

Court No. - 52

Case :- WRIT - C No. - 28505 of 2021

Petitioner :- Narendra Kumar Pahuja

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Madhusudan Dikshit

Counsel for Respondent :- C.S.C.,Jai Bahadur Singh,Satyam Singh

Hon'ble Kshitij Shailendra,J.

1. Counter affidavit filed by Saharanpur Development Authority pursuant to the previous order is taken on record.
2. Heard Sri Madhusudan Dikshit, learned counsel for the petitioner, learned Standing Counsel for the State-respondents and Sri Jai Bahadur Singh, learned counsel for the respondent- Saharanpur Development Authority.
3. This petition has been filed seeking a direction in the nature of mandamus commanding the respondents no.2 and 3 to pass suitable orders regarding correction in the revenue records. Further prayer has been made to expunge the name of State recorded in the Khatauni and to make entry in the name of the petitioner.
4. It is contended that the proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 were held against the petitioner and a Division Bench of this Court by order dated 20.05.2010 allowed Writ-C No.70468 of 2009 with an observation that since actual and physical possession of the land was not taken by the State on the date of repeal of the Act, 1976, therefore, in view of the provisions of Urban Land (Ceiling and Regulation) Repeal Act, 1999, the petitioner is entitled for the benefit of Clause 7 contained in Section 3 of the Repeal Act. The aforesaid judgment was carried before the Supreme Court by the State by filing Special Leave Petition, which was also dismissed by order dated

11.03.2013. A review application was filed, which was also dismissed by the Supreme Court.

5. It is contended that thereafter the petitioner has moved various applications from one pretext to the other requesting compliance of the aforesaid orders and making an entry in his name in the revenue records, however no head is being paid to the said applications.

6. Learned Standing Counsel as well as learned counsel for the respondent- Saharanpur Development Authority have jointly opposed the writ petition stating that possession of the land was taken by the State and thereafter it was transferred to Saharanpur Development Authority and, therefore, the petitioner is not entitled for any relief. Possession memos have also been brought on record.

7. In so far as the contention of the learned counsel for the respondents with regard to actual and physical possession over the land is concerned, once the Division Bench of this Court has already analyzed the said aspect in its order dated 20.05.2010 which has been confirmed by the Apex Court, I cannot take a different view of the matter and the judgment of this Court as confirmed by the Apex Court is binding upon this Court.

8. Learned counsel for the petitioner has placed reliance upon the order dated 09.02.2023 passed by this Court in Writ-C No.4621 of 2023 filed by one identically placed person Islam in which following order was passed by this Court:-

"Heard Sri Madhsudan Dixit, learned counsel for the petitioner and learned Standing Counsel for the State-Respondent.

This writ petition has been filed seeking a direction for Respondent No. 2 and 3 to pass suitable orders so that necessary correction may be made in the revenue records and the name of the State recorded in the Khatauni in relation of Khasra No. 304 of village Chak Adampur,

Tehsil and District Saharanpur be deleted and the name of the petitioner be recorded.

It is contended by the learned counsel for the petitioner that in the proceedings under Urban Land (Ceiling and Regulation), Act, 1976, earlier a writ petition being Writ Petition No. 30577 of 2009 (Isalm Vs. State of U.P. and others) was filed by petitioner which was allowed by a Division Bench of this Court vide order dated 23.5.2013. By the said order, the Respondents were directed not to interfere in the peaceful possession of the petitioner and with a further direction to restore entry in his name on moving proper application in accordance with law with shortest possible time.

The order dated 23.5.2013 is reproduced hereinbelow:

"By means of this writ, petitioner has prayed for a direction to the respondents not to interfere in his peaceful possession over the land declared as surplus under the Urban Land (Ceiling and Regulation) Act, 1976 as they continued in possession.

It is not necessary to write each and every fact of writ and counter as the controversy centre rounds to a limited issue.

The main ground is that actual physical possession over the land was never taken, in accordance with law and the petitioner continued in actual possession.

Argument is also about lack of notice/proper notice and non taking of possession.

Submission is that in view of U.P. Urban Land (Ceiling and Regulation) Repeal Act, 1999 petitioner will be deemed to be continuing with his rights.

Various other aspects were also argued.

Learned counsel for the petitioner placed reliance on a recent judgement given by this court on 22.5.2013 in Writ C No. 8983 of 2012 (Ram Singh and others Vs. State of U.P. and others) connected with other writ petitions which has taken note of the recent judgment of Apex

Court in State of U.P. Vs. Hari Ram reported in JT 2013 (4) SC 275.

Argument advanced in this petition and the grounds so stated have been dealt in the aforesaid judgement and various other cases on the point touching the issue has been referred.

State Counsel is not successful in his argument about factual and legal aspects in the light of the pleadings/exchanged pleadings about proper service and any positive material to take actual physical possession. This being so, petitioner cannot be divested of his rights.

Accordingly, this petition succeeds and is allowed.

Respondents are directed not to interfere in the peaceful possession of the petitioner and also to restore entry in his name on moving proper application in accordance with law within shortest possible time, if that is so required."

It is further contended that the order dated 23.5.2013 was carried by the State before the Hon'ble Supreme Court where the special leave petition was dismissed on 11.04.2014. It is further contended that pointing out the aforesaid finality, the petitioner moved various applications including application dated 1.11.2021 requesting the Additional District Magistrate (Finance and Revenue), Saharanpur to implement the order so that necessary correction be made in the revenue records.

Contention of the learned counsel for the petitioner is that the application dated 1.11.2021 is not being paid any heed to despite the matter having attained finality upto Hon'ble Supreme Court.

This Court takes a very serious view of the matter and deprecates the conduct of the Additional District Magistrate (Finance and Revenue), Saharanpur who is sitting tight over the matter despite the fact that the litigation has already attained finality upto to the Apex Court way back in the year 2014.

The application dated 1.11.2021 filed by the petitioner refers to the aforesaid proceedings finalized by this Court as well as the Apex Court and even then no action has been taken by the Respondent No.3 for implementation of the orders.

Learned Standing Counsel shall inform the Respondent No.3-Additional District Magistrate (Finance and Revenue), Saharanpur to look into the matter and take immediate steps for implementation of the aforesaid orders, if not yet been implemented. He will apprise the Court about the action taken by the Respondent No.3 within a period of three weeks from today.

In case this Court finds that the orders of this Court as well as the Hon'ble Apex Court are not paid any heed and actual implementation in the revenue record is not carried out, this Court may pass strict orders against the Respondent No.3, including directing his personal appearance on any date.

Put up this case as fresh on 2nd March, 2023 before the Appropriate Bench."

9. Learned counsel for the petitioner has placed further reliance upon the order dated 29.03.2022 passed by this Court in Writ-C No.28495 of 2021 filed by the petitioner himself on identical ground in relation to Gata No.103 (property in dispute in the present case is Gata No.104), in which following order was passed on 29.03.2022:-

"Civil Misc. Impleadment Application No. 2 of 2022

This application has been filed with the leave of this Court by the Saharanpur Development Authority seeking impleadment to this writ petition.

The application is allowed.

Let the Saharanpur Development Authority, Saharanpur through its Vice-Chairman be impleaded as party respondent to this petition during course of the day.

Order on Writ Petition

The petitioner's land that was declared surplus in proceedings under Urban Land Ceiling (Ceiling and Regulation) Act, 1976 was not taken actual physical possession of before the enforcement of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 and by virtue of Section 3 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, the land earlier declared surplus with the petitioner stood re-vested in the petitioner. Since the respondent-State was not acknowledging the lapse of proceedings under Section 3 of the Repeal Act and re-vesting of surplus land with the petitioner, the petitioner filed Writ-C No. 490 of 2010 before this Court. The said writ petition was allowed by a Division Bench vide judgement and order dated 17.05.2010 ordering in the following terms:

After the repealing of the Urban Land (Ceiling & Regulation Repeal) Act 1976 by Act No. 15 of 1999 Urban land (Ceiling and Regulation Repeal) Act 1999 the petitioners are entitled to the benefit of Section 3 of the Act No. 15 of 1999. The petitioner's land shall not be treated to have been declared as vacant land under the repeal Act.

The petitioner has annexed the Khasra of the year 1412 Fasli. Thus the possession of the petitioner stands proved after coming into force the Repealing Act. Therefore, the petitioner is entitled for the benefit of Clause 7 contained in section 3 of the repealing Act.

For the reasons recorded above the instant writ petition is allowed.

No orders as to cost. "

A Special Leave Petition was carried from the aforesaid judgement to the Hon'ble Supreme Court by the State being S.L.P. (Civil) Nos. 14052 of 2012 and 11140 of 2013. The aforesaid S.L.P. after grant of leave was converted into Civil Appeal No. 002472 of 2013. The aforesaid appeal has been dismissed vide judgment and order dated 11.03.2013 affirming the judgment of Division Bench of this Court dated 17.05.2010. Thus,

the land subject matter of ceiling proceedings now stands re-vested with the petitioner, after lapse of proceedings earlier taken under the Urban Land (Ceiling and Regulation) Act, 1976.

It appears that in the meantime, the land aforesaid has been illegally handed over to the Saharanpur Development Authority. The Saharanpur Development Authority and the State of U.P. are not delivering possession of land by employment of force of the State and have refused to comply with the declaration of the petitioner's rights granted by this Court and approved by the Supreme Court, defeating the petitioner's rights. It is submitted by the petitioner that the action of the respondent in refusing to deliver back the possession of land that was earlier surplus and now re-vested with him amounts to an arbitrary exercise of power by the State, including the Saharanpur Development Authority.

Admit.

Issue notice returnable on 11.04.2021.

Let an interim mandamus be issued to the Additional District Magistrate (Finance and Revenue), Saharanpur and the Vice-Chairman, Saharanpur Development Authority requiring the said respondents to deliver back possession of khasra No. 103 admeasuring 0.7640 hectares of land to the petitioner, situate in village Dabki Junardaar, Paragna and Tehsil Saharanpur, District Saharanpur and restore his rights in the Revenue papers, after deleting the name of the State and the Saharanpur Development Authority within a period of ten days or show cause by filing a counter affidavit why this interim mandamus be not made absolute.

List this matter again on 11.04.2022 in the additional cause list in the top three cases of the day.

Let this interim mandamus be communicated to the Additional District Magistrate (Finance & Revenue), Saharanpur and the Vice-Chairman, Saharanpur Development Authority, Saharanpur through the

*Collector, Saharanpur by the Registrar (Compliance)
within 24 hours.*

Order on Civil Misc. Stay Application No. 1 of 2021

For order, see orders of date made on the writ petition."

10. The submission of the learned counsel for the petitioner is that the present case is fully covered by the aforesaid interim orders and in so far as the orders dated 29.03.2022 passed in Writ-C No.28495 of 2021 and order dated 09.02.2023 passed in Writ-C No.4621 of 2023 are concerned, the same have been complied with and both the petitions have been disposed of.

11. Considering the above noted proceedings, an interim mandamus is issued to the (Additional District Magistrate (Finance), Saharanpur (respondent no.2) to take appropriate steps for implementation of the orders which have attained finality upto the Apex Court, if not yet implemented, or show cause, within a period of **three weeks** from today, as to why despite the aforesaid orders, either by this Court or Supreme Court, name of the petitioner is not mutated in the revenue records.

12. List this case on 30.05.2023 in top 10 cases.

Order Date :- 5.5.2023

AKShukla/-