IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 20th OF MARCH, 2024

WRIT PETITION No. 15045 of 2010

BETWEEN:-

1. **SMT. TIKA BAI KOSTA W/O JEEVAN LAL KOSTA, AGED ABOUT 73 YEARS, VILL. TEVER TEH. AND DISTT. JABALPUR (MADHYA PRADESH)**

2. **DR. DILIP KU. MALAIYA S/O DR. KHUSALCHAND, AGED ABOUT 56 YEARS, KAMLA NEHRU NAGAR, JABALPUR (MADHYA PRADESH)**

3. **RAMCHARAN S/O SHRI TIKARAM, AGED ABOUT 53 YEARS, VILLAGE TEVER TEHSIL AND DIST. JABALPUR (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI BRIAN D'SILVA – SENIOR ADVOCATE WITH SHRI VIRENDRA SINGH AND VRUSHAL BHIDE - ADVOCATES)

AND

1. **SECRETARY THE STATE OF MADHYA PRADESH REVENUE DEPTT. VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

2. **COLLECTOR / DISTRICT MAGISTRATE OFFICE OF THE COLLECTOR JABALPUR (MADHYA PRADESH)**

3. **THE ADDITIONAL COLLECTOR COMPETENT AUTHORITY UNDER THE URBAN LAND (CEILING AND REGULATION) ACT, JABALPUR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI MOHAN SAUSARKAR – GOVERNMENT ADVOCATE)

....

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

ORDER

This petition under Article 227 of Constitution of India has been filed seeking the following reliefs :-

> "(1) To issue an order/direction/writ of appropriate nature quashing the impugned order dated 20.05.2010.
>
> (ii) To issue an order/writ/direction of appropriate nature holding that the Petitioner are in actual possession of the land in question.
>
> (iii) To issue order/writ/direction of appropriate nature prohibiting the Respondents to alienate or compel the Petitioner to vacate the land.
>
> (iv) To issue order/writ/direction of appropriate nature directing the Respondents to modify the land records in the name of Petitioners.
>
> (v) Any writ order or direction as this Hon'ble Court deems just and fair in the facts and circumstances of the case.
>
> (vi) Costs be awarded to the petitioner."

2. It is submitted by counsel for the petitioners that after several rounds of litigation, the matter in hand is confined to the fact as to whether the possession was taken as per the provisions of section 10(5) of Urban Land (Ceiling and Regulation) Act or not?

3. It is submitted that earlier by order dated 16.8.2005 passed in W.P.No.7715/2005 a Coordinate Bench of this Court had remanded

the matter back to the competent authority to scrutinize and scan the provisions of section 10 of the Act by giving an opportunity of hearing to the petitioners so that they can putforth their stand. Accordingly, by order dated 20.5.2010 passed by Additional Collector, Jabalpur in Revenue Case No.463/A-90/B-9/81-82, arising out of Possession Case no.31/B-121/91-92 has held that the land was already declared surplus and *de jure* vested in the State Government and even if the petitioners are in possession of the same, then at the most it can be said that they are in possession as an encroachers.

4. Challenging the order passed by Additional Collector, it is submitted by counsel for petitioners that no actual possession was taken.

5. The Supreme Court in the case of **State of U.P. v. Hari Ram**, reported in **(2013) 4 SCC 280** has held that the requirement of giving notice under sub-section (5) and (6) of section 10 of Act is mandatory. Although the word "may" has been used therein but 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.

6. It is submitted that paper possession will not be sufficient to hold that possession was taken in accordance with law. The counsel for petitioner has also relied upon the judgment passed by a Coordinate Bench of this Court in the case of **Dattatrayrao Kale Vs. State of M.P. and others decided on 12.2.2019 passed in W.P.No.1426/2011** and order dated passed in the case of **Durgadeen**

and others Vs. Secretary, the State of M.P. and others, decided on 8.9.2023 in W.P.No.14506/2010 (Indore Bench).

7. Per contra, the petition is vehemently opposed by the counsel for State. It is submitted that possession of the land in dispute was taken, which is apparent from the possession warrant (Annexure R-5). It is further submitted that it is clear from the notesheet dated 4.3.1992 that the petitioner was not present in spite of the notice and therefore, *ex parte* proceedings for taking possession was done.

8. Heard the learned counsel for the parties.

9. In the notesheet dated 4.3.1992 it is mentioned that the officer concerned went to the village; whereas the petitioner was not present in spite of the notices. *Ex parte* proceedings for taking possession was done, possession warrant was prepared and it was directed to be kept in the record. Thereafter on the next date (however the notesheet is partially torn and the date is not visible) it was mentioned that the possession has been taken and the revenue record has also been corrected by mutating the name of the State Government. A case for payment of compensation to the owner has been prepared. No further action is required. Accordingly, the record was directed to be sent to the record room.

10. Thus, it is clear that in the notesheet dated 4.3.1992 it is specifically mentioned that in spite of the service of notice, the petitioner was not present and possession warrant was prepared.

11. Now the only question for consideration is as to whether a paper possession is sufficient to hold that the possession was taken and whether the land after having vested in the State Government can be divested.

Whether the land once vested in the State Government can be divested

12. The aforesaid question is no more *res integra*.

13. The Constitutional Bench of Supreme Court in the case of **Indore Development Authority Vs. Manoharlal and others**, reported in (2020) 8 SCC 129 has held as under :-

> "**148.** A similar view has been taken in *Market Committee* v. *Krishan Murari* [*Market Committee* v. *Krishan Murari*, (1996) 1 SCC 311] and *Puttu Lal* v. *State of U.P.* [*Puttu Lal* v. *State of U.P.*, (1996) 3 SCC 99] The concept of "vesting" was also considered in *Fruit & Vegetable Merchants Union* v. *Delhi Improvement Trust* [*Fruit & Vegetable Merchants Union* v. *Delhi Improvement Trust*, AIR 1957 SC 344 : 1957 SCR 1] . Once vesting takes place, and is with possession, after which a person who remains in possession is only a trespasser, not in rightful possession and vesting contemplates absolute title, possession in the State. This Court observed thus : (*Fruit & Vegetable Merchants Union case* [*Fruit & Vegetable Merchants Union* v. *Delhi Improvement Trust*, AIR 1957 SC 344 : 1957 SCR 1] , AIR p. 353, para 19)
>
> > "*19*. That the word "vest" is a word of variable import is shown by provisions of Indian statutes also. For example, Section 56 of the Provincial Insolvency Act (5 of 1920) empowers the court at the time of the making of the order of adjudication or thereafter to appoint a receiver for the property of the insolvent and further provides that 'such property shall thereupon vest in such receiver'. The property vests in the receiver for the purpose of administering the estate of the insolvent for the payment of his debts after realising his assets. The property of the insolvent vests in the receiver not for all

> purposes but only for the purpose of the Insolvency Act and the receiver has no interest of his own in the property. On the other hand, Sections 16 and 17 of the Land Acquisition Act (1 of 1894), provide that the property so acquired, upon the happening of certain events, shall 'vest absolutely in the Government free from all encumbrances'. In the cases contemplated by Sections 16 and 17 the property acquired becomes the property of Government without any conditions or limitations either as to title or possession. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration. It would thus appear that the word "vest" has not got a fixed connotation meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. The provisions of the Improvement Act, particularly Sections 45 to 49 and 54 and 54-A when they speak of a certain building or street or square or other land vesting in a municipality or other local body or in a trust, do not necessarily mean that ownership has passed to any of them."

14. Thus, it is clear that once vesting takes place and is with possession, after which a person who is in possession, is only a trespasser and not in rightful possession.

15. Similarly, the Supreme Court in the case of **Land & Building Department through Secretary and Another Vs. Attro Devi and others, reported by judgment dated 11.04.2023 decided in Civil Appeal No.2749/2023** has held as under :-

*“12. The issue as to what is meant by "possession of the land by the State after its acquisition" has also been considered by Constitution Bench of Hon'ble Supreme Court in **Indore Development Authority’s** case (supra). It is opined therein that after the acquisition of land and passing of award, the land vests in the State free from all encumbrances. The vesting of land with the State is with possession. Any person retaining the possession thereafter has to be treated trespasser. When large chunk of land is acquired, the State is not supposed to put some person or police force to retain the possession and start cultivating on the land till it is utilized. The Government is also not supposed to start residing or physically occupying the same once process of the acquisition is complete. If after the process of acquisition is D.No.23608/2021 complete and land vest in the State free from all encumbrances with possession, any person retaining the land or any re-entry made by any person is nothing else but trespass on the State land. Relevant paragraphs 244, 245 and 256 are extracted below:*

*"**244.** Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The word "possession" has been used in the Act of 1894, whereas in Section 24(2) of Act of 2013, the expression "physical possession" is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form. <u>When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession,</u>*

any person retaining the possession, thereafter, has to be treated as trespasser and has D.No.23608/2021 *no right to possess the land which vests in the State free from all encumbrances.*

***245**. The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression "physical possession" used in Section 24(2). As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and drawns up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any reentry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is* D.No.23608/2021 *deemed to be the trespasser on land which in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.*

xxxx

***256**. Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the Act of 1894 that once possession is taken, absolute vesting occurred. It is*

an indefeasible right and vesting is with possession thereafter. The vesting specified under Section 16, takes place after various steps, such as, notification under Section 4, declaration under Section 6, notice under Section 9, award under Section 11 and then possession. The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of the property. Thereafter there is no control of the landowner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such D.No.23608/2021 possession of trespasser enures for his benefit and on behalf of the owner."

(emphasis supplied)"

16. Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976 reads as under :-

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

(3) At any time after the publication of the notification under subsection (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."

17. The Supreme Court in the case of **Attro Devi (supra)** has also held that the vesting of land with the State is with possession. Any person retaining the possession thereafter has to be treated trespasser. When large chunk of land is acquired, the State is not supposed to put some person or police force to retain the possession and start cultivating on the land till it is utilized. The Government is also not supposed to start residing or physically occupying the same once process of the acquisition is complete. If after the process of acquisition is complete and land vest in the State free from all encumbrances with possession, any person retaining the land or any re-entry made by any person is nothing else but trespass on the State land.

18. Thus, once the land has vested in the State Government, then the possession of a person would be that of an encroacher only and he cannot claim adverse possession. Such person cannot be treated as a person in rightful possession.

Whether the possession on paper can be said to be a physical possession

19. The Supreme Court in the case of ***Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others, reported in AIR 1996 SC 1239*** has held as under :-

> *"**4.** It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4-1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of*

taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession."

20. The Supreme Court in the case of ***Tamil Nadu Housing Board Vs. A.Viswam(Dead) by LRs., reported in AIR 1996 SC 3377*** has held as under :-

*"**9.** It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or Panchnama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not cooperate in taking possession of the land."*

21. The Supreme Court in the case of ***Sita Ram Bhandar Society, New Delhi Vs. lieutenant Governor, Government of NCT, Delhi and others, reported in (2009) 10 SCC 501*** has held as under :-

*"**28** A cumulative reading of the aforesaid judgments would reveal that while taking possession, symbolic and notional possession is perhaps not envisaged under the Act but the manner in which possession is taken must of necessity depend upon the facts of each case. Keeping this broad principle in mind, this Court in T.N. Housing Board v. A. Viswam [(1996) 8 SCC 259 : AIR 1996 SC 3377] after considering the judgment in Narayan Bhagde case [(1976) 1 SCC 700] , observed that while taking possession of a large area of land (in this case 339 acres) a pragmatic and realistic approach had to be taken. This Court then*

examined the context under which the judgment in Narayan Bhagde case [(1976) 1 SCC 700] had been rendered and held as under: (Viswam case [(1996) 8 SCC 259 : AIR 1996 SC 3377] , SCC p. 262, para 9)

> *"9. It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or panchnama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not be cooperative in taking possession of the land.*

***29.** In Balmokand Khatri Educational and Industrial Trust v. State of Punjab [(1996) 4 SCC 212 : AIR 1996 SC 1239] yet again the question was as to the taking over of the possession of agricultural land and it was observed thus: (SCC p. 215, para 4)*

> *"4. It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4-1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession."*

***30.** It would, thus, be seen from a cumulative reading of the aforesaid judgments, that while taking possession of a large area of land with a large number*

> *of owners, it would be impossible for the Collector or the revenue official to enter each bigha or biswa and to take possession thereof and that a pragmatic approach has to be adopted by the Court. It is also clear that one of the methods of taking possession and handing it over to the beneficiary Department is the recording of a panchnama which can in itself constitute evidence of the fact that possession had been taken and the land had vested absolutely in the Government."*

22. The Supreme Court in the case of **Banda Development Authority v. Moti Lal Agarwal** reported in **(2011) 5 SCC 394** has held as under :-

> "**37.** The principles which can be culled out from the abovenoted judgments are:
>
> (*i*) No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.
>
> (*ii*) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.
>
> (*iii*) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.
>
> (*iv*) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that

> symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.
>
> (*v*) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken."

23. Further the Supreme Court in the case of **State of U.P. and another Vs. Ehsan and another, decided on 13.10.2023 in C.A.No.5721/2023** has held that no doubt, in a writ proceeding between the State and a landholder, the Court can, on the basis of materials/evidence(s) placed on record, determine whether possession has been taken or not and while doing so, it may draw adverse inference against the State where the statutory mode of taking possession has not been followed. However, where possession is stated to have been taken long ago and there is undue delay on the part of landholder in approaching the writ court, infraction of the prescribed procedure for taking possession would not be a determining factor, inasmuch as, it could be taken that the person for whose benefit the procedure existed had waived his right thereunder. In such an event, the factum of actual possession would have to be determined on the basis of materials/evidence(s) available on record and not merely by finding fault in the procedure adopted for taking possession from the land holder. And if the writ court finds it difficult to determine such question, either for insufficient/inconclusive materials/evidence(s) on record or because oral evidence would also be required to form a definite opinion, it

may relegate the writ petitioner to a suit, if the suit is otherwise maintainable. There was a serious dispute with regard to taking of possession of the surplus land. There was a delay of about seven years in filing the first writ petition from the date when possession was allegedly taken by the State, after publication of the vesting notification. No documentary evidence such as a *Khasra* or *Khatauni* of the period between alleged date of taking possession and filing of the first writ petition was filed by the original petitioner. In the earlier two rounds of litigation, the High Court refrained from deciding the issue of possession of the surplus land even though that issue had arisen directly between the parties. Infraction of the prescribed statutory procedure for taking possession cannot be the sole basis to discard. State's claim of possession, when it is stated to have been taken long before the date the issue is raised, held, that the High Court should have refrained from deciding the issue with regard to taking of actual possession of the surplus land prior to the cut off date specified in the Repeal Act, 1999. Instead, the writ petitioner should have been relegated to a suit.

24. Thus, it is clear that one of the permissible mode of taking possession is by preparing possession *panchnama,* thus it cannot be said that possession of surplus land was not taken. Furthermore, when the possession was being taken, the petitioners were not present on the spot.

25. Under these circumstances, the State authorities were left with no other option but to take *ex parte* possession. Since the land in question was an open land it is not the case of the petitioners that any crop etc.was standing, therefore, in the light of judgment passed by

the Supreme Court in the case of **Banda Development Authority (supra)** paper possession will be a recognized mode of taking possession.

26. Since the possession of the land in dispute was already taken on 4.3.1992 and in spite of that if the petitioners are still in possession of the same, then their status would be that of encroachers only and they cannot be said to be in rightful possession of the land.

27. Under these circumstances, it cannot be said that the proceedings, which were initiated under the Urban Land (Ceiling and Regulation) Act had abated in the light of section 4 of Urban Land (Ceiling and Regulation) Repeal Act, 1999.

28. Accordingly, no case is made out warranting interference.

29. The petition fails and is hereby **dismissed.**

(G.S.AHLUWALIA)
JUDGE

TG/-