

**Court No. - 34****Case :-** WRIT - C No. - 22911 of 2015**Petitioner :-** Deena Nath**Respondent :-** State Of U.P. & 5 Others**Counsel for Petitioner :-** S.K. Pal, Sushil Kumar Pal**Counsel for Respondent :-** C.S.C., Ram Raj Singh, S.P. Singh, Y.K. Srivastava**Hon'ble Sudhir Agarwal, J.****Hon'ble Ajit Kumar, J.**

1. By means of this writ petition, petitioner is seeking writ of mandamus commanding respondent no. 4 to restore the name of the petitioner in revenue record i.e. in Khatauni by expunging the name of State from the land declared surplus in case no. C-1064/1976 State v. Ram Sewak in Plot No. 89A area 1436.95 sq. mtrs. 92 Gha 1368.53 sq.mtrs., 142 area 2623.01 sq.mtrs and 108 Kha area 889.55 sq. mtrs., which has wrongly been restored by the name of State without any specific order of prescribed authority situated in village Jhalwa, District Allahabad (hereinafter referred to as "land in question").

2. In view of Urban Land (Ceiling and Regulation) Repeal Act, 1999 the ceiling proceedings had stood abated as actual physical possession was not taken even though land in question was declared surplus under the Ceiling Proceedings carried out under U.P. Urban Land and (Ceiling and Regulation) Act, 1976. The contention raised is that though after land was declared as surplus, notice was issued by the prescribed authority in exercise of power under Section (10) of the Act, 1976 on 23/24.12.1998, but such notice was neither served upon the petitioner nor any further action was taken in the matter. It is further contended that father of the petitioner who was original tenure holder did not surrender his possession over land in question and even then no further proceedings to take forcible possession to tenure holder was initiated under Section 10(6) of the Act, 1976.

3. Relief in this regard raised in paragraph nos.7, 8 and 12 in the writ petition are quoted hereunder:

*7. That thereafter, after the death of the petitioner's father, the order was sent by the Prescribed Authority to the District Magistrate, Allahabad on 23/24.12.1998 under Section 10(5) of the Act, for entering the name of State in the revenue records over the land declared*

*surplus situated in Village Jhalwa, Tehsil Sadar, District Allahabad and after taking the possession from petitioner, report may be sent to the Prescribed Authority. The true copy of the order passed by Prescribed Authority under Section 10(5) of the Act, 1976 on 23/24. 12.1998 is being filed herewith and marked as Annexure No. 3 to this writ petition.*

8. *That in fact the order dated 24.12.1998 was neither communicated to the father of the petitioner nor to the petitioner by the District Magistrate, Allahabad nor it was complied and in pursuance to above mentioned order dated 23/24.12.1998 neither the actual physical possession was taken from the tenure holder petitioner or (father of the petitioner) nor proceedings under Section 10(6) of the Act, 1976 was initiated for taking actual and physical possession over the land declared surplus.*

12. *That till the date petitioner is in actual physical possession over the land declared surplus by Prescribed Authority and no proceedings was initiated for taking the actual physical possession either from late Ram Sewak and his co-shares or from the petitioner. In fact Late Ram Sewak died in the year of January 1993 and above proceedings under Section 10(5) of Urban Ceiling Act initiated against him after his death which is totally illegal, arbitrary and liable to be quashed.*

4. In reply, counter affidavit has been filed on behalf of State respondents and it has been contended that if notification was published under Section 10(3) of the Act, 1976, the land in question is stood vested with the State Government through all encumbrances.

5. It is further alleged that once the notice has been issued under Section 10(5) of Act, 1976 prior to the repeal act coming into force w.e.f. 18.3.1999, there was no question of proceedings get abated and the name of the State Government has rightly been mutated in the revenue records over surplus land.

6. The relief paragraphs are 16 and 17 of the counter affidavit which quoted hereunder:

*"16. That the contents of paragraphs nos. 7 to 19 of the writ petition as stated are not admitted hence denied. In reply thereto it is submitted that Final Statement under Section 9 of the Act of 1976 was issued on 21.11.1985 which was personally served upon the tenure holder Ram Sewak and others on 07.01.1986. Thereafter notifications under Section 10(1) and 10(3) of the Act, 1976 were issued and published in official gazette on 27.2.1993 and 22.8.1998 respectively and the land was*

*vested in the State Government free from all encumbrances. Thereafter notice under Section 10(5) of the the Act of 1976 was issued on 24.12.1998 for handing over possession of land which has been declared as surplus.*

*17. That in reply to the contents of paragraph nos. 20,21,22,23 and 24 of the writ petition it is submitted that proceedings upto Section 10(5) of the Act, 1976 was completed prior to repeal of Ceiling Act by Repeal Act, 1999 which was made effective from 18.3.1999 and the tenure holders of the land in question have not filed any objections to notice under Section 8(3) of the Act and 17 years after the lapse of proceedings, the petitioner son of original tenure holder Ram Sewak filed an application dated 16.4.2015 before the District Magistrate requesting for mutation of his name in the revenue record over the surplus land. The aforesaid application dated 16.5.2015 of the petitioner has been rejected by the District Magistrate, Allahabad (respondent no.4) vide order dated 30.6.2015 on the ground that notice under Section 10(5) of the Act was issued on 24.12.1998 i.e. prior to the repeal of the Act of 1976 and neither the tenure holders nor the petitioner have filed any objections."*

7. From the pleadings raised by the petitioner as well as respondents it is very much clear that land in question was declared surplus and notification to that effect was also issued under Section 10(3) of the Act, 1976 and thereafter notice under Section 10(5) of the Act, 1976 was also issued by the Ceiling Authority requiring tenure-holder to surrender the possession of the land declared as surplus. However, contention raised by the petitioner is that his father was original tenure-holder, did not surrender his possession has not come to be disputed in the counter affidavit. Under these circumstances, once the tenure-holder has not made voluntarily surrender of land, it was incumbent upon the Ceiling Authority to have issue notice under Section 10(6) of the Act, 1976 and thereafter to proceed to take forcible possession of the land and further to include the possession memo on the spot of such forcible taking of the decision of the land in question as it is admitted in the counter affidavit itself that after section 10 of the Act, no further proceeding was taken.

8. The contention raised by respondent State Government is that land stood vested with the State Government after notification under Section 10(3) of the Act, 1976 would not result in automatic transfer of actual

physical possession to the State Government. The issue with regard to actual physical possession in order to come out to the effect of the Repeal Act 1999 is not more resintegra.

9. This has been so held in the case of **State of U.P. v. Hari Ram, (2013) 4 SCC 280**. Relevant paragraphs are quoted hereunder:

*"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 the hands of a 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 UP and Others (1977) 1 SCC 155, while interpreting Section 117(1) of U.P. Zamindari Abolition and Land Reform Act, 1950 held that "vesting" is a word of slippery import and has many meanings and the context controls the text and the purpose and scheme project the particular semantic shade or nuance of meaning. The court in Rajendra Kumar v. Kalyan (2000) 8 SCC 99 held as follows: (SCCp. 114, para 28)*

*"28. ...We do find some contentious substance in the contextual facts, since vesting shall have to be a 'vesting' certain. 'To "vest", generally means to give a property in.' (Per Brett, L.J. Coverdale v. Charlton. 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 executory devise. Be it noted however, that 'vested' does not necessarily and always mean 'vest in possession' but includes 'vest in interest' as well."*

#### **Peaceful dispossession**

*34. Sub-section (5) of Section 10, for the first time, speaks of "possession" which says that 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) of 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. Subsection (5) of Section 10 visualises a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession.

### **Forceful dispossession**

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

37. The requirement of giving notice under sub-sections (5) and (6) of Section 10 is mandatory. Though the word "may" has been used therein, the word "may" in both the sub-sections has to be understood as "shall" because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of non-issue of notice under sub-section (5) or sub-section (6) of Section 11 is that it might result the landholder being dispossessed without notice, therefore, the word "may" has to be read as "shall".

42. 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. The 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 landowner or holder can claim the benefit of Section 4 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 4 of the Repeal Act."

10. In view of above and as discussed earlier in the judgment, since actual possession is still continued to be retained by the tenure-holder at the time when repeal act, 1999 came into force, Ceiling proceedings in the present case stood abated and hence revenue authority are not right in continuing with entry in the name of State Government treating the land to be declared surplus land under the Ceiling Act, 1976 in the event

of the petitioner moved such application for necessary correction of revenue records, needless to observe that revenue authority shall take appropriate action in accordance with law and respondents are restrained from interfering with possession of the petitioner over land in question.

11. Writ petition stands allowed.

**Order Date :-** 30.11.2017  
Sanjeev