

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 11th OF NOVEMBER, 2022

WRIT PETITION NO. 24448 OF 2022

Between:-

**SARDAR SINGH S/O LATE SHRI
JANGJEET SINGH, AGE 72 YEARS,
OCCUPATION AGRICULTURIST, R/O
VILLAGE MAU TEHSIL AND DISTRICT
GWALIOR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI KAMAL JAIN – ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH
THROUGH ITS PRINCIPAL SECRETARY,
DEPARTMENT OF REVENUE,
MANTRALAYA VALLABH BHAWAN,
BHOPAL (MADHYA PRADESH)**
- 2. THE COLLECTOR, DISTRICT
GWALIOR/COMPETENT AUTHORITY/
PRESCRIBED OFFICER, UNDER URBAN
LAND CEILING ACT, GWALIOR
(MADHYA PRADESH) OFFICE ADDRESS
COLLECTORATE BHAWAN, PUTLIGHAR
GWALIOR**

....RESPONDENTS

(BY SHRI DEVENDRA CHAUBEY – GOVERNMENT ADVOCATE)

*This petition coming on for hearing this day, the Court passed the
following:*

ORDER

This petition under Article 226 of the Constitution of India has

been filed seeking following reliefs :

- i) The order annexure P-1 passed by the respondent no.2 and notification herein and the order annexure P-2 the notice as contended therein and the possession receipt and the order passed by the Collector annexure p-3 may kindly be quashed and it is may be declared that the petitioner being physical possession of the land and is entitled to hold the same and the order passed by Collector Gwalior/competent authority is not binding upon the petitioner and ineffective against the interest of the petitioner and respondents 1 & 2 be directed to correct the entries recorded in the record;
- ii) Cost of this petition may kindly be awarded
- iii) Any other relief which this Hon'ble Court deem fit in the facts and circumstances of the case may kindly be granted to the petitioner.

It is submitted by the counsel for the petitioner that Jangeet Singh, the ancestor of the petitioner, was the owner of the land bearing survey Nos.113, 114, 115, 122, 123, 124, 166, 204 and 236 situated in Village Mau, Tehsil and District Gwalior. The proceedings under Urban Land (Ceiling and Regulation) Act, 1976 were initiated and order dated 21.5.1985 was passed and 16150 square meter of land was declared as surplus land. Thereafter, the proceedings under Section 10(1) of Urban Land (Ceiling and Regulation) Act, 1976 were initiated and the matter was fixed for further proceedings under Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976. Till 7.1.1992 the matter remained pending for taking possession. Thereafter, it was observed that on 7.1.1992 the possession receipt has been obtained and by order dated 30.6.1992 it was observed that since the possession has been taken, therefore, there is no need and requirement for further proceedings. It is

submitted that in spite of the fact that a possession receipt was issued, the name of the petitioner continued in the revenue record. It is submitted that an *ex parte* possession was taken and no notice in this regard was served and, therefore, the receipt of an *ex parte* possession is a void document. It is also claimed that while declaring land in excess of the ceiling limits, several aspects were not taken into consideration and, therefore, the order declaring the land in excess of ceiling limit dated 21.5.1985 is also bad. It is submitted that when the petitioner applied for issuance of Kisan Credit Card at that time he came to know about the proceedings, therefore, he applied for grant of certified copy of order and received the same on 14.3.2016 and 21.3.2016. Thereafter, it appears that the petitioner preferred an appeal under Section 33 of Urban Land (Ceiling and Regulation) Act, 1976 along with an application for condonation of delay. By order dated 21.3.2016, the application under Section 5 of Limitation Act was rejected on the ground that the appeal has been preferred after 31 long years and no sufficient cause has been shown to condone the delay. It appears that the said order was never challenged by the petitioner. Thereafter, the petitioner filed an application under Section 4 of the Urban Land (Ceiling and Regulation), Repeal Act, 1999 (in short "Repeal Act, 1999") alongwith the stay application. Since that application remained pending, therefore, the petitioner filed Writ Petition No.17841/2020, which was disposed of by order dated 25/11/2020 with a direction to decide the application as expeditiously as possible within a period of three months. Accordingly, the impugned order has been passed.

It is submitted by the counsel for the petitioner that no notice was given and a forged receipt has been prepared to show that the possession

of the land has been taken on 6/11/1986. It is submitted that not only the petitioner continued to remain in possession, but his name also continued to remain in the revenue records till 2011-2002.

Per contra, the petition is vehemently opposed by the counsel for the State. It is submitted that notice dated 6/11/1986 was given to the original owner and accordingly, on 6/11/1986 the Nazul Tahsildar took possession of the excess land forming part of survey nos.166, 204, 351 & 386 and, accordingly, the possession receipt was also prepared. The petitioner woke up only after 30 years of taking of possession and preferred an appeal against the original order dated 21/5/1985. The said appeal was dismissed as barred by limitation. Thereafter, the petitioner moved an application under Section 4 of the Repeal Act, 1999, which too has been rejected on the ground that since the possession was also taken, therefore, the proceedings have not abated.

Heard learned counsel for the parties.

According to the respondents, the land was declared in excess of ceiling limit by order dated 21/5/1985 and the possession of the excess land was taken on 6/11/1986. The application under Section 4 of the Repeal Act, 1999 was filed in the year 2016, i.e. 17 years after the Repeal Act, 1999 came into existence and 30 years after the possession was taken. It is not disputed that the original owner Jangjeet Singh, i.e. the father of the petitioner was alive on 6/11/1986 or on 21/5/1985. In the impugned order it is specifically mentioned that the original owner received the copy of the order dated 21/5/1985, but he did not challenge the same. Therefore, it is clear that now the petitioner cannot challenge the proceedings by which 16150 sq.meter of land was declared as excess to the ceiling limit. Furthermore, his appeal against the order dated

21/5/1985 has already been dismissed by order dated 21/3/2016 by the competent authority and the said order has attained finality.

Now the only question which remains to be decided is "as to whether the respondents /State had taken possession of the land in dispute or not and whether the proceedings can be said to be pending immediately before the commencement of the Repeal Act, 1999 or not?"

A Division Bench of this Court in the case of **Lalji Choubey Vs. State of M.P. and another** reported in **I.L.R. (2008) M.P., 2513** has held that preparation of receipt of possession by the revenue authorities as well as the mutation of name of the State Government in the revenue record is a sufficient material to show that physical possession was taken. Paragraphs 9 and 10 of the judgment passed in the case of **Lalji Choubey (supra)** reads as under:-

9. Now another question arises that what is the procedure for taking possession. Apart from section 10 of the principal Act, in the Act no procedure is prescribed for taking possession. Under section 46 of the Act there is no provision for framing such rules prescribing the procedure for taking possession. The Apex Court in *Tamil Nadu Housing Board (supra)* considered this aspect and held that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or panchnama by the Land Acquisition Officer in the presence of witnesses winged by him and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. The Apex Court held that it is common knowledge that owner/interested person may not cooperate in taking possession of the land. In *Larsen & Toubro Ltd. Vs. State of Gujarat & others* [(1998) 4 SCC 387] the Apex Court held in para 13 that recording of panchnama in presence of witnesses signed by them as also by Circle Officer evidencing handing over of possession is a sufficient

compliance. The revenue records showing the party in possession of land coupled with revenue entries is a sufficient compliance. The Apex Court held that the High Court could not convert itself into a revenue Court and hold that inspite of panchanama and revenue record actual physical possession of the land was not taken over.

In view of the settled position of law by the Apex Court in *Tamil Nadu Housing Board & Larsen & Toubro Ltd.* (supra) the factual position in the present case may be seen. The Additional Collector vide order dated 10.10.2005 Annexure A-1 had categorically recorded a finding that the possession of land was taken over *ex parte* and the land was recorded in the name of State and this revenue record is continuing since 1988. In these circumstances, in absence of any challenge to the aforesaid action and existence of the entries for a considerable long period of more than 11 years, the contention of appellant has been rightly turned down by the learned Single Judge that the possession of the land was not taken from him. In view of this finding, report Annexure A-3 cannot be relied to set aside order dated 10.10.2005. The report does nowhere say that the petitioner was not dispossessed. Some act of trespass or encroachment on the part of the petitioner would not prove his legal possession or that he was not dispossessed in execution of earlier orders.

10. Section 3 of the Repeal Act meets out two exigencies, one is in respect saving of vesting of any vacant land under sub-section (3) of Section 10, possession of which was taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority. Another situation is provided under sub-section (2) of section 3 where the 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 any

amount has been paid by the State Government with respect to such land, then, such shall not be restored unless the amount paid is refunded to the State Government. But such is not the case of petitioner and both the provisions are not applicable in the present case.

In the present case, it is true that the name of the State Government was not mutated immediately after 1986, but an entry was made in the revenue record of the year 2001-2002 to the effect that the land has been declared to be an excess land. Thus, the case in hand is duly covered by the law laid down by the Division Bench of this Court in the case of **Lalji Choubey (supra)**. Even if the name of the original owner continued to remain in the revenue record till 2001-2002, still it would not make much difference because it is the well established principle of law that the revenue entries are made for fiscal purposes only and they do not create any right in favour of the person in whose name the revenue entry has been made.

Under these circumstances, this Court is of the considered opinion that no case is made out warranting interference in the impugned order dated 7/10/2021 passed by the Collector (Urban Land Ceiling) Gwalior in case No.120/83-84/Reader/U.L.C./2021.

Accordingly, the petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE