of U.P. and others* 2018 LawSuit (All) 1276: 2018 (5) ADJ 566; and *Yasin and others v. State of U.P. and others* 2014 (4) ADJ 305 (DB).

Rebutting the submissions of the learned counsel for the petitioners, learned standing counsel appearing for the State – respondents submits that the possession has been taken over by the State Government in accordance with law on 27.03.1998 and thereafter, the land in question was transferred in favour of Saharanpur Development Authority on 19.02.2002 and the stand taken by the learned counsel for the petitioners is of no consequence. In his submission, the writ petition lacks merit and deserves to be dismissed.

Learned Standing Counsel has placed reliance on the judgments of the Supreme Court in the cases of *State of Assam v. Bhaskar Jyoti Sarma and others* (2015) 5 SCC 321 and *State of U.P. and others v. Surendra Pratap and others* AIR 2016 SC 2712, and judgment of this Court in *Shiv Ram Singh v. State of U.P. and others* 2015 (5) AWC 4918.

We have summoned the original record and we have perused

the same. We find that the record no where indicates as to how possession was taken and what is the name of the witness in whose presence such possession was taken. There is no name indicated in the counter affidavit filed by the State. The signature of the tenure holder is also not there.

At this stage, before adverting to the submissions raised on behalf of the parties, it is quite relevant to reproduce the relevant provisions of the Act for proper appreciation of the controversy involved in the matter.

Sections 2(o), 2(q) and sub-sections (5) and (6) of Section 10 of the Act, 1976 are reproduced hereunder:

**"2(o) "urban land" means,--**

*(i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or*

*(ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat, but does not include any such land which is mainly used for the purpose of agriculture.*

*Explanation.--For the purpose of this clause and clause (q),--*

*(A) "agriculture" includes horticulture, but does not include--*

*(I) raising of grass,*

*(ii) dairy farming,*

*(iii) poultry farming,*

*(iv) breeding of live-stock, and*

*(v) such cultivation, or the growing of such plant, as may be prescribed;*

*(B) land shall not be deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the appointed day as for the purpose of agriculture:*

*Provided that where on any land which is entered in the revenue or land records before the appointed day as for the purpose of agriculture, there is a building which is not in the nature of a farm-house, then, so much of the extent of such land as is occupied by the building shall not be deemed to be used mainly for the purpose of agriculture:*

*Provided further that if any question arises whether any building is in the nature of a farm-house, such question shall be referred to the State Government and the decision of the State Government thereon shall be final;*

*(C) Notwithstanding anything contained in clause*

*(B) of this Explanation, land shall not be deemed to be mainly used for the purpose of agriculture if the land has been specified in the master plan for a purpose other than agriculture;"*

**"2(q)** *"vacant land" means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include--*

*(i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;*

*(ii) in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building; and*

*(iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building:*

*Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of live-stock, on any land situated in a village within an urban agglomeration (described as a village in the revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purposes of this clause."*

**"10(5)** *Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice."*

**"10(6)** *If any person refuses or fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary.*

*Explanation.--In this section, in sub-section (1) of section 11 and in sections 14 and 23, "State Government", in relation to--*

*(a) any vacant land owned by the Central Government, means the Central Government;*

*(b) any vacant land owned by any State Government and situated in the Union territory or within the local limits of a cantonment declared as such under section 3 of the Cantonments Act, 1924 (2 of 1924), means that State Government."*

Section 2(o) of the Act, 1976 defines "urban land" and Section 2(q) defines "vacant land". Section 6 of the Act, 1976 provides that owner of the land shall submit a statement giving detail of the vacant land. Section 8(1) enjoins that the competent authority shall get a survey of the land conducted and on the basis of the said survey a draft statement under sub-section (3) of

Section 8 of the Act, 1976 was required to be served upon the land owner calling for objection to the said statement within thirty days and the order is passed under sub-section (4) of Section 8 of the Act, 1976 and later a notification is issued under sub-section (1) of Section 10 for publication in the Gazette giving particulars of the vacant land. Thereafter another notice is published stating that the land shall be deemed to have been vested on the Government free from all encumbrances. Thereafter a notice under sub-section (5) of Section 10 of the Act, 1976 is issued calling upon the land owner to hand over possession of the land declared surplus. If the land owner fails to handover the possession voluntarily in response to the aforementioned notice, sub-section (6) of Section 10 of the Act, 1976 confers a power upon the competent authority to take forceful possession.

In the year 1999 the Parliament enacted the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short Act 15 of 1999). The said Act was adopted by the State of U.P. also by a notification dated 18.03.1999. It is apposite to reproduce Sections 3 and 4 of the Repeal Act.

**"3. Saving.--** (1) *The repeal of the principal Act shall not affect--*

*(a) the vesting of any vacant land under sub-section 10, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority;*

*(b) the validity of any order granting exemption under sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary;*

*(c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of Section 20.*

(2) *Where--*

*(a) any land is deemed to have vested in the State Government under sub-section (3) of Section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority; and*

*(b) any amount has been paid by the State Government with respect to such land then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.*

**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 11,12,13 and 14 of the principal Act in so far 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."*

In exercise of the powers under Section 35 of the Act, 1976 the State Government issued the Directions, 1983 known as 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). The direction no.3 is relevant for our purpose which is extracted below:

**"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 Num-ber	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*

.....  
.....”

In addition, the State Government has issued a Government Order on 29.09.2015 pursuant to the judgment of the Supreme Court in the case of Hari Ram (supra) and to avoid the unnecessary litigation the State Government has issued detailed directions in respect of the possession and abatement of the proceedings. The said Government Order reads as under:

“संख्या – 2228/आठ-6-15-124 यूसी/13

प्रेषक,

पनधारी यादव

सचिव,  
उत्तर प्रदेश शासन।  
सेवा में,  
जिलाधिकारी,  
गोरखपुर, वाराणसी, इलाहाबाद, लखनऊ, कानपुर  
आगरा, मेरठ, मुरादाबाद, अलीगढ़, बरेली, सहारनपुर।

आवास एवं शहरी नियोजन अनुभाग-6

लखनऊ: दिनांक 29 सितम्बर 2015

विषय- नगर भूमि (अधिकतम सीमा एवं विनियमन) निरसन अधिनियम, 1999 तत्कम में निर्गत शासनादेश तथा मा0 उच्चतम न्यायालय के निर्णय दिनांक 11.03.2013 के सम्बन्ध में।

महोदय,

उपयुक्त विषय पर मुझे यह कहने का निर्देश हुआ है कि भारत सरकार के अधिनियम संख्या-15/1999 दिनांक 18.03.1999 द्वारा नगर भूमि (अधिकतम सीमा एवं विनियमन) अधिनियम 1976 को निरसित करते हुए नगर भूमि (अधिकतम सीमा एवं विनियमन) निरसन अधिनियम 1999 प्राख्यापित किया गया जिसके क्रम में शासनादेश संख्या- 502/9- न0 भू0-99-21यू0सी0/99, दिनांक 31.03.1999 द्वारा उक्त निरसन अधिनियम को उत्तर प्रदेश राज्य में अंगीकृत किया गया। निरसन अधिनियम 1999 की धारा-3 में यह प्राविधान है कि मूल अधिनियम का निरसन निम्नलिखित को प्रभावित नहीं करेगा-

(1) (क) धारा-10 की उपधारा- (3) के अधीन ऐसी रिक्त भूमि का निहित होना, जिसका कब्जा राज्य सरकार या राज्य सरकार द्वारा इस निमित्त सम्यक रूप से अधिकशतक किसी व्यक्ति या सक्षम प्राधिकारी ने ले लिया है।

(ख) धारा- 20 की उपधारा- (1) के अधीन छूट देने संबंधी किसी आदेश या उसके अधीन की गयी किसी कार्यवाही की किसी न्यायालय के किसी निर्णय में उसके विरुद्ध किसी बात के होते हुए भी विधिमान्यता:

(ग) धारा- 20 की उपधारा- (1) के अधीन प्रदान की गयी छूट की शर्त के रूप में राज्य सरकार को किया गया कोई संदाय:

(2) जहां-

(क) मूल अधिनियम की धारा-10 की उपधारा (3) के अधीन किसी भूमि को राज्य सरकार में निहित होना मानी गयी है किन्तु जिसका कब्जा राज्य सरकार या राज्य सरकार द्वारा इस निमित्त सम्यक रूप से प्राधिकृत किसी व्यक्ति या सक्षम प्राधिकारी द्वारा नहीं लिया गया : और

(ग) ऐसी किसी भूमि के बाबत जिसके लिए राज्य सरकार द्वारा किसी रकम का संदाय कर दिया गया है तब तक प्रत्यावर्तित नहीं की जाय और जब तक कि राज्य सरकार को संदाय की गयी रकम का यदि कोई हो, प्रतिदाय नहीं कर दिया जाता।

उक्त के क्रम में शासनादेश संख्या-777/9न0भू0-135 यू0सी0/99 दिनांक 09.02.2000, शासनादेश संख्या-1623/ 9-न0भू0-2000 दिनांक 09.08.2000 एवं शासनादेश संख्या- 190/9-आ-6-2001 दिनांक 24.01.2001 निर्गत किये गये जिसमें मुख्य रूप से यह व्यवस्था की गई कि मूल अधिनियम धारा

—8 (4) के अन्तर्गत जो भूमि रिक्त घोषित की गई थी और धारा-10 (3) के अन्तर्गत राज्य में निहित हो चुकी थी एवं धारा-10 (5) की कार्यवाही का आदेश हो चुका था परन्तु इस भूमि पर राज्य सरकार का कब्जा प्राप्त नहीं हो सका था, ऐसी भूमि के सम्बन्ध में मूल भूधारक को अदा की गई धनराशि भूधारक द्वारा वापस करने पर भूमि मूल भूधारक को प्रत्यावर्तित की जा सकती है किन्तु अदा की गई धनराशि भू-धारक द्वारा वापस न करने की दशा में भूमि पर कब्जा किये जाने के सम्बन्ध में विधि अनुसार अग्रिम कार्यवाही अमल में लायी जाय। यह भी व्यवस्था की गई कि जिस भूमि के सम्बन्ध में धारा-10 (5) की कार्यवाही के उपरान्त धारा-10 (6) की कार्यवाही पूर्व हो चुकी है और भूमि पर राज्य सरकार द्वारा कब्जा लिया जा चुका है वह सरप्लस भूमि अन्तिम रूप से राज्य सरकार में निहित मानी जायेगी।

3. नगर भूमि सीमारोपण— गोरखपुर, वाराणसी, इलाहाबाद, लखनऊ, कानपुर, आगरा, मेरठ, मुरादाबाद, अलीगढ़, बरेली, सहारनपुर में लम्बित अर्बन सीलिंग प्रकरणों का समुचित रूप से निस्तारण ने होने की स्थिति में भू-धारकों/वादियों द्वारा मा0 उच्च न्यायालय में अधिक संख्या में रिट याचिकायें योजित की जा रही हैं। नगर बस्ती कार्यालयों द्वारा रिट याचिकाओं में विभागीय पक्ष समयान्तर्गत साक्ष्यों सहित प्रबलता से प्रस्तुत न किये जाने के कारण मा0 न्यायालय द्वारा पारित आदेशों के क्रम में शासन को असमंजसपूर्ण स्थिति का सामना करना पड़ रहा है।

4. अर्बन सीलिंग के अन्य प्रकरण में राज्य सरकार द्वारा मा0 उच्चतम न्यायालय नई दिल्ली में विशेष अनुमति याचिका संख्या-12960/2008 उत्तर प्रदेश राज्य बनाम हरीराम योजित की गयी। कालान्तर में अन्य जनपदों के अर्बन सीलिंग से संबंधित प्रकरणों में योजित विशेष अनुमति याचिकायें उक्त विशेष अनुमति याचिका से क्लब की गयी। उक्त विशेष अनुमति याचिका संख्या-12960/2008 तथा उससे क्लब अन्य विशेष अनुमति याचिकाओं में पारित मा0 उच्चतम न्यायालय के निर्णय दिनांक 11.03.2013 में अर्बन सीलिंग से संबंधित प्रकरणों में मार्गदर्शक सिद्धान्त प्रतिपादित किये गये हैं। निर्णय दिनांक 11.03.2013 का महत्वपूर्ण एवं क्रियात्मक अंश निम्नवत है:-

प्रस्तर— 39

*The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the land owner or holder can claim the benefit of Section 3 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 3 of the Repeal Act.*

प्रस्तर—40

*We, therefore, find no infirmity in the judgment of the High Court and the appeal is, accordingly dismissed so also the other appeals. No documents have been produced by the State to show that the respondents had been dispossessed before coming into force of the Repeal Act and hence, the respondents are entitled to get the benefit of Section 3 of the Repeal Act. However, there will be no order as to cost.*

5. नगर भूमि (अधिकतम सीमा एवं विनियमन) निरसन अधिनियम, 1999 में विहित प्राविधान तथा तत्कम में निर्गत शासनादेश दिनांक 09.02.2000, शासनादेश दिनांक 09.08.2000 एवं शासनादेश दिनांक 24.01.2001 स्वतः स्पष्ट है। विशेष अनुमति याचिका संख्या-12960/2008 उत्तर प्रदेश राज्य बनाम हरीराम तथा उससे क्लब अन्य विशेष अनुमति याचिकाओं में पारित मा0 उच्चतम न्यायालय के निर्णय दिनांक 11.03.2013 में उल्लिखित सिद्धान्त/आदेश भी स्वतः स्पष्ट हैं।

6. कृपया नगर भूमि (अधिकतम सीमा एवं विनियमन) निरसन अधिनियम, 1999 तथा उक्त शासनादेश दिनांक 09.02.2000, शासनादेश दिनांक 09.08.2000 एवं शासनादेश दिनांक 24.01.2001 में विहित व्यवस्था, विशेष अनुमति याचिका संख्या-12960/2008 उत्तर प्रदेश राज्य बनाम हरीराम में पारित मा0 उच्चतम न्यायालय के निर्णय दिनांक 11.03.2013 में उल्लिखित सिद्धान्तों/आदेशों के आलोक में लम्बित प्रकरणों में स्महंस पदहतमकपमदजे देखते हुए आवश्यक कार्यवाही की जाय।

भवदीय  
ह0 अपठनीय  
(पनधारी यादव)  
सचिव

संख्या एवं दिनांक तदैव।

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

1. निदेशक नगर भूमि सीमारोपण, उ0प्र0 जवाहर भवन- लखनऊ
2. सक्षम प्राधिकारी नगर भूमि सीमारोपण गोरखपुर, वाराणसी, इलाहाबाद, लखनऊ, कानपुर, आगरा, मेरठ, मुरादाबाद, अलीगढ़, बरेली, सहारनपुर।
3. मुख्य स्थायी अधिवक्ता मा0 उच्च न्यायालय, इलाहाबाद
4. गार्ड फाईल।

आज्ञा से

(कल्लू प्रसाद द्विवेदी) उप सचिव।”

In view of the aforesaid provisions, referred to above, the question, which emerges to be decided by this Court, is as to whether in the present set of fact ceiling proceedings shall be abated in view of the sub-section (2) of section 3 of the Act of 1999.

The Supreme Court in various cases has taken the view that if at the time of the enforcement of the Repeal Act the possession has not been taken by the State in terms of sub-section (5) or sub-section (6) of Section 10 of the Act, 1976, then the

proceedings under Section 1976 shall be abated.

The Supreme Court has elaborately considered the scope of sub-section (5) and sub-section (6) of Section 10 of the Act, 1976 and the directions framed by the State Government under Section 35 of the Act, 1976 and the directions framed by the State Government under U.P. Urban Land Ceiling (Taking of Possession, Payment of Amount and Allied Matters) Direction 1983 in the case of *State of U.P. v. Hari Ram* (2013) 4 SCC 280. The relevant part of the judgment of the Supreme Court reads thus:

**"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.*<sup>13</sup>, 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. Kalyan*<sup>14</sup> 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. Charlton*<sup>15</sup> : *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."*

The case of Hari Ram (supra) was followed by the Supreme Court in the case of *Gajanan Kamlya v. Addl. Collector & Comp. Auth.& Ors.* JT 2014 (3) SC 211. The relevant part of the judgment is extracted below:

**"13.** *We have, therefore, clearly indicated that it was always open to the authorities to take forcible possession and, in fact, in the notice issued under Section 10(5) of the ULC Act, it was stated that if the possession had not been surrendered, possession would be taken by application of necessary force. For taking forcible possession, certain procedures had to be followed. Respondents have no case that such procedures were followed and forcible possession was taken. Further, there is nothing to show that the Respondents had taken peaceful possession, nor there is anything to show that the Appellants had given voluntary possession. Facts would clearly indicate that only de jure possession had been taken by the Respondents and not de facto possession before coming into force of the repeal of the Act. Since there is nothing to show that de facto possession had been taken from the Appellants prior to the execution of the possession receipt in favour of*

*MRDA, it cannot hold on to the lands in question, which are legally owned and possessed by the Appellants. Consequently, we are inclined to allow this appeal and quash the notice dated 17.2.2005 and subsequent action taken therein in view of the repeal of the ULC Act. The above reasoning would apply in respect of other appeals as well and all proceedings initiated against the Appellants, therefore, would stand quashed."*

In *Special Leave Petition (C) No.17799 of 2015*, which was also taken up with *Special Leave Petition (C) No. 38922 of 2013, State of U.P. and another v. Vinod Kumar Tripathi and others*, vide order dated 19<sup>th</sup> January, 2016 the Supreme Court has held as under:

*"As could be seen from the original record, possession of the land in question is taken neither by the competent authority or his authorised representative by following the procedure as laid down under Section 10(5) and Section 10(6) of the Urban Land (Ceiling & Regulation) Act, 1976 (now repealed), therefore, the impugned order cannot be interfered. Hence, the special leave petition is liable to be dismissed and is hereby dismissed accordingly."*

This Court in *State of Uttar Pradesh and another v. Nek Singh* 2010 LawSuit (All) 3581, has considered extensively the procedure which has to be followed for taking possession from the land holder. The relevant paragraph of the judgment reads as under:

*"9. Otherwise also, the statutory benefit of the Repealing Act is also available to the landholder-respondent in the fact-situation of the matter, as the taking of the "possession" in the present case was neither de jure nor de facto. The term "possession" as per sections 3 and 4 of the Repealing Act and section 10(6) of the U.L.C.R Act means and implies the lawful "possession" after "due compliance of the statutory provisions". In State of U.P v. Boon Udhyog (P) Ltd. . 1999 4 AWC 3324 para 16, a Division Bench of this Court has held that where possession has been taken, its legality is to be decided on merits. Similarly, another Division Bench of this Court in State of U.P v. Hari Ram . 2005 60 ALR 535., has held that "in case possession is purported to be taken under section 10(6) of the Act, still Court is required to examine whether "taking of such possession' is valid or invalidated on any of the considerations in law. If Court finds that one or more grounds exist which show that the process of possession, though claimed under section 10(5) or 10(6) of the Act is unlawful or vitiated in law, then such possession will have no reorganization in law and it will have to be ignored and treated as of no legal consequence". On examination of the facts on record, it is crystal clear that the possession allegedly taken on 23.1.1986 was unlawful for plurality of reasons which are--Firstly, the possession allegedly taken on 23.1.1986 was pursuant to the CA's order dated 19.12.1985 under section 10(5) which was addressed to deceased Dhan Singh and, therefore, it was nullity and non est factum having no legal*

*consequence and the possession taken on the basis was also void. Secondly, as per the Government Order dated 9.2.1977 issued by the State Government (filed with Supplementary Counter Affidavit and taken on record), the Collector was alone authorised under section 10(6) of the U.L.C.R Act to take possession on behalf of the State Government, but in the instant case, the possession was taken by the Tehsil officials and not by the Collector or the Additional Collector or by the Competent Authority himself. The Collector could not have delegated his authority to anyone else as a delegate could not have further delegated in view of the maxim--Delegatus non potest delegare. As such, the taking of possession by the Tehsil Officials was per se illegal being not as per the authorisation dated 9.2.1977 and, therefore, had no consequences. Thirdly, the possession was taken on 23.1.1986, while the alleged affixation of the order dated 19.12.1985 under section 10(5) of the U.L.C.R Act was made on 9.1.1986 by the process-server and, as such, the possession was taken on 23.1.1986 only after the expiry of 14 days instead of the statutory period of 30 days as enjoined in section 10(5) of the U.L.C.R Act. Fourthly, the possession certificate (Annexure-7 to the WP) did not mention the factum of 'taking' possession, and it merely stated the factum of the transfer of possession to the State Government. Needless to say that unless the possession was first 'taken', the same could not have been 'transferred' to the State Government. The plain reading of the possession certificate does not show taking of possession from the occupants and, therefore, it cannot be termed as a possession certificate under section 10(6). Fifthly, the stand of the State Government before the Appellate Authority was that the State Government has 'taken over only symbolic possession over the plots in question and the same cannot be treated physical possession'. If it be so, then also, it would not be deemed to be 'possession' within the meaning of section 10(6) of the U.L.C.R Act which meant actual and physical possession and not symbolic one."*

The similar view has also been expressed by this Court in *Ram Singh v. State of U.P. and others* 2013 (7) ADJ 662 (DB). The relevant part of the judgment is extracted below:

*"36. It is a matter of common notice and also matter of record that large number of cases which earlier came before this court and were decided and even at present also on getting the record it is clear that proceedings are either without any notice on the land holders or after the notice to the dead person or after the notice but not the proper service stating the name of the witnesses and their details and in most of the cases proceedings did not progress after the notice under Section 10(5) of the Urban Land (Ceiling and Regulation) Act 1976 and if there is notice under Section 10(6) of the Act it again do not contain proper service with the name/identity of the witnesses. For taking Dakhal document demonstrates the authority signing the paper is not competent. The emphasis on the word 'actual physical possession' has some special meaning and thus that rules out the paper possession and it is for this reason it has been said that mere entry will not reflect taking of actual physical possession."*

In the case of *State of U.P. Thru Secy Avas Avam Shahri Niyojan v. Ruknuddin and others* (Writ-C No. 54830 of 2011, decided on 03.10.2018: LawSuit(All) 3470), the Court has

observed as under :

*"We having gone through the records and we find that the possession memo which was prepared on 22/23.03.1998, no where indicates as to how possession was taken and what is the name of witness in whose presence such possession was taken. There is no name indicated in the writ petition filed by the State or even in the rejoinder affidavit. The name of the Lekhpal in whose presence the alleged possession is said to have been taken has not been mentioned and the printed proforma of the possession memo is blank to that effect. The question as to how the factum of taking actual physical possession has been established by the State was discussed by a Division Bench in the case of **Mohd. Islam & 3 Others Vs. State of U.P.** in Writ Petition No. 15864 of 2015 decided on 4th December, 2017. The said decision was quoted with approval by a Division Bench in the case of **Rati Ram Vs. State of U.P. & Others 2018 (4) ALJ 338** paragraph no. 8 as follows:-*

*"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."*

The decisions in the case of *Bhaskar Jyoti Sarma* (2015) 5 SCC 321 and a Division Bench of this Court in *Shiv Ram Singh* 2015 (5) AWC 4918 have been relied upon by the learned standing counsel. Both the judgments have been considered by a Division Bench of this Court in the case of *Mohammad Suaif and another v. State of U.P. and others* 2019 (5) ADJ 764 (DB) and *Lalji* (supra).

The case of *Shiv Ram Singh* (supra), the petitioner therein had challenged the order passed by the District Magistrate holding that the possession of the land declared surplus has been taken on 25<sup>th</sup> June, 1993, much before Repeal Act came into force. Hence, it was found that he was not entitled to the benefit of the provisions of Section 3 (2) of the Repeal Act. In the said case, the notice under Section 10(1) was issued on 15<sup>th</sup> May, 1985, thereafter on 02<sup>nd</sup> June, 1986 a notification under Section 10(3) was issued and published in the official gazette, and on 25<sup>th</sup> February, 1987 a notice under Section 10(5) of the Act, 1976 was issued. The respondents-State had taken a stand that the possession was taken on 25<sup>th</sup> June, 1993 pursuant to the notice dated 25<sup>th</sup> February, 1987 i.e. prior to enforcement of the Repeal Act and in the revenue record the name of the State was mutated. The petitioner therein had earlier approached the Court by means of Writ Petition No. 47279 of 2002 claiming that he is still in possession over the land which was declared surplus, hence after the Repeal Act the possession cannot be taken over from him. The

said writ petition was disposed of by this Court by issuing a direction upon the District Magistrate to consider his representation. The District Magistrate, after furnishing opportunity to the petitioner, by an order dated 10<sup>th</sup> May, 2007 held that the possession has already been taken on 25<sup>th</sup> June, 1983, hence the petitioner would not be entitled to the benefit of the Repeal Act. The petitioner challenged the said order of the District Magistrate after two years in July, 2009. In the meantime in the year 2008 the construction of a Sewage Treatment Plant (STP) for treating 210 MLD of sewage was commenced. The Jal Nigam, in whose favour the land was transferred, filed a counter affidavit in the said writ petition and took the stand that by the time the writ petition was filed, nearly 65% of the work had been completed at a cost of Rs.73 crores and the petitioner was fully aware of the said facts but he did not file the writ petition for two years. In the light of those peculiar facts the Court did not interfere. Moreover, the Court has also found that the procedure for taking possession was followed by the administration. The District Magistrate after affording opportunity to the petitioner has recorded a finding that the possession was taken on 25<sup>th</sup> June, 1993.

We have carefully gone through the judgment of Shiv Ram Singh (*supra*) and we find that the said judgment is distinguishable for the reasons recorded above.

In the case of Bhaskar Jyoti Sarma (*supra*) the land owner has not denied the fact that possession was taken from him by the State before enactment of the Repeal Act. In view of the admitted fact the Supreme Court refused to examine the matter that whether the possession was taken forcefully or illegally. Once possession was taken by the State and land vested in the State Government, the benefit of Section 4 of the Repeal Act shall not be applicable. Hence, the said case is distinguishable as in the present case the main issue raised by the petitioners is that they are still in physical possession and the State has never taken

possession from them.

Keeping in the mind the principle laid down by the Supreme Court and this Court, as indicated in the authorities referred herein-before, we find that in the counter affidavit the State has taken a very general and vague stand about the possession. In Paragraph-3 of the counter affidavit of the State the only averment made in this regard is that the notice under Section 10(5) of the Act, 1976 was issued on 27.01.1994. It is also averred therein that "*thereafter the State Government obtained possession on the surplus vacant land of 8246.00 square meters on 27.03.1998, the possession was obtained in accordance with law*". 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.

In addition to above, as discussed above, there is no material on the record to demonstrate that actual possession was handed over to the Saharanpur Development Authority except a Dakhalnama wherein the land has been shown to be agricultural land. But except bald statement no other material is on the record to show that any construction has been made. In any view of the matter, if the possession has not been taken in terms of Sections 10(5) and 10(6) of the Act, 1976, the petitioners are entitled for the benefit under Sections 3 and 4 of the Repeal Act.

In view of the above, we find that the physical possession of

the land in question was never taken from the petitioners. They are still in physical possession over the land in question. For all the reasons stated above, we find that the ceiling proceedings stood lapsed and the petitioners are entitled for the land in question which has been declared surplus.

With the aforesaid observations and directions, the writ petition is allowed.

No order as to costs.

**Order Date :-13/11/2019**

*Amit Mishra*