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Reserved

Case :- WRIT - C No. - 26861 of 2017

Petitioner :- Raju
Respondent :- State Of U.P. Thru Secy. And 2 Others
Counsel for Petitioner :- Raj Karan Yadav
Counsel for Respondent :- C.S.C.,Ravi Prakash Pandey,Vivek Verma

Hon'ble Pradeep Kumar Singh Baghel,J.
Hon'ble Rohit Ranjan Agarwal,J.

(Delivered by Hon.Pradeep Kumar Singh Baghel,J.)

The petitioner has laid challenge in the present writ petition the proceedings initiated under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (for short Act No. 33 of 1976)[1] on the ground that the said proceedings stood abated in terms of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short Act 15 of 1999)[2] and for quashing of the order dated 02.05.2017 passed by the District Magistrate,Varanasi.

Brief factual matrix may be noted. The petitioner claims that he is owner of the araji nos. 31/1 area 11 decimal, 86/1 area 26 decimal, 86/4 area 20 decimal, 32/2 area ¾ decimal. He claims to have half share out of total araji. The said land was within the municipal limit of the Varanasi and the land was recorded as agricultural land but being the land within the municipal limit the provisions of the Act, 1976 were made applicable. The petitioner submitted ceiling return/statement under sub-section (1) of Section 6 of the Act No.33 of 1976 Act, which was registered as case no.915/7035/76-77 (State Vs. Lallan) and case no.916/7035/76-77 (State v. Bachau), Village Ranipur, District Varansari. It is stated that without serving the notice under Section 8(3) of the Act,1976 illegal order was passed on 27.10.1978 under Section 8(4) of the Act, 1976

1 Act, 1976
2 Repeal Act

and out of 3218.54 square meter land 218.54 square meter land was declared surplus. Thereafter a notice is said to be issued under sub-section (5) of Section 10 of the Act, 1976, it bears the date 15.02.1982. The petitioner has averred in paragraph 7 of the writ petition which has been repeated in other paragraphs also that the said notice dated 15.02.1982 was never served upon the petitioner and as such the land holders neither surrendered the land to the State nor the respondents have ever taken actual possession from the petitioner.

It is stated that the petitioner is still in physical and cultivatory possession of the land in question and since the order under sub-section (4) of Section 8 of the Act, 1976 was never served upon the land holder, therefore, he could not file any appeal under Section 33 of the Act, 1976.

The petitioner has further averred that no proceeding under sub-section (5) or sub-section (6) of Section 10 of the Act,1976 has been initiated, therefore, after repeal Act came into force respondents have no right to take possession from the petitioner.

It is worthwhile to mention that in the meantime the Act, 1976 was repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Act 15 of 1999). The said Act was adopted by the State of U.P. whereunder subject to the certain conditions mentioned in the provisions of the Act the pending proceedings shall be lapsed. That one of the relief sought in the writ petition is that to declare that the proceedings initiated under the Act, 1976 is abated in terms of the Repeal Act.

The petitioner had earlier approached this Court by way of **Writ Petition No.6757 of 2017, Raju v. State of U.P. & 2 Others**. The said writ petition was disposed of on 13.02.2017 with a direction upon the respondent no.2 to consider the fact relating to the actual physical possession of the plot in question and such an enquiry be undertaken at first instance by the District Magistrate. In

pursuance of the order of this Court dated 13.02.2017 the petitioner had submitted detailed representation on 23.02.2017, wherein he has asserted that he is still in physical possession and no forceful possession has been taken under sub-section 6 of Section 10 of Act, 1976. It has also been averred that the petitioner never surrendered voluntarily his land after the alleged notice under sub-section (5) of Section 10 of the Act, 1976 was issued to him. The District Magistrate has rejected the representation of the petitioner by a cryptic order only on the ground that the petitioner's land has been declared surplus vide order date 27.10.1978 under sub-section (4) of Section 8 of the Act, 1976 and 218.54 square meter has been declared surplus. Declaration under sub-section (1) and sub-section (3) of Section 10 of Act, 1976 was made in official gazette and after that the information in terms of sub-section (5) of Section 10 of Act, 1976 was issued on 15.02.1982 and the compensation amount Rs.1092.70 was determined on 21.08.1998 and the possession to the Varanasi Development Authority has been handed over before the Repeal Act came into force and accordingly the representation of the petitioner has been rejected. The order dated 02.05.2017 passed by the District Magistrate is also under challenge in the instant writ proceedings.

A counter affidavit has been filed by the State. The stand taken in the counter affidavit is that Lallan and Bachau, sons of Mitlu (father of the petitioners) had filed detailed documents under sub-section (1) Section 6 of Act, 1976 and a notice dated 21.10.1978 was issued under sub-section (3) of Section 8 of the Act, 1976 against which no objection was filed. Thereafter the competent authority on 27.10.1978 has passed an order under sub-section (4) of Section 8 of the Act, 1976 and declared 218.54 square meter as surplus vacant land. It is further averred that the necessary publication in terms of sub-section (1) and sub-section (3) of Section 10 of the Act, 1976 was issued and after issuance of the Government Order dated 26.12.1978 and 22.03.1980 a notice under sub-section (5) of Section 10 of the Act, 1976 was issued to the petitioner for delivering the possession of

the land and that was done prior to the Repeal Act came into force.

A short counter affidavit was filed on behalf of the Varanasi Development Authority wherein it is clearly mentioned that the petitioner's land has not been transferred to the Varanasi Development Authority. The said counter affidavit was sworn by the Tehsildar, Varanasi Development Authority wherein it has been averred that the Competent Officer has not transferred any surplus land of plot nos. 3/6, 18/1, 18/9 and 18/11 at Mauja Lakhanpur, Pargana Dehat, Tehsil Amanat, District Varanasi to the Varansari Development Authority. It is averred that neither the disputed land has been transferred to the Varansari Development Authority nor the same is in its possession at present.

(emphasis supplied)

In the rejoinder affidavit the petitioner has denied the allegation made in the counter affidavit filed on behalf of the State that the notice under sub-section (5) of Section 10 of the Act, 1976 has never been served upon the petitioner and no proceeding under-section (6) of Section 10 has been held. It is also stated that the State in its counter affidavit has not given the date of peaceful possession or actual physical possession taken by the State. It is also averred that the possession of the land in dispute has not been taken by the State nor the petitioner has voluntarily handed over the possession of his land which was declared surplus land to the State.

We have heard Sri Raj Karan Yadav, the learned counsel for the petitioner, Sri M.C.Chaturvedi, learned Senior Advocate assisted by Sri R.P. Pandey, learned counsel for the Varanasi Development Authority and the learned Standing Counsel and perused the materials on record.

The learned counsel for the petitioner has submitted that the petitioner has never handed over the possession of the disputed land under sub-section (5) of Section 10 of Act, 1976 to the State and no forceful possession has been taken from the petitioner under sub-

section (6) of Section 10 of the Act,1976.

It has been vehemently urged that the petitioner is still in physical and cultivatory possession of the land and he has never handed over the possession to the authority. He further submits that in view of the fact that the petitioner is still in possession of the land and no forceful possession has not been taken over by the State, the proceedings under under the Act, 1976 stood abated in terms of sub-section 2(a) of Section 3 of the Repeal Act. Lastly, he has urged that the Varanasi Development Authority in its counter affidavit has clearly admitted that the land in question has never been transferred to it. Thus, a false statement has been made by the State in its counter affidavit that the possession was handed over to the Varanasi Development Authority. He further submitted that the State in its counter affidavit has not disclosed the date when the possession was taken.

The learned counsel for the petitioner has placed reliance on the judgment of the Supreme Court in the case of **State of U.P. v. Hari Ram**[3], **Lalji v. State of U.P. and another**[4], **Yasin and others v. State of U.P. and others**[5], and **Ram Chandra Pandey v. State of U.P. and others**[6],

Learned Standing Counsel submitted that after the notification made under sub-section (1) of Section 10 and sub-section (3) of Section 10 of the Act, 1976 the surplus land declared by the competent authority stood vested with the State and in the revenue records also the name of the State was recorded. He has placed reliance on a judgment of the Supreme Court in the case of **State of Assam v. Bhaskar Jyoti Sharma and Others**[7], and Shiv

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3 (2013) 4 SCC 280

4 2018 LawSuit (All) 1276:2018(5) ADJ 566

5 2014(4) ADJ 305(DB)

6 2010 (82) ALR 136.

7 2015 (5) SCC 321

Ram Singh Vs. State of U.P. & Others[8],.

We have summoned the original record in the matter and the learned Standing Counsel has stated that in this batch of writ petitions there is no original possession memo in the original record. He also failed to point out in the original record which indicates that after taking possession from the petitioner it was handed over to the Varanasi Development Authority.

From the record it is also evident that no proceedings under sub-section (6) of Section 10 of the Act, 1976 has been taken.

Before adverting to the submissions raised by the learned counsel for the parties it would be apposite to refer relevant provisions of the Act, 1976.

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. For the sake of convenience,

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8 2015 (5) AWC 4918

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."*

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."

It is significant to mention that 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 possess-ion	Case Num-ber	Date of Notifi-cation under Secti-on 10(3)	Land to be acqui-red village Moha-li	Date of taking over posse-ssion	Remarks	Signature of compete-nt 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

Location	*Khasra No. identification*	*Area*	*Remarks*
1	*2*	*3*	*4*

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, अलीगढ, बरेली,
सहारनपुर।

आवास एवं शहरी नियोजन अनुभाग–6

लखनऊः दिनांक 29 सितम्बर 2015

विषय– नगर भूमि (अधिकतम सीमा एवं विनियमन) निरसन अधिनियम, 1999 ततक्रम में निर्गत शासनादेश तथा मा0 उच्चतम न्यायालय के निर्णय दिनांक 11.03. 2013 के सम्बन्ध में।

———————

महोदय,

उपयुर्क्त 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 अधिकश्तक 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 विरूद्ध किसी बात के होते हुए भी विधिमान्यताः

(ग) धारा– 20 की उपधारा– (1) के अधीन प्रदान की गयी छूट की शर्त के रूप मे राज्य सरकार को किया गया कोई संदायः

(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 नही 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 नही की जाय और जब तक कि राज्य सरकार को संदाय की गयी रकम का यदि कोई हो, प्रतिदाय नही 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 जिसमे मुख्य रूप से यह व्यवस्था की गई कि मूल अधिनियम धारा –8 (4) के अन्तर्गत जो भूमि रिक्त घ ोषित 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 नही हो सका था, ऐसी भूमि के सम्बन्ध मे 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 मे विधि अनुसार अग्रिम कार्यवाही अमल मे 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, अलीगढ, बरेली, सहारनपुर में लम्बित अर्बन सीलिंग प्रकरणों का समुचित रूप से निस्तारण ने होने की स्थिति मे भू–धारकों/वादियों द्वारा मा0 उच्च न्यायालय में अधिक संख्या में रिट याचिकायें योजित की जा रही है। 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 उच्चचम न्यायालय नई दिल्ली में विशेष अनुमति याचिका संख्या–12960/2008 उत्तर प्रदेश राज्य बनाम हरीराम योजित की गयी। कालान्तर मे अन्य जनपदों के अर्बन सीलिंग से संबधित प्रकरणों मे 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 मे अर्बन सीलिंग से संबधित प्रकरणों मे मार्गदर्शक सिद्धान्त प्रतिपादित किये गये हैं। निर्णय दिनांक 11.03.2013 का महत्वपूर्ण एवं क्रियात्मक अंश निम्नवत हैः–

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 तत्क्रम 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 मे स्मइंस 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, अलीगढ, बरेली, सहारनपुर।

3. मुख्य स्थायी अधिवक्ता मा0 उच्च न्यायालय, इलाहाबाद

4. गार्ड फाईल।

आज्ञा से

(कल्लू प्रसाद द्विवेदी)

उप सचिव।"

Now, the question before us is whether in present set of facts the proceedings shall abate in view of sub-section (2) of Section 3 of the Act, 1999. The issue regarding the abatement of the Urban Land Ceiling Proceeding in terms of sub-section (2) of Section 3 of the Repeal Act fell for consideration before the Supreme Court in some of the cases and in a large number of the cases in this Court. The law laid down in the unbroken line of the judgments are 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.

In the case of **Hari Ram (supra)** 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. 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.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."*

The case of **Hari Ram (supra)** was followed by the Supreme Court in the case of **Gajanan Kamlya v. Addl. Collector & Comp. Auth.& Ors.**[9]. 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*

9 JT 2014 (3) SC 211

> *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 19th 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**[10], 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*

10 2010 LawSuit (All) 3581

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**[11]. 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*

11 2013 (7) ADJ 662 (DB)

> *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**[12], 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:*

12 Writ-C No. 54830 of 2011, decided on 03.10.2018: LawSuit(All) 3470

"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."*

Applying the aforesaid principle in the present case, we find that there is no possession memo on the record. In the counter affidavit also copy of the possession memo has not been enclosed. The date when the possession has been taken either under sub-section (5) or sub-section (6) of Section 10 of the Act, 1976 has not been mentioned in any of the affidavit filed by the State or the Varanasi Development Authority. Thus, it is evident that the averments made by the petitioner in the writ petition that he is still in possession

acceptance.

In addition, to the above the Varanasi Development Authority in its short counter affidavit has categorically stated that the State has not handed over the surplus land to it. Paragraph nos. 4 and 5 of the counter affidavit filed by the Varanasi Development Authority are extracted below:

> *"4. That it is pertinent to state here that a perusal of relevant record reveals that the Competent Officer, Urban Land Ceiling, Varanasi has not transferred any surplus land of plot nos. 3/6, 18/1, 18/9, 18/11 at Mauja Lakhanpur, Pargana Dehat, Tehsil Amanat, District Varanasi to the Varanasi Development Authority, Varanasi till date.*
>
> *5. That it is therefore reiterated that the aforesaid land in dispute has neither been transferred to the Varanasi Development Authority nor the same is in its possession at present."*

From the above quoted paragraphs of the counter affidavit filed by the Varanasi Development Authroity it is clearly established that the possession of the plots in question has not been handed over to the Varanasi Development Authority. The statement made in the counter affidavit filed by the State authorities in this regard is incorrect. From the pleadings of the State and the submissions of the learned Standing Counsel it appears to us that the State authorities and the competent authorities are under impression that after the notification under Section 10(3) of the Act,1976 the land in question stands vested in the State, hence, the Repeal Act will have no application.

We do not agree with the submission of the learned Standing Counsel that the land is vested in the State irrespective of the physical possession taken by the respondents or not. If the proposition is accepted then the sub-section 2(a) of Section 3 of the Repeal Act shall be redundant which clearly provides that if the land is deemed to have been vested in the State under sub-section (3) of Section 10 of the

principal Act but possession of which has not been taken over by the State Government, such land shall not be restored unless the amount paid if any, has been refunded to the State Government.

In the counter affidavit filed by the respondents there is no averment that the compensation has been paid to the petitioner.

The averments made by the petitioner that it has not surrendered the land to the respondents and they have not taken possession from him has not been effectively denied in the counter affidavit. It has also been stated that the petitioner is in actual possession and no proceeding under sub-section (5) and sub-section (6) of Section 10 of the Act, 1976 has been initiated. Along with the counter affidavit only three documents have been brought on record, notice under sub-section (4) of Section 8 of the Act, 1976, notice under sub-section (5) of Section 10 of the Act, 1976 and the letter sent by the competent authority to the Vice-Chairman of the Varanasi Development Authority dated 6/12.05.1998. This communication simply mentions that the possession was handed over to the Varanasi Development Authority but no possession memo has been enclosed. Moreover, when there is no document to support that the possession was taken from the petitioner by the State authorities in accordance with law then simply on the basis of a communication sent by the competent authority to the Vice-Chairman, Varanasi Development Authority to transfer the possession is not a compliance in terms of of sub-section (5) and sub-section (6) of Section 10 of the Act,1976. As discussed above, in the counter affidavit there is no averment that the petitioner was given compensation. Moreover, the communication of the competent authority to the Vice-Chairman, Varanasi Development Authority is not correct as the Varanasi Development Authority in its counter affidavit, as discussed above, has clearly stated that the surplus land has not been transferred to it.

As regards the judgment in the case of **State of Assam (supra)** it was admitted by the land holder therein that the actual physical possession of the land in question was taken over by the

State on 07.12.1991. The judgment of the **State of Assam (supra)** was considered by a Division Bench of this Court in the case of **Lalji v. State of U.P. & 2 Others**[13],. The Court has held as under:

> ***[29]***. *Faced with a situation where respondents could not place even an iota of evidence showing actual physical possession of disputed land by respondent, learned Standing Counsel sought to rely upon Supreme Court judgment in State of Assam Vs. Bhasker Jyoti Sharma & Ors. 2015 (5) SCC 321 and contended that irrespective of any defect in notice under Sections 10(5) or 10(6) of Act, 1976, if possession has been taken in any manner, Repeal Act 1999 will have no application.*
>
> **** *** ****
>
> ***[37]***. *We may also mention at this stage that except bare averment that disputed land was transferred to ADA by competent Authority, no material has been placed on record about transfer of possession to ADA and infact nothing has been placed on record even to show that de facto possession of land in dispute before or after Repeal Act, 1999 is with ADA. ADA has also not placed on record anything to show that land in dispute is in its actual physical possession and in absence thereof, we had no occasion to require petitioner to prove, how de facto possession of land in dispute came in the hands of ADA. With regard to possession of land in dispute, except bare averments, nothing has been placed on record. It appears that respondents were under impression that once notification under Section 10(3) has been issued, land in dispute vested in 'State' and thereafter, irrespective of fact whether actual physical possession is taken by respondents or not, land owner would cease to have any right and Repeal Act, 1999 will have no application though this assumption on the part of respondents, as we have already discussed, stood negated by Court in State Vs. Hari Ram."*

In the case of **Shiv Ram Singh (supra)** the petitioner has

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challenged the proceedings under the Act, 1976 after lapse of considerable long time. In the said case notice under sub-section (1) of Section 10 of the Act, 1976 was issued in 1985 and a notification under sub-section (3) of Section 10 of the Act, 1976 was issued on 02.06.1986. The State had taken possession on 25.06.1993 prior to the enforcement of the Repeal Act and the name of the State was recorded in the revenue records. In that case the petitioner for the first time challenged the proceedings in the year 2002 and when the matter was remitted to the District Magistrate to decide the issue of the actual possession on 10.05.2007, the District Magistrate after considering the evidence adduced by the petitioner and the State by its order dated 10.05.2007 found that the possession from the petitioner was taken on 25.06.1993 pursuant to the notice dated 25.02.1987, i.e., prior to the enforcement of the Repeal Act. Moreover, the order of the District Magistrate dated 10.05.2007 was challenged by the petitioner after lapse of two years in July, 2009 and in the meantime Jal Nigam at the surplus land had constructed Sewage Treatment Plant (STP) at the cost of Rs. 73.00 crores. In context of the said fact the Court had dismissed the writ petition of the petitioner therein.

In view of the above, we find that the physical possession of the land was never taken from the petitioner. He is still in cultivatory and physical possession. On the basis of the materials on record we are satisfied that the State authorities have not taken possession from the petitioner in terms of sub-section 5 or sub-section (6) of Section 10 of the Act, 1976 and he is still in possession. Hence, in our view, the proceedings initiated under the Act,1976 stands abated in terms of sub-section 2(a) of Section 3 of the Repeal Act. The order of the District Magistrate dated 02.05.2017 is set aside and the proceedings under Act, 1976 is abated. The writ petition is, accordingly, allowed.

Order Date :-17.9.2019
MAA/-