

Reserved

A.F.R.

Court No. - 4

Case :- WRIT - C No. - 33121 of 2017

Petitioner :- Smt. Bedo

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

Counsel for Petitioner :- Vishnu Sahai, Bhupeshwar Dayal

Counsel for Respondent :- C.S.C.

Hon'ble Bala Krishna Narayana,J.

Hon'ble Prakash Padia,J.

Delivered by Hon'ble Bala Krishna Narayana, J.

Heard Sri Bhupeshwar Dayal, learned counsel for the petitioner and learned Standing Counsel for the respondent nos. 1 to 3.

The instant writ petition has been filed by the petitioner with the following prayer to :-

(i) a writ, order or direction in the nature of certiorari calling for the record and to quash the impugned order dated 18.05.2017 passed by the respondent no. 3 (Annexure No. 3 to the writ petition);

(ii) a writ, order or direction in the nature of mandamus commanding the respondents not to interfere with the possession of the petitioner over Plot No. 1346 area 3-19-13 situate in village- Maliyana, Pargana, Tehsil and District- Meerut;

(iii) a writ, order or direction in the nature of mandamus commanding the respondents to delete the name of the respondent State from the revenue record and to mutate the name of the petitioner who is owner of the land in dispute;

(iv) any other writ, order or direction which this Hon'ble Court deems fit and proper in the facts and circumstances of the case;

(v) award cost of writ petition to the petitioner throughout.

The facts of this case are as hereunder :-

The petitioner claims herself to be the owner of Plot No. 1346 area 3-19-13 situate in village- Maliyana, Pargana, Tehsil, District- Meerut, hereinafter referred to as the 'disputed plot'. Proceedings under The Urban

Land (Ceiling and Regulation) Act, 1976, hereinafter referred to as the 'principal Act', were initiated against the petitioner on the basis of the return submitted by her u/s 6 (1) of the principal Act, whereupon 8656.53 sq. m. of her land was declared surplus vide ex-parte order dated 27.06.1979 passed by the respondent no. 3. The order dated 27.06.1979 was assailed by the petitioner by filing an appeal before the District Judge, Meerut which was registered as Appeal No. 73/1984 and allowed by him by judgement and order dated 05.01.1988. In the interregnum pursuant to the ex-parte order dated 27.06.1979 passed by the respondent no. 3, notifications u/s 10 (1) and 10 (3) of the principal Act were issued which were followed by a notice issued u/s 10 (5) of the principal Act requiring the petitioner to deliver possession of the land declared surplus. The petitioner claims that no notice was served on her u/s 10 (6) of the principal Act as the possession was resisted by her and hence, the same could not have been taken without serving of notice u/s 10 (6) of the principal Act on her and the petitioner continued to remain in actual physical possession of the surplus land of the disputed plot despite the passing of the ex-parte order dated 27.06.1979 till the same was set-aside by the order dated 05.01.1988 passed by the appellate court. The appellate court by its order dated 05.01.1988 after setting aside the ex-parte order dated 27.06.1979 of the respondent no. 3, remanded the matter back to the respondent no. 3 who after remand, again declared an area of 8656.53 sq. m. of disputed plot as surplus by his order dated 30.01.1992. Against the order dated 30.01.1992, the petitioner filed an Appeal No. 9 of 1992 before the District Judge, Meerut. However, the said appeal stood abated by order dated 14.12.1999 passed by the appellate court upon coming into force of The Urban Land (Ceiling and Regulation) Repeal Act, 1999, hereinafter referred to as the 'Repeal Act, 1999'. Since the petitioner was still in possession of the surplus area although the name of State had been mutated in the revenue record, she moved an application before the respondent no. 3 for deleting the entry made in favour of the State of Uttar

Pradesh and for restoring her name in the revenue record claiming the benefit of the Repeal Act, 1999. Copy of the aforesaid application has been brought on record as Annexure No. 1 to the writ petition. However, when no order was passed on the petitioner's aforesaid application, she filed Civil Misc. Writ Petition No. 18199/2011 which was finally disposed of by another coordinate Bench of this Court by order dated 22.02.2017 which has been reproduced hereinbelow :-

Learned Standing Counsel states that he has filed counter affidavit on 13.9.2013, that is not on the record. Sri Ashish Kumar Singh, learned counsel for the petitioner states that he has filed rejoinder affidavit in the year 2015 itself, that is also not on the record.

Both the counsel have provided true copy of the counter affidavit and rejoinder affidavit, which are taken on record.

We have heard Sri Ashish Kumar Singh, learned counsel for the petitioner and learned Standing Counsel for the State respondents.

By means of this writ petition, following prayer has been made :-

(A) To issue a writ, order or direction in the nature of mandamus commanding the respondents-authorities mainly respondent no. 3 to mutate the petitioner's name over Plot No. 1346 area 3 bighas 19 biswas 13 biswansis, village Maliyana Pargana Tehsil and District Meerut.

(B) To issue a writ, order or direction in the nature of mandamus commanding the respondents-authorities mainly respondent no. 3 to dispose of the petitioner's application for mutation of her name over the land in question pursuant to Urban Land Ceiling Repeal Act, 1999.

(C) To issue any other writ order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.

(D) Award cost of the writ petition in favour of the petitioner.

Considering the petitioner's prayer, this Court, on 29.3.2011, has granted time to the learned standing counsel to file counter affidavit. Again on 10.5.2013, learned standing counsel was granted one month and no more time to file counter affidavit. Pursuant thereto, counter affidavit has been filed.

In paragraph 6 of the counter affidavit, following averments have been made :-

6. That the contents of paragraph 3 of the writ petition are not admitted and in reply it is submitted that an appropriate reply of the petitioner's representation dated 20.3.2011 for mutating her name over khasra No. 1346 by deleting the name of the petitioner, has already been sent to the petitioner by office letter dated 18.4.2011.

The reply of paragraph 6 of the counter affidavit has been given in paragraph 5 of the rejoinder affidavit, which is reproduced herein under :-

5. That the averments made in para 6 of the counter affidavit are not admitted, as stated, hence denied. In reply, it is submitted that till date petitioner has not received any reply vide alleged office letter dated 18.4.2011. The alleged letter dated 18.4.2011 has never been served upon the petitioner prior to filing of the present writ petition which was filed in the month of March, 2011. The Respondent Authority for the reasons best known has not filed the office letter dated 18.4.2011 which according to petition is nothing but an eye wash. It has also come to know that in the aforesaid letter, it has been asserted that the application would be disposed of only after disposal of the present writ petition.

From the perusal of para 6 of the counter affidavit and para 5 of the rejoinder affidavit, it appears that the stand taken by the learned Standing Counsel, that an order for mutating the petitioner's name has already been passed, has been denied by the petitioner.

Considering the same, it is directed that the petitioner may file an application along with certified copy of this order before the respondent no. 3 demanding the copy of the order passed on the mutation application. In case, such an application is filed, copy of the order be provided to the petitioner within a period of two weeks from the date of filing of the application.

In case, the order has yet not been passed, the same shall be passed on the petitioner's application within a period of ten weeks after hearing all concerned.

It may be clarified that we have not addressed ourselves on the merit of the matter and it is in the sole domain of the respondent no. 3 to do the needful in accordance with law.

Thereafter, it appears that the respondent no. 3 by the impugned order dated 18.05.2017 rejected the petitioner's application holding that since the Tehsildar- Meerut had obtained possession of the area of 8656.53 sq. m. of petitioner's plot which was declared surplus on 19.07.1981 and handed over its possession to the State Government, much before coming into force of the Repeal Act, 1999, the petitioner was not entitled to any benefit of the Repeal Act, 1999.

In paragraphs 18 and 20 of the counter affidavit which has been filed on behalf of the respondent nos. 2 and 3 in this writ petition, it has

been contended that possession of the surplus land was taken and was handed over to the State Government on 29.07.1981, and hence, there was no requirement of issuing any notice further u/s 10 (6) of the principal Act. In paragraph 4, it was stated that the possession of the petitioner's land which was declared surplus by the order dated 27.06.1979 passed by the respondent no. 3 was taken on 29.07.1981 after giving due notice to the petitioner on 30.05.1981 u/s 10 (5) of the principal Act which was preceded by following the provisions of Section 9, 10 (1) and 10 (3) of the principal Act. Copies of notice dated 30.05.1981 and possession memo dated 29.07.1981 have been brought on record as Annexure Nos. C.A.-1 & 2 respectively to the counter affidavit filed in the writ petition.

That reply to the paragraph nos. 18 and 20 of the counter affidavit has been given by the learned counsel for the petitioner in paragraph 14 of the rejoinder affidavit filed in this writ petition. In the said paragraph, apart from denying the allegations made in paragraph nos. 16 to 21 of the counter affidavit filed on behalf of the respondent nos. 2 and 3, it has been stated that proceedings u/s 9, 10 (1) and 10 (3) of the principal Act stood set-aside by the judgement and order dated 05.01.1988 passed by the District Judge, Meerut and the matter was remanded back for decision afresh and no possession was ever delivered to the ceiling authorities and since no proceedings for taking possession after passing of the aforesaid order after remand was initiated by the ceiling authorities, there is no question of possession of the surplus land having ever been taken by the ceiling authorities. It was also stated that even where ex-parte proceedings are taken, issuance of notice u/s 10 (6) of the principal Act is required and since the prescribed procedure was not followed, the possession memo, copy whereof has been brought on record as Annexure No. C.A.-2 to the counter affidavit filed in the writ petition, was a paper transaction.

The petitioner in paragraph 4 of the rejoinder affidavit, apart from denying the allegations made in paragraph 4 of the counter affidavit further stated that the ex-parte order dated 27.06.1979 passed u/s 8 (4) of

the principal Act and the subsequent proceedings taken in pursuance thereof were wholly illegal and the order dated 27.06.1979 was set-aside by the appellate court by allowing the appeal filed by the petitioner against the ex-parte order and the matter was remanded back for deciding the case afresh. It was further stated in the same paragraph that the possession memo dated 30.05.1981 was a mere paper transaction as no possession was delivered by the petitioner and further no notice u/s 10 (6) of the principal Act was ever issued to her.

In paragraph 5 of the counter affidavit, it has further been observed that after the appeal preferred by the petitioner against the judgement and order dated 27.06.1979 of the respondent no. 3 was allowed by the District Judge, Meerut, the matter was remanded back to the respondent no. 3 who by his order dated 30.01.1992 again declared an area of 8656.53 sq. m. of the disputed plot as surplus. Copy of the order dated 30.01.1992 has been brought on record as Annexure No. C.A.-4 to the counter affidavit filed in the writ petition.

Sri Bhupeshwar Dayal, learned counsel for the petitioner has submitted that the finding recorded by the respondent no. 3 in the impugned order dated 27.06.1979 that the possession of the surplus area of the disputed plot stood with the State Government on the date of the coming into force of the Repeal Act, 1999, is per se illegal and not warranted by any material on record. He next submitted that even if it is assumed for the sake of arguments that the possession of the surplus land of the petitioner was taken by Tehsildar- Meerut on 29.07.1981 and delivered to the State Government after the passing of the ex-parte order dated 27.06.1979 by the respondent no. 3, even then the so-called possession memo dated 29.07.1981 does not indicate that the possession was taken by the Tehsildar- Meerut from the petitioner. There being absolutely no material on record even prima facie indicating that when after the passing of the order dated 30.01.1992 by the respondent no. 3 after remand by which again an area of 8656.53 sq. m. of the disputed plot

was declared surplus, any proceedings u/s 10 (1), 10 (3), 10 (5) and 10 (6) of the principal Act were taken by the ceiling authorities as after the setting-aside of the order of the respondent no. 3 dated 27.06.1979 on appeal preferred by the petitioner, all subsequent proceedings taken pursuant thereto became a nullity because the legal consequence which followed was that there existed no order declaring any land of the petitioner surplus and land continued to remain in possession of the petitioner. He next contended that there being no material on record that any fresh proceedings u/s 10 (1), 10 (3), 10 (5) and 10 (6) of the principal Act were taken by the respondent no. 3 after the passing of the order dated 30.01.1992 by the respondent no. 3 on remand, it could not be held that the State Government was in possession of the surplus land on the date of the coming into force of the Repeal Act, 1999 and hence, the petitioner was not entitled to any benefit thereof, the view taken to the contrary by the respondent no. 3 in the impugned order dated 18.05.2017, cannot be sustained and the impugned order is liable to be set-aside.

Per contra learned Standing Counsel appearing for the respondent nos. 1 to 3 supported the impugned order by relying upon the proceedings which were taken u/s 10 (1), 10 (3) and 10 (5) of the principal Act which were taken pursuant to the order passed by the respondent no. 3 on 27.06.1979 u/s 8 (4) of the principal Act and the possession memo dated 29.07.1981 submitted that it is an admitted factual position that after the order dated 27.06.1979 was set-aside on appeal preferred by the petitioner, the petitioner had not moved any application before the ceiling authorities for restoration of possession of the surplus land to her which was taken from her by the Tehsildar- Meerut and handed over to the State Government on 29.07.1981. He next submitted that argument advanced by the learned counsel for the petitioner that once the order dated 27.06.1979 was set-aside, the entire proceedings taken pursuant thereto become a nullity and the petitioner continued to remain in possession of the surplus land despite her having not taken any steps for restitution of

the possession, is not only misconceived but also preposterous. The respondent no. 3 did not commit any illegality or legal infirmity in denying to the petitioner the benefit of the Repeal Act, 1999. This writ petition which lacks merit is liable to be dismissed.

We have heard learned counsel for the parties and perused the pleadings as well as the original record which was produced before us by the learned Standing Counsel.

The twin questions which arise for our consideration in this writ petition inter-alia are that whether on the date of the coming into force of the Repeal Act, 1999, actual physical possession of the disputed land was with the petitioner or the same stood delivered to the State and; whether the petitioner is entitled to the benefit of the Repeal Act ?

In order to examine the aforesaid questions, it would be useful to reproduce the provisions of The Urban Land (Ceiling and Regulation) Act, 1976 and The Urban Land (Ceiling and Regulation) Repeal Act, 1999 which are relevant for our purpose :-

6. Persons holding vacant land in excess of ceiling limit to file statement-

(1) Every person holding vacant land in excess of the ceiling limit at the commencement of this Act shall, within such period as may be prescribed, file a statement before the competent authority having Jurisdiction specifying the location, extent, value and such other particulars as may be prescribed of all vacant land and of any other land on which there is a building, whether or not with a dwelling unit therein, held by him (including the nature of his right, title or interest therein) and also specifying the vacant land within the ceiling limit which he desires to retain: Provided that in relation to any State to which this Act applies in the first instance, the provisions of this sub-section shall have effect as if for the words “Every person holding vacant land in excess of the ceiling limit and the commencement of this Act”, the words, figures and letters “Every person who held vacant land in excess of the ceiling limit on or after the 17th day of February, 1975 and before the commencement of this Act and every person holding vacant land in excess of the ceiling limit at such commencement” had been substituted. Explanation.—In this section, “commencement of this Act” means,—

(i) the date on which this Act comes into force in any State;

(ii) where any land, not being vacant land, situated in a State in which this Act is in force has become vacant land by any reason whatsoever, the date on which such land becomes vacant land;

(iii) where any notification has been issued under clause (n) of section 2 in respect of any area in a State in which this Act is in force, the date of publication of such notification.

(2) If the competent authority is of opinion that—

(a) in any State to which this Act applies in the first instance, any person held on or after the 17th day of February, 1975 and before the commencement of this Act or holds at such commencement; or

(b) in any State which adopts this Act under clause (1) of article 252 of the Constitution, any person holds at the commencement of this Act, vacant land in excess of the ceiling limit, then, notwithstanding anything contained in sub-section (1), it may serve a notice upon such person requiring him to file, within such period as may be specified in the notice, the statement referred to in sub-section (1).

(3) The competent authority may, if it is satisfied that it is necessary so to do, extend the date for filing the statement under this section by such further period or periods as it may think fit; so, however, that the period or the aggregate of the periods of such extension shall not exceed three months.

(4) The statement under this section shall be filed,—

(a) in the case of an individual, by the individual himself; where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs, by his guardian or any other person competent to act on his behalf;

(b) in the case of a family, by the husband or wife and where the husband or wife is absent from India or is mentally incapacitated from attending to his or her affairs, by the husband or wife who is not so absent or mentally incapacitated and where both the husband and the wife are absent from India or are mentally incapacitated from attending to their affairs, by any other person competent to

act on behalf on the husband or wife or both;

(c) in the case of a company, by the principal officer thereof;

(d) in the case of a firm, by any partner thereof;

(e) in the case of any other association, by any member of the association or the principal officer thereof; and

(f) in the case of any other person, by that person or by a person competent to act on his behalf. Explanation.—For the purposes of this sub-section, “principal officer”—

(i) in relation to a company, means the secretary, manager or managing- director of the company;

(ii) in relation to any association, means the secretary, treasurer, manager or agent of the association, and includes any person connected with the management of the affairs of the company or the association, as the case may be, upon whom the competent authority has served a notice of his intention of treating his as the principal officer thereof.

7. Filing of statement in cases where vacant land held by a person is situated within the jurisdiction of two or more competent authorities.—

(1) Where a person holds vacant land situated within the jurisdiction of two or more competent authorities, whether in the same State or in two or more States to which this Act applies, then, he shall file his statement under sub-section (1) of section 6 before the competent authority within the jurisdiction of which the major part thereof is situated and thereafter all subsequent proceedings shall be taken before that competent authority to the exclusion of the other competent authority or authorities concerned and the competent authority, before which the statement is filed, shall send intimation thereof to the other competent authority or authorities concerned.

(2) Where the extent of vacant land held by any person and situated within the jurisdiction of two or more competent authorities within the same State to which this Act applies is equal, he shall file his statement under sub-section (1) of section 6 before any one of the competent authorities and send intimation thereof in such form as may be prescribed to the State Government and thereupon, the State Government shall, by order, determine the competent authority before

which all subsequent proceedings under this Act shall be taken to the exclusion of the other competent authority or authorities and communicate that order to such person and the competent authorities concerned.

(3) Where the extent of vacant land held by any person and situated within the jurisdiction of two or more competent authorities in two or more States to which this Act applies is equal, he shall file his statement under sub-section (1) of section 6 before any one of the competent authorities and send intimation thereof in such form as may be prescribed to the Central Government and thereupon, the Central Government shall, by order, determine the competent authority before which all subsequent proceedings shall be taken to the exclusion of the other competent authority or authorities and communicate that order to such person, the State Governments and the competent authorities concerned.

8. Preparation of draft statement as regards vacant land held in excess of ceiling limit-

(1) On the basis of the statement filed under section 6 and after such inquiry as the competent authority may deem fit to make the competent authority shall prepare a draft statement in respect of the person who has filed the statement under section 6.

(2) Every statement prepared under sub-section (1) shall contain the following particulars, namely:—

(i) the name and address of the person;

(ii) the particulars of all vacant land and of any other land on which there is a building, whether or not with a dwelling unit therein, held by such person;

(iii) the particulars of the vacant lands which such person desires to retain within the ceiling limit;

(iv) the particulars of the right, title or interest of the person in the vacant land; and

(v) such other particulars as may be prescribed.

(3) The draft statement shall be served in such manner as may be prescribed on the person concerned together with a notice stating that any objection to the draft statement shall be preferred within thirty days of the service thereof.

(4) The competent authority shall duly consider any objection received, within the period specified in the notice referred to in sub-section (3) or within such further period as may be specified by the competent authority for any good and sufficient reason, from the person whom a copy of the draft statement has been served under that sub-section and the competent authority shall, after giving the objector a reasonable opportunity of being heard, pass such orders as it deems fit.

9. Final Statement.—After the disposal of the objections, if any, received under sub-section (4) of section 8, the competent authority shall make the necessary alterations in the draft statement in accordance with the orders passed on the objections aforesaid and shall determine the vacant land held by the person concerned in excess of the ceiling limit and cause a copy of the draft statement as so altered to be served in the manner referred to in sub-section (3) of section 8 on the person concerned and where such vacant land is held under a lease, or a mortgage, or a hire-purchase agreement, or an irrevocable power of attorney, also on the owner of such vacant land.

10. Acquisition of vacant land in excess of ceiling limit-

(1) As soon as may be after the service of the statement under section 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that—

(i) such vacant land is to be acquired by the concerned State Government; and

(ii) the claims of all person interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land, to be published for the information of the general public in the Official Gazette of the State concerned and in such other manner as may be prescribed.

(2) After considering the claims of the persons interested in the vacant land, made to the competent authority in pursuance of the notification published under sub-section (1), the competent authority shall determine the nature and extent of such claims and pass such orders as it deems fit.

(3) At any time after the publication of the notification under sub-section (1) the competent authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to in the notification published under sub-section (1) shall, with effect

from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.

(4) During the period commencing on the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made under sub-section (3)—

(i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void; and

(ii) no person shall alter or cause to be altered the use of such excess vacant land.

(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 authorized by the State Government in this behalf within thirty days of the service of the notice.

(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 3 and 4 of the Repeal Act, 1999 are as hereunder :-

3. Saving.—

(1) The repeal of the principal Act shall not affect—

(a) the vesting of any vacant land under sub-section (3) of Section 10, possession of which has been taken over the State Government or any person duly authorised 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 authorised 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.

Upon perusal of the aforesaid provisions of the principal Act, it transpires that Section 6 provides that every person holding vacant land in excess of the ceiling limit was required to file a statement before the competent authority having jurisdiction specifying the location, extent, value and such other prescribed particulars of the vacant land and of any

other land on which there was a building, whether or not with a dwelling unit therein, held by him.

Section 7 provides the procedure for filing of statement in cases where vacant land held by a person was situated within the jurisdiction of two or more competent authorities.

Section 8 provides that on the basis of the statement filed u/s 6 and after such inquiry as the competent authority may deem fit to make, the competent authority shall prepare the draft statement.

Section 8 (3) stipulates that the draft statement prepared u/s 8 shall be served on the person concerned together with a notice stating that any objection to the draft statement shall be prepared within 30 days of the service thereof.

Section 9 provides that after disposal of the objections, if any, received under sub-section (4) of Section 8, the competent authority shall prepare the final statement.

Section 10 (1) provides that after the service of the statement u/s 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit to be published in the Official Gazette of the State concerned for the information of the general public.

Section 10 (2) empowers the competent authority to decide the claims of the persons interested in the vacant land filed in pursuance of the notification published under sub-section (1).

Section 10 (3) provides that the competent authority concerned may, by notification published in the Official Gazette of the State concerned, anytime after the publication of the notification under sub-section (1) declare that excess vacant land referred to in the notification published under sub-section (1) with effect from such date as may be specified in the declaration, be deemed to be have been acquired by the State Government. Such land shall be deemed to have vested absolutely in

the State Government free from all encumbrances.

Section 10 (4) prohibits transfer by way of sale, mortgage, gift, lease or otherwise by any person any excess vacant land (including any part thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void and no person shall alter or cause to be altered the use of such excess vacant land.

Section 10 (5) empowers the competent authority to order any person by notice in writing who is in possession of any vacant land vested in the State Government under sub-section (3) to surrender or deliver possession thereof to State Government or to any person duly authorized by the State Government in this behalf within thirty days of the service of the notice.

Section 10 (6) states where 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 authorized by such State Government in this behalf and may for that purpose use such force as may be necessary.

The kind of possession contemplated u/s 3 & 4 of the Repeal Act, 1999, in our opinion, is actual possession and not a mere paper possession and if the possession of the petitioner's land which was declared surplus land stood vested in the State Government u/s 10 (3) of the principal Act was not taken and no proceedings u/s 11, 12, 13 and 14 of the principal Act were pending on the date of coming into force of the Repeal Act, 1999, the petitioner is entitled to the benefit of the Repeal Act, 1999.

In the instant case, there is no dispute about the fact that after the order dated 30.01.1992 passed by the competent authority on remand, no proceedings u/s 10 of the principal Act were taken.

Learned Standing Counsel has placed reliance in support of his

contention that the State Government had taken actual physical possession of the disputed land from the petitioner pursuant to the proceedings taken u/s 10 (1) to 10 (6) of the principal Act after the passing of the order dated 27.06.1979 by the respondent no. 3 which was eventually set-aside by the District Judge, Meerut by his order dated 05.01.1988 passed in Appeal No. 73/1984 preferred by the appellant against order dated 27.06.1979.

Now, the question which arises before us is that whether, even if it is assumed for the sake of arguments that the possession of the petitioner's surplus land was taken from him and delivered to the State Government u/s 10 (1) to 10 (6) of the principal Act as argued by the learned Standing Counsel pursuant to the order dated 27.06.1979, a fact which has been seriously disputed by Sri Bhupeshwar Dayal, learned counsel for the petitioner, the same shall enure to the benefit of the State Government, even after setting-aside of the order pursuant to which the aforesaid proceedings were taken ?

Before examining the aforesaid aspect of the matter, we first propose to delve into the issue whether the possession of the petitioner's land was taken and delivered to the State Government pursuant to the order dated 27.06.1979 passed by the competent authority ?

There is dispute about the fact that the possession of the surplus land was delivered by the petitioner to the State Government upon issuance of notice u/s 10 (5) of the principal Act as there is nothing on record which may indicate that the notice u/s 10 (5) of the principal Act was ever served upon the petitioner. We could not find any endorsement of the service of notice upon the petitioner after going through the record. There is also no material on record indicating that any notice was issued to the petitioner u/s 10 (6) of the principal Act before possession of the surplus land of the disputed plot was allegedly taken.

In **State of U.P. v. Hari Ram**, reported in (2013) 4 SCC 280, the Apex Court observed that what is required for a land to come out

from the purview of Repeal Act is that it should be a case of forceful dispossession in the event of there being no peaceful dispossession. The peaceful dispossession is related to proceedings u/s 10 (5) of the principal Act, whereas, the forceful dispossession is related to proceedings u/s 10 (6) of the principal Act vide paragraph 39 of **Hari Ram (supra)**, the Court concluded thus :-

“39. Above-mentioned directives make it clear that sub-section (3) takes in only de jure possession and not de facto possession, therefore, if the land owner is not surrendering possession voluntarily under sub-section (3) of Section 10, or surrendering or delivering possession after notice, u/s 10 (5) or dispossession by use of force, it cannot be said that the State Government has taken possession of the vacant land.”

(emphasis added)

Now, coming back to the instant case, we find that there is nothing on record indicating that forceful possession of the surplus land of the petitioner u/s 10 (6) of the principal Act was taken from the petitioner.

Reliance has been placed by the learned Standing Counsel on possession memo dated 29.07.1981, copy whereof has been brought on record as Annexure Nos. C.A.- 2 to the counter affidavit filed in the writ petition. There is nothing in the possession memo even remotely suggesting that it was prepared in proceedings purported to have been taken in Section 10 (6) of the principal Act. The possession memo neither gives the details nor the area of the land of which the possession was allegedly taken. The possession memo, in our opinion, is nothing but a mere paper transaction and it is not safe to hold on the basis thereof that the surplus land of the disputed plot of the petitioner was in the possession of the State Government on the date of the coming into force of the Repeal Act, 1999.

Even otherwise, if for the sake of arguments, it is assumed that the State Government had dispossessed the petitioner in proceedings taken pursuant to the order dated 27.06.1979 passed by the competent authority

but once the said order was set-aside on appeal and the matter was remitted back to the competent authority, all consequential action taken pursuant to that order also stood annulled.

Paragraph nos. 16 and 17 of the order passed by another coordinate Bench of this Court in the case of **M/s. A.B.P. Design Sonakpur Versus Moradabad Development Authority and others** reported in **2018 (8) ADJ 747 (DB)**, which are relevant for our purpose, are being reproduced hereinbelow :-

16. Against order dated 16.03.1988, Zahid Hussain preferred Revenue Appeal No. 23 of 1988. This appeal was allowed by District Judge, Moradabad vide judgement dated 6.1.1993 and Competent Authority was directed to decide the matter afresh after taking into consideration amended master plan. In the meantime, Competent Authority issued notification dated 27.09.1988 under Section 10 (1) of Act, 1976, vesting surplus land in the State and therein disputed land of Plot No. 200, area 1295.04 sq. mts., was mentioned.

17. Whether any subsequent proceedings were undertaken thereafter or not, no material has come on record in this regard. It is also not clear when possession was taken by Competent Authority from landowner under the provisions of Act, 1976. A copy of letter dated 31.7.1992 has been placed on record which is addressed to Competent Authority, Urban Land Ceiling, Moradabad and states that possession of land, detailed therein, is being handed over by Naib Tehsildar, Urban Ceiling Moradabad to Naib Tehsildar, MDA on 31.7.1992. Apparently this letter is only to show a "paper possession" and not "actual physical possession" of land, declared surplus by Competent Authority vide order dated 16.3.1988. The appeal against order dated 16.3.1988 having been allowed vide judgement dated 6.1.1993 and matter was remanded to Competent Authority, consequence thereof, in our view, would be as if no order of Competent Authority declaring any land of Zahid Hussain 'surplus' remained in existence and if that be so, no question of any valid vesting of land in State or taking possession thereof would arise."

Since, we have found that actual physical possession of the petitioner's surplus land was never taken by the State Government from the petitioner and the petitioner stood in possession of the surplus land on

the date of the coming into force of the Repeal Act, 1999, this writ petition deserves to be allowed.

Accordingly, the writ petition is **allowed**.

The impugned order dated 18.05.2017 is hereby quashed. A further direction is issued to the respondents to expunge the respondent-State from the revenue record and to restore that of the petitioner who is the owner of the land in dispute.

Order Date :- 21.11.2019

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