

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAVI MALIMATH,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE PURUSHAINDR KUMAR KAURAV

ON THE 14th OF FEBRUARY, 2022

WRIT APPEAL No. 81 of 2006

Between:-

1. **RAM NARAYAN S/O DURGA PRASAD PANDEY.**
2. **VINIT KUMAR S/O DURGA PRASAD PANDEY.**
3. **SUNIL KUMAR S/O DURGA PRASAD PANDEY.**
4. **SANJAY S/O DURGA PRASAD PANDEY.**
5. **RAMESHWAR S/O DURGA PRASAD PANDEY.**
6. **SMT. RAMETI W/O BRINDAWAN CHOUBEY,
D/O DURGA PRASAD PANDEY.**
7. **SMT. KRISHNA W/O RAM KISHOR, D/O
DURGA PRASAD CHOUBEY.**
8. **SMT. SATARA ALIAS SUNITA PANDEY D/O
DURGA PRASAD PANDEY.**

**ALL RESIDENTS OF VILLAGE KARMETA,
TAHSIL AND DISTRICT JABALPUR.**

.....APPELLANTS

***(SHRI MUKESH MISHRA - ADVOCATE AND OTHERS ARE
ABSENT)***

AND

1. **THE STATE OF MADHYA PRADESH THROUGH
THE SECRETARY TO GOVERNMENT, REVENUE
DEPARTMENT, BHOPAL (M.P.)**
2. **THE ADDITIONAL COLLECTOR
(COMPETENT AUTHORITY) UNDER THE
URBAN LAND (CEILING AND REGULATION)
ACT, JABALPUR (M.P.)**

.....RESPONDENTS

(BY SHRI A. RAJESHWAR RAO - GOVERNMENT ADVOCATE)

This appeal coming on for hearing this day, Hon'ble Shri Justice Purushaindra Kumar Kaurav, passed the following:

ORDER

This *intra* court appeal takes exception to order dated 28.02.2006, passed by the learned Single Judge in Writ Petition No.1759 of 2006, whereby the petition preferred by the appellants/petitioners has been dismissed.

2. The case of the appellants is that they are *Bhumiswami* of agriculture land situated in village Karmeta, P.C. No.26, Settlement No.497, Tahsil and District Jabalpur in Khasra No.95 and 200, comprising a total area 1.117 Hectares. The proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "The Act of 1976"), were initiated for declaring the land as surplus. Draft statement was issued on 30.11.1979. As per the order dated 03.03.1982, land admeasuring 64645.70 square meters was declared as surplus. The proceedings attained finality and the name of the State Government was recorded in revenue records.

3. The Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as "The Repeal Act, 1999") came into force on 18.03.1999 repealing the Act of 1976 with a saving clause in Section 3 of the Repeal Act, 1999. The appellants on 18.05.2004 made an application under Section 4 of the Repeal Act, 1999 read with Section 109 and 116 of the M.P. Land Revenue Code, 1959 (hereinafter referred to as "The Code of 1959") before the competent authority under the Urban Land (Ceiling and Regulation) Act, Jabalpur, stating that since the physical possession of the land in question remained with the appellants and only name of the State was entered into the Khasra, therefore, such Khasra entries should be corrected and the names of the appellants be re-entered in the revenue record.

4. The application of the appellants was rejected by the competent authority vide order dated 08.09.2005 (Annexure P/2) holding that the land in question has already been vested in the State Government and the possession thereof has been legally taken and the name of the State Government has rightly been recorded, therefore, the application of the appellants does not fall under the provisions of Section 4 of the Repeal Act, 1999.

5. The appellants approached this Court by way of writ petition under Articles 226 and 227 of the Constitution of India, challenging the order dated 08.09.2005 passed by the competent authority. The learned Single Judge did not find any substance in the petition and hence, the same was dismissed. Therefore, the appellants are in this *intra* court appeal.

6. We have carefully perused the record.

7. The main ground in the present appeal is that no proceedings under Section 10(5) and 10(6) of the Act of 1976 were initiated and the possession of the land was not taken over as per law and, therefore, the proceedings stood abated as per Section 4 of the Repeal Act, 1999. The appellants also pleaded that possession of the land are still with them and for all those reasons, they are entitled for continuation on their possession and directions for recording their names as *Bhumiswami*.

8. The learned Government Advocate appearing for the State has submitted that the possession of the land was taken over on 22.01.1994 by recording a *Panchnama* in the presence of witnesses. The proceedings initiated under the Act of 1976 were concluded much before coming into force of the Repeal Act, 1999 and, therefore, benefit of Section 4 of the Repeal Act, 1999 is not available to the appellants. The decision of the learned Single Judge is in accordance with law and the same does not call for any interference.

9. It was not disputed before the learned Single Judge nor before us that the notification under sub-section (3) of Section 10 of the Act of 1976 was issued. Section 10 of the Act of 1976 is being reproduced as under:-

“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 persons 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 authorised 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."*

10. A perusal of sub-section (3) of Section 10 shows that after publication of the notification under sub-section (1) of Section 10 in the official Gazette, the excess vacant land referred to in the notification, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and such land shall be

deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.

11. Sections 3 and 4 of the Repeal Act, 1999 are being reproduced as under:-

“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 by 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.”

12. It is clear that no proceeding was pending as on the date on which the Repeal Act, 1999 came into force. The possession was taken over by the State way back on 22.01.1994 by recording a Panchnama in the presence of witnesses. There is a statutory presumption under Section 117 of the Code

of 1959 of correctness of entries made under Chapter IX of the Code of 1959. After taking over the possession, name of the holder was deleted and the name of the State Government was recorded as owner and the same continued without any objection until the application, as stated above, in the year 2004 was filed. Under such circumstances, the proceedings which stood concluded much before came into force of the Repeal Act, 1999, cannot be reopened under the guise of the Repeal Act, 1999.

13. The learned Single Judge has relied upon the decisions of the Hon'ble Supreme Court in the matters of **Tamil Nadu Housing Board Vs. A. Viswam (Dead) by LRs¹**, **Larsen & Toubro Vs. State of Gujrat and others²** and **Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others³** and has held that recording of memorandum or *Panchnama* in the presence of witnesses would constitute taking of possession of the land; the High Court should not convert itself into a revenue court and hold that in spite of *Panchnama* and the revenue records, actual physical possession of the acquired land had not been handed over to the acquiring body and subsequent to the *Panchnama* of possession, the retention of possession would tantamount only to illegal or unlawful possession.

14. This Court in the matter of **Gokul Prasad Vs. State of Madhya Pradesh and another⁴**, has held that when the land is vested in the State and possession was taken, repeal of the principal Act did not affect the land so vested in the State as no proceeding was pending.

15. A constitution bench of the Hon'ble Supreme Court in **Indore Development Authority v. Manoharlal⁵** considered the question when is physical possession is said to have been taken under the provisions of the

1 AIR 1996 SC 3377

2 (1998) 4 SCC 387

3 (1996) 4 SCC 212

4 2003 (2) MPLJ 271

5 (2020) 8 SCC 129, paragraph 247, 260, 274

Land Acquisition Act, 1894. The court held that when the State draws up a memorandum or *Panchnama* of taking possession, that amounts to taking the physical possession of the land. When vacant land is acquired, the State is not supposed to put some person or the police in possession to retain it and start cultivation till the time the land is used for the purpose for which it is acquired. The State is not supposed to physically reside or occupy the land once the possession is taken after drawing of *Panchnama*. After drawing *Panchnama* taking possession of the land, if any one makes re-entry over the land then he is deemed to be a trespasser on the land which is in the possession of the State. It was further held that once possession is taken by drawing of *Panchnama* the lands vests in the government free from encumbrances. Thereafter any illegal re-entry over the land cannot have the effect of divesting the land once it vests in the State.

16. In **State of Madhya Pradesh v. Ghisilal**⁶ a two-judge bench of the Hon'ble Supreme Court considered the issue of taking possession of vacant land under the Act of 1976. While following the dictum of the constitution bench in **Indore Development Authority**⁵, it was held that taking possession of the vacant land by drawing a *Panchnama* amounts to taking physical possession of the land.

17. Further, in **State of Assam v. Bhaskar Jyoti Sarma and others**⁷ an argument was raised that when the possession of the land was taken, the provision of Section 10(5) of the Act of 1976 was not followed and hence no possession can be said to have been taken within the meaning of Section 3 of the Repeal Act of 1999. This argument was repelled by the Hon'ble Supreme Court by holding that if the actual possession of the land is taken over by the State then the grievance about non-compliance with Section 10(5) has to be taken within reasonable time of dispossession. If the land owner failed to take such objection within reasonable time then he has

6 2021 SCC Online SC 1098

7 (2015) 5 SCC 321, paragraph 15, 16, 17

deemed to have waived his right under Section 10(5). The decision and reasoning of **Bhaskar Jyoti Sarma**⁷ was approved by the constitution bench of the Hon'ble Supreme Court in **Indore Development Authority v. Manoharlal**⁸. In the present case, appellants filed an application alleging non-compliance with Section 10(5) and 10(6) in 2004 whereas the possession of the land was taken over by the State in 1994 i.e., 10 years earlier. The appellants, it is clear, did not object to the taking over of the possession within reasonable time. Thus, we are of the view, that on this additional point too, the possession of the State obtained legitimacy and cannot be questioned at this stage when the land is already vested in the State and its name mutated in the revenue records.

18. In view of the aforesaid, we do not find any substance in the instant writ appeal and the same is, therefore, dismissed.

(RAVI MALIMATH)
CHIEF JUSTICE

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

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