

Court No. - 34

Case :- WRIT - C No. - 14639 of 2015

Petitioner :- Shiv Murat And 2 Ors.

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

Counsel for Petitioner :- Raj Karan Yadav

Counsel for Respondent :- C.S.C., Ram Raj Singh

Hon'ble Sudhir Agarwal,J.

Hon'ble Ajit Kumar,J.

1. Sri Raj Karan Yadav, learned counsel for petitioners and learned Standing Counsel for State respondents.
2. This writ petition is a glaring example showing completely callous and negligent attitude of respondents district authorities. We are also inclined to place it on record that conduct of respondents which include Senior Officer of District Administration is collusive
3. Petitioners have filed this writ petition stating that 4105.38 square meter of land was declared surplus by order dated 24.04.1981 passed by competent authority under Urban Land (Ceiling and Regulation) Act, 1976 (*hereinafter referred to as "Act, 1976"*) and after a declaration of surplus land under Act, 1976 no actual physical possession was taken over by State respondents and later on Act, 1976 was repealed by Urban Land (Ceiling and Regulation) Repeal Act, 1999 (*hereinafter referred to as "Act, 1999"*)
4. Repeal Act, 1999 provided that proceeding relating to any order made under Act, 1976 pending immediately before commencement of Repeal Act, 1999 before any Court, Tribunal or Authority would abate. It further provided that Repeal Act, 1999 will not affect proceedings relatable to land, possession whereof has been taken over by State Government. If actual physical possession of land declared surplus has not been taken by State and same continue with land owner, State has no authority to take possession of surplus land from tenure-holder after enforcement of Repeal Act, 1999.
5. It is submitted by learned counsel for petitioners that since actual physical possession of land declared 'surplus' was not taken by

respondents, hence no action can be taken with respect to the said land possession whereby is vested with petitioner.

6. This Court while entertaining writ petition on 23.03.2015 passed following order:

"Connect with Writ (C) No.48264 of 2014, Ram Nath vs. State of U.P. and 2 Others.

We have heard learned counsel for the petitioners.

Petitioners claim benefit of the Repeal Act on the ground that he still continues to be in actual physical possession of the surplus land and has never been dispossessed. Learned counsel for the petitioners in support of his contention has relied upon a judgment of the Apex Court in State of U.P. vs. Hari Ram reported in JT 2013 (4) SC 275 and also the Division Bench judgment of this court in Ram Chandra Pandey vs. State of U.P. reported in 2010 (82) ALR 136.

Learned Standing Counsel for the State respondents may file counter affidavit within four weeks. Rejoinder affidavit, if any, may be filed within a week thereafter.

List immediately after expiry of the aforesaid period.

Considering facts and circumstances, until further orders of the court, parties to the writ petition are directed to maintain status-quo with regard to nature and possession over the land in question, as it exists today."

7. Respondents did not respond and no counter affidavit was filed. On the contrary, an impleadment application was filed on behalf of Allahabad Development Authority (*hereinafter referred to as "ADA"*) which was allowed vide Courts order dated 28.08.2017. Court further granted time to respondents to file counter affidavit. On the next date 12.09.2017, Court directed Standing Counsel to produce record on the next date, obviously for the purpose of perusal of original record where actual physical possession of land in dispute was taken by the State or not. Neither record was placed nor, counter affidavit was filed when matter was taken on 19.9.2017. Hence on request Court passed following order.

"Learned Standing Counsel prays for and is granted two weeks and no more time to file a counter affidavit.

List this matter on 11th October, 2017.

The record will be brought on that date. "

8. On 11.10.2017 when the matter came up, still no reply was filed.

This Court having no alternative, passed order directing that record be produced by 13.10.2017 through an officer not below the rank of Additional District Magistrate, failing which respondent no.2 shall appear in person on the next date. The order dated 11.10.2017 reads as under:

"1. This is a matter relating to Urban Land (Ceiling and Regulation) Act, 1976. The submission is that after declaring land in dispute, surplus, physical possession was not taken and, therefore, proceedings have abated in view of repeal of aforesaid Act.

2. Respondents no. 1, 2 and 3 have not filed any counter affidavit and in any case matter requires to be seen in the light of documents whether actual and physical possession has been taken or not.

3. This Court vide order dated 19.09.2017 has already directed respondents to produce record but the same has not been produced. Let record be produced by 13.10.2017 through an officer not below the rank of Additional District Magistrate, failing which respondent no. 2 shall appear in person on the next date.

4. Put up on 13.10.2017.

5. A copy of this order shall be made available to learned Standing Counsel for communication to concerned respondents and compliance by today itself. "

9. Still respondents showed total callousness and did not respond at all.

On 13.10.2017, this Court passed following order:

"On 11.10.2017, this Court passed following order:-

"1. This is a matter relating to Urban Land (Ceiling and Regulation) Act, 1976. The submission is that after declaring land in dispute, surplus, physical possession was not taken and, therefore, proceedings have abated in view of repeal of aforesaid Act.

2. Respondents no. 1, 2 and 3 have not filed any counter affidavit and in any case matter requires to be seen in the light of documents whether actual and physical possession has been taken or not.

3. This Court vide order dated 19.09.2017 has already directed respondents to produce record but the same has not been produced. Let record be produced by 13.10.2017 through an officer not below the rank of Additional District Magistrate, failing which respondent no. 2 shall appear in person on the next date.

4. Put up on 13.10.2017.

5. A copy of this order shall be made available to learned Standing Counsel for communication to concerned respondents and compliance by today itself."

2. Despite this order having been passed, neither record has been

produced nor respondent-2 is present.

3. Learned Standing Counsel said that there was some mistake on his part in late communication of the order and, therefore, seeks only 24 hours further time to comply with order dated 11.10.2017.

4. Let the matter be placed on 25.10.2017, on which date, as already directed, record shall be produced through an officer not below the rank of Additional District Magistrate, failing which respondent no. 2 shall appear in person on the next date. "

10. Today Amar Pal Singh, Additional District Magistrate is present and has made statement that record is not traceable and, therefore, counter affidavit could not be filed. This shows that there is no attempt on the part of respondents to show that possession of land in question was actually taken after declaration of land 'surplus'. In these circumstances, in view of uncontroverted averments made by petitioners in the writ petition and also considering that respondents-2 and 3 have acted in collusion and or wholly negligent, We have no option but to accept uncontroverted averments of petitioners and allow this writ petition holding that ceiling proceedings have already abated after Repeal Act, 1999 since State has taken actual physical possession of land from tenure-holders.

11. In the result, writ petition is **allowed**. Respondents are directed not to interfere with possession of petitioners over property in dispute. Considering the conduct of respondents in the case, we allow an exemplary cost of Rs.50,000/- upon respondents-2 and 3 which will be paid to the petitioners.

12. Let a copy of this order be forwarded to Chief Secretary, U.P., Lucknow for information and also for taking appropriate action against concerned officers. He shall apprise this Court by submitting action taken report within six months.

Order Date :- 25.10.2017

S. Thakur