HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT JABALPUR

Case No.	**W.P. No.21957/2013**
Parties Name	*Chhedilal* ***Vs.*** *State of Madhya Pradesh and others*
Date of Judgment	**29/10/2018**
Bench Constituted	Single Bench.
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	**Yes**
Name of counsels for parties	**For petitioner**: Mr. Sanjay K. Agrawal, Advocate. **For Respondents:** Mr. Rahul Rawat with Mr. Ankit Agrawal, Government Advocate.
Law laid down	1. **Urban Land (Ceiling and Regulation) Act, 1976** Section 8, 9 and 10- the notification under Section 10(1) is required to be issued in respect of "vacant land in excess of the ceiling limit." "Such land" is to be acquired by issuance of notification under Section 10(1) and 3 of the Act. However, determination of such excess vacant land is based on draft statement followed by final statement prepared under Section 8 and 9 of the Act. Once such statement is set aside by Appellate Authority, the notification under Section 10(1) and 3 have become inconsequential. 2. **Article 226 of the Constitution-** Where very foundation of the notification under Section 10(1) and 10(3) has been set aside by Appellate Authority, entire edifice of notification will collapse automatically. If notifications are not separately challenged, it is not fatal for the petitioner. 3. **Section 10(5) and 10(6)-** The Competent Authority needs to pass a notice in writing and order any person in possession to surrender or deliver

	possession. Issuance of such notice/order is *sine qua non* for exercise of power under Section 6 of Section 10. In absence thereto, the action of taking possession is bad in law.
Significant paragraph numbers	**22, 28, 29 & 30**

O R D E R
29/10/2018

This petition filed under Article 227 of the Constitution of India is directed against the order dated 31.08.2013 (Annex.P/14) passed by the Tehsildar whereby the prayer of petitioner to mutate the land in his name was rejected on the ground that the matter is not related with mutation and the Tehsildar has no jurisdiction to take a decision regarding a claim relating to ceiling of the land.

2. Briefly stated, the relevant facts are that the petitioner claimed himself to be the owner of the land bearing Khasra No.51 area 0.482 hectare, Kh.No.52/1 area 0.235 hectares, Kh.No.123 area 1.26 hectares. New number of the aforesaid land is Kh.No.89 area 0.390 hectares, Kh.No.91 area 0.640 hectares, Kh.No.195 area 0.640 hectares and Kh.No.198 area 0.560 hectares situated in village Chowkital, Tahsil and District Jabalpur. It is claimed that petitioner is in cultivating possession of the aforesaid land. In support thereof, reliance is placed on Khasra Panchshala (Annex.P/1). The petitioner prayed for total exemption from the provisions of Urban Land (Ceiling & Regulation) Act, 1976. The competent authority registered Case No.176/A-90/B-9/80-81 upon receiving the return filed by the petitioner. The competent authority passed an order whereby 36044.61 Sq.mt. land of petitioner was declared as surplus vacant land. The petitioner was held entitled to retain only 1500 Sq.mt of land. On the basis of said order, a draft statement was directed to be issued. Thereafter on 23.04.1984 (Annx.P/3), the competent authority passed an order for publishing a final statement as per section 9 of the said Act. Aggrieved, petitioner

preferred an appeal under section 33 of the said Act before the Divisional Commissioner, Jabalpur against the order dated 23.4.1984. The said appeal was registered as Case No.785/A-90/B-9/86-87.

3. Upon hearing the parties, the appellate authority by order dated 18.02.1988 set aside the order dated 23.04.1984 passed by the competent authority and directed to decide the matter afresh after taking into consideration the claim of the petitioner. Petitioner contends that despite setting aside the order of competent authority by Additional Commissioner by order dated 18.02.1988, the Tahsildar (Nazul) Jabalpur took over *ex-parte* possession of the land on 27.09.1988. The memo of taking over possession is filed as Annexure P/5.

4. Shri Sanjay K. Agrawal pointed out that in the said memo it was clearly mentioned that since land owner has not handed over the possession, the same is being taken *ex-parte*. No independent witnesses have been shown in the memo whereas it is mandatory pre condition as per law. Shri Agrawal further urged that taking over possession by the Naib Tahsildar is in utter violation of section 10(5) and 10(6) of the said Act. The petitioner was not put to notice before taking over the possession. The Tahsildar (Nazul) was not competent to take over the possession on his own without there being any order by the competent authority. The appellate order of competent authority was well within the knowledge of Tahsildar which is evident by a bare perusal of the order sheets of the proceedings (Annx.P/6).

5. The stand of the petitioner is that the said possession allegedly taken by the Tahsildar was merely on papers and petitioner continued to be in actual physical possession of the said land. The petitioner is still cultivating the said land which is evident from Khasra Panchshala (Annx.P/1).

6. The petitioner has drawn attention of this court on the order sheets of the proceedings before the competent authority (Annx.P/6). It is urged that the competent authority directed issuance of notices to the petitioner. Thereafter petitioner participated in the proceedings. The matter was last fixed before the competent authority on 23.02.2000 on which date it was adjourned on account of non availability of the Presiding Officer. No order as required under section 10 of the said Act was ever passed by the competent authority till 23.02.2000. It is argued that the Act of 1976 was repealed by the Urban Land (Ceiling and Regulation) Act, 1998 (Repeal Act). The State Legislature adopted the Repeal Act on 17.02.2000.

7. Shri Agrawal further argued that as per section 4 of the Repeal Act all proceedings relating to any order made or purported to be made under the principal Act pending immediately before commencement of the Repeal Act before any Authority/ Court/ Tribunal shall abate. The proviso to this section is relied upon to contend that section 4 shall not apply to the proceedings relating to section 11,12,13 and 14 of the principal Act. It is strenuously contended that till the date Repeal Act came into being, no orders were passed in the said proceedings and, therefore, the same stood abated as per legislative mandate of the Repeal Act.

8. On the basis of aforesaid factual matrix, petitioner's case is that no part of his holding has been declared as surplus vacant land by the competent authority. For all purposes, petitioner must be treated to be owner of the land. The petitioner prayed for setting aside the action of taking possession by preferring an application before the competent authority on 07.06.1999 (Annx.P/7). Since no order could be passed on the said application of the petitioner, he preferred another application dated 16.11.2011 (Annx.P/8) after Repeal Act was introduced to correct the revenue records and incorporate the name of the petitioner and his

family members as owners of the land.

9. The petitioner placed reliance on a report dated 18.01.2001 (Annx.P/9) whereby the Patwari and Revenue Inspector stated that order of competent authority under section 9 has been set aside in appeal and, therefore, further action under section 10(5) and 10(6) of the Act was required to be taken which has not been taken. They further stated that petitioner is in possession of the land.

10. The petitioner filed W.P.No.13046/12 before this court seeking direction to the respondents for taking a decision relating to his claim of mutation aforesaid. This court by order dated 09.11.2012 (Annx.P/10) disposed of the matter with the direction to take a decision in the revenue case within stipulated time. In obedience of this order, the Addl. Collector passed an order on 15.03.2013 and directed the Tahsildar to pass the order for correction of entries in the Records of Rights considering the fact that the proceedings have already been abated.

11. Since no final decision was taken on the claim for change of entry/ mutation, Conc.Case No.520/13 was filed. This court by order dated 12.03.2013 extended the period for implementation for three months. Since the concerned authorities did not take a final decision, W.P.No.13965/13 seeking direction to the Tahsildar to pass an order within stipulated time was filed. This court by order dated 16.08.2013 directed the Tahsildar to pass an order positively on or before 31.08.2013. Thereafter, the impugned order dated 31.08.2013 came to be passed which is subject matter of challenge in this petition.

12. Shri Sanjay K. Agrawal, learned counsel for the petitioner submits that a welfare state needs to act in a fair, just and bonafide manner. The land of the petitioner cannot be taken under the garb of the

Act of 1976 in utter violation of provisions of the said act. He further argued that there is no delay on the part of the petitioner in raising his grievance. Heavy reliance is placed on the order sheets of the Competent Authority to show that the petitioner participated in the proceeding and consistently prayed for mutation of his name on the land in question. Shri Agrawal placed reliance on an order passed by this Court in WP. No.1992/2008 ***(Kishanlal vs. State of M.P. & Ors.)***. On the strength of this order, it is urged that the notices were never issued and in the manner land is acquired, it is in gross violation of method prescribed in Section 10 of the Act. He also placed reliance on order dated 09-08-2016 passed in WA. No.882/2018 ***(State of M.P. vs. Smt. Munni Bai Lodhi)***. It is urged that no notice to deliver possession in terms of Section 10(5) of the Act was issued and, therefore, possession could not have been taken.

13. Shri Rahul Rawat, learned Government Advocate on the other hand contended that the order dated 18-02-1988 passed by Additional Commissioner whereby the order dated 23-04-1984 passed by the Competent Authority was set aside, was never communicated to the Competent Authority, who was competent to take possession under Section 10(5) and 10(6) of the Act of 1976. Since the appellate order of Additional Commissioner was not within the knowledge of the Tehsildar, he took possession of the land *ex-parte* on 27-09-1988. The notification under Section 10(3) was published in the gazette on 04-04-1986. After taking possession on 27-09-1988, the petitioner has not challenged the said proceeding before any competent forum. The petitioner has not claimed restoration of his possession. The petitioner only claimed for correction of revenue entries without claiming restoration of possession. In absence of restoration of possession, the revenue entries cannot be corrected.

14. It is further averred in the return that as per Section 4 of the

Repeal Act, the proceeding under the main act are not abated. Since the possession was already taken by the State Government, Repeal Act will not restore the possession of land in favour of the petitioner. In the return, the order of Collector dated 15-03-2013 was criticized by saying that it is an order passed on misconception that High Court has set aside the ceiling proceeding. Such inadvertent position on incorrect finding will not give any right in favour of the petitioner. The impugned order passed by Collector is supported by the respondents. Shri Rawat, learned G.A. contended that admittedly possession of land was taken by the government in the year 1988 itself and thereafter State Government is in possession of the land. If the petitioner has cultivated the land without claiming the right of restoration, his status will be of an encroacher only. Even if the proceedings are treated to be abated, the land which has been taken over by the State Government cannot be automatically restored.

15. Shri Rawat, learned G.A. submits that the petition suffers from delay and latches. A possession which was taken in the year 1988 cannot be subject matter of challenge in a petition filed in the year 2013. More so, when notification issued under Section 10(3) of the Act has not been called in question. He relied on a Division Bench judgment (Indore Bench) in WA. No.125/2017 ***(State of M.P. & Ors. vs. Sunil)*** and argued that delay in filing litigation from the date of possession alone is sufficient to dismiss the petition. ***(1999) 3 SCC 5 (Shivgonda Anna Patil vs. State of Maharashtra)*** is relied upon to bolster the same point and the point that the writ petition is not maintainable when no appeal or revision application is filed against the order of Competent Authority. Lastly, ***(2015) 5 SCC 321 (State of Assam vs. Bhaskar Jyoti Sarma)*** is relied upon to submit that as per Section 10(5) of the Act, if physical possession of land was taken longback, the owner must be deemed to have waived his right under

Section 10(5) of the Act.

16. In the rejoinder submissions, Shri Agrawal, learned counsel for the petitioner submits that a careful reading of order sheets will make it crystal clear that no decision of any nature was ever taken to take possession of the land. The petitioner was consistently pursuing his matter and, therefore, delay will not be a hurdle in the present case.

17. No other point is pressed by learned counsel for the parties.

18. I have heard learned counsel for the parties at length and perused the record.

19. Section 6 of the Act of 1976 makes it clear that the land owner who is in excess of the ceiling limit, needs to file a statement in a prescribed form before the competent authority within three months from the due date. As per Section 8 of the said Act, on the basis of the statement filed under Section 6 and after conducting such inquiry, as the competent authority may deem fit, the authority shall prepare a draft statement in respect of the person/owner who has filed the statement under Section 6 of the Act. The draft statement must contain particulars mentioned in sub-section (2) of Section 8. The draft statement needs to be served on the person/owner together with a notice inviting his objection to the draft statement. After considering the objection so received, the competent authority passed an appropriate order as it deems fit. After the disposal of the objections received under sub section (4) of Section 8, the competent authority shall make necessary alterations in the draft statement in accordance with the orders passed on the objections aforesaid and shall determine the vacant land held by the person concerned in excess of ceiling limit and cause a copy of the draft statement as so altered to be served on the person concerned. Thereafter, the acquisition takes place as per Section

10 of the Act. Relevant portion of Section 10 reads 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 person 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."

(Emphasis supplied)

20. Indisputably, in the present case, the Appellate Authority by order dated 18.02.1988 (Annexure-P/4) set aside the order dated 23.04.1984 and remitted the matter back to rehear the appeal and pass appropriate fresh order in accordance with law. The respondents although have not disputed the factum of issuance of this order of Appellate Authority dated 18.02.1988, pleaded ignorance about this order. In the considered opinion of this Court, no such ignorance can be pleaded because the appellate order was admittedly passed by the competent authority. Unless that order is called in question in appropriate proceedings, the order will not vanish in thin air by pleading ignorance. Ignorance pleaded is also factually incorrect, which is evident from the order sheet dated 24.09.1988 wherein the competent authority clearly recorded the fact that Additional Commissioner, Jabalpur Division has set aside the order of competent authority dated 23.04.1984 by passing the order dated 18.02.1988. Thus, it cannot be said that the order dated 18.02.1988 has no effect at all. The question which needs consideration is : what is the effect and impact of this order dated 18.02.1988 ?

21. It cannot be forgotten that the stand of the respondent is that

belated challenge to the possession and no challenge to the notification issued under Section 10(3) must result in the dismissal of the petition.

22. A microscopic reading of sub-section (1) of Section 10 shows that the notification must give particulars of the vacant land held by such person in excess of ceiling land and such vacant land is to be acquired by the concerned State Government. The expression *"vacant land in excess of the ceiling limit" and "such land is to be acquired"* have great significance. The land which is notified must be a land for which a draft statement is prepared under Section 8 of the Act followed by a final statement prepared under Section 9 of the said Act after deciding the objections (if any) of the person/owner. A conjoint reading of Sections 6,8, 9 & 10 makes it clear that vacant land is to be determined on the basis of the statement filed by the owner under Section 6 of the Act, on which determination is made under Sections 8 & 9 by the competent authority. The determination of vacant land is depending upon the draft statement which takes shape of a final statement as per Section 9 of the Act. Thus, the notification issued under sub-section (1) of Section 10 depends on the nature of vacant land determined by the competent authority under Section 8 read with Section 9 of the Act. The foundation of the said notification is the determination of the vacant land by the competent authority.

23. Sub section (3) of Section 10 based on the notification issued under sub-section (1) of Section 10 of the Act. Putting it differently, after publication of 1st notification under sub-section (1), the competent authority may publish another notification in relation to said vacant land. The parties, during the course of argument, fairly admitted that both the notifications were actually issued by the competent authority. The parties are at loggerheads on the question whether in absence of challenge to notification, any relief can be granted.

24. The argument of learned counsel for the State on the first blush appears to be attractive wherein it is argued that in absence of challenge to the notification issued under sub sections (1) & (3) of Section 10, the petitioner cannot get any relief. However, on a closer scrutiny, this Court in the peculiar facts and circumstances of this case found that the said argument does not have much substance.

25. As noticed, the foundation for issuance of notification under sub-section (1) of Section 10 was the draft/final statement. Admittedly, the Appellate Authority by order dated 18.02.1988 (Annexure-P/4) set aside such a statement which was the foundation of the notification and remitted the matter back for reconsideration. No such consideration has ever taken place and the Repeal Act came into being.

26. This is trite law that if a foundation of any Act or order goes, the entire edifices gets collapsed automatically. Since the foundation of the notification was the draft/final statement, which could not sustain judicial scrutiny, at the level of the Appellate Authority, the very foundation of edifices of notifications collapsed and, therefore, whether or not notifications are separately called in question, it will not make any difference. Thus, in my view, the petitioner was vigilant and promptly challenged Section 8/9 statement before the Appellate Authority and succeeded before the said Authority. The petitioner was not a fence sitter or a sleeping litigant. The petitioner preferred an application dated 07.06.1999 before the competent authority with the prayer to set aside the order of Tahasildar (Nazul) dated 26.09.1988 with further prayer to record his name in the revenue record. This application is followed by another application dated 16.11.2011 (Annexure-P/8) wherein as per the mandate of Repeal Act, the petitioner prayed for mutation of his name in the revenue record. Since the aforesaid applications could not fetch any result, the petitioner filed W.P. No.13046/2012, Contempt Petition No.520/2013 and W.P.

No.13965/2013. All the said petitions were entertained and appropriate directions were issued.

27. In turn, the Additional Collector, Jabalpur vide order dated 15.03.2013 passed certain directions. In furtherance thereof, the Tahasildar passed the impugned order and opined that the Tahasildar does not have authority to decide the question of ceiling on its merits. Since in Government record land is shown as Government Nazul Land, the claim of the petitioner for mutation cannot be accepted.

28. As analyzed above, the very basis on which notification under Section 10(1) and subsequent notification under section 10(3) were founded upon gets collapsed in view of the order of Additional Commissioner, thus, it will be a hypertechnical approach to support the building when admittedly the foundation gets collapsed. The inevitable effect of collapse of foundation is collapse of edifice also. Thus, non-challenge to the notifications in the present case is not fatal.

29. The order sheets (Annexure-P/5) show that the petitioner or his representative consistently appeared in the matter before the competent authority. The order sheets nowhere show that any decision was taken by the competent authority for surrender of possession. As per sub-section (5) of Section 10, the competent authority may, by notice in writing, order any person to give possession or to deliver or surrender possession to the State Government.

30. It is seen that no such decision was ever taken. Sub-section (6) of Section 10 comes into play when a person refuses or fails to comply with the order made under sub-section (5), in that event, the competent authority may take possession of the vacant land. A combined reading of sub-sections (5) & (6) shows that passing of a notice in writing/order by the competent authority is *sine qua non* for handing over/deliver of

possession. In absence thereof, possession (if any) taken is bad in law. It is useful to refer in this regard a Division Bench judgment of this Court reported in ***2008 (3) MPLJ 365 (Sohan Singh vs. State of M.P.)*** wherein the Court opined that if the possession of land is taken contrary to the mandatory provisions of the Act of 1976, such action is bad in law. In ***2011 (4) MPLJ 355 (Govind Prasad Yadav vs. State of M.P. & Ors.)***, the Court held that the actual possession of land in question was never taken from the petitioner and, therefore, as per Section 3 of the Repeal Act, consequences would follow and proceeding under the Act of 1976 shall stand abated. Similarly, in ***2016 (2) MPLJ 623 (Thamman Chand Koshta vs. State of M.P.)***, this Court poignantly held that since the actual physical possession of land had remained with the holder on the date of commencement of Repeal Act and notice for taking possession as per Section 10(5) and 10(6) of the Principal Act were never issued, impugned order of rejection is liable to be set aside. In view of this legal position, it can be safely held that petitioner's actual possession remained on the land in question and notice/order to handover possession was never issued. Thus, mandatory requirement of Section 10(5) and 10(6) of the Act were never satisfied.

31. Precisely, this was the reason for non-interference by Division Bench in the case of ***State of M.P. Vs. Smt. Munni Bai Lodhi*** *(W.A. No.882/2018 decided on 09.08.2018)*. Thus, I am constrained to hold that possession of land of petitioner was not taken in accordance with law.

32. The learned Govt. Advocate relied on *Bhaskar Jyoti Sharma* (supra). In the said case, the Apex Court held that unless there was something that was inherently wrong so as to affect the very process of taking over such as the identity of land or the boundaries thereof or any other circumstances of a similar nature going to the root of the matter, no interference should be made. In the considered opinion of this Court, in the present case, there are circumstances which go to the root of the matter. The circumstance because of which (i) the final statement drawn

under section 9 itself stood quashed; (ii) consequential notifications issue under sub-sections (1) and (3) pale into insignificance; (iii) in absence of order in writing by the competent authority under sub-section (5) of Section 10, the possession is bad in law & (iv) the respondents have not denied that as per khasra entries (Annexure-P/1), the petitioner is still in actual possession and cultivating the land. So far the judgment on *Shivgonda Anna Patil* (supra) is concerned, in the said case, the order of competent authority was not called in question by preferring appeal or revision whereas in the present case, the petitioner admittedly preferred an appeal and succeeded in it, which is evident from Annexure-P/4. Thus, the said judgment is of no assistance to the respondents. The judgment of Division Bench in *Sunil* (supra)is based on the said Supreme Court's judgment.

33. As per Clause (1) of sub-section (1) of Section 3 of Repeal Act, the possession which has been taken over by the State Government must be a valid possession. The vesting of land under sub-section (3) of Section 10 is saved in the Repeal Act, but the said provision will not help the respondents in the present case because in the instant case, the very foundation of notification issued under sub-section (1) and (3) could not sustain judicial scrutiny. This Court has given detailed reason for the same and I am not inclined to repeat the same.

34. In nutshell, for the reasons stated above, the proceedings initiated against the petitioner under the Act of 1976 stood abated. The order dated 31.08.2013 (Annexure-P/14) is set aside. The respondents are directed to correct the relevant revenue entries and record the name of the petitioner instead of State Government. This order shall be complied within 60 days from the date of its communication.

35. Petition is allowed.

(Sujoy Paul)
Judge

MKL/mohsin/Biswal

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