

HIGH COURT OF MADHYA PRADESH

Date of Decision: 01/04/2024

Bench : HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

FIRST APPEAL No. 977 of 2005

**STATE OF MADHYA PRADESH THROUGH THE COLLECTOR, BHOPAL
(M.P.) AND OTHERS...APPELLANTS**

VERSUS

**CHETAN GODANI S/O PRAKASH GODANI AND
ANOTHER...RESPONDENTS**

Legislation:

Section 96 of the Code of Civil Procedure, 1908

The Urban Land (Ceiling and Regulation) Repeal Act, 1999

Section 10(5)/10(6) of the Urban Land Ceiling Act 1976

Subject: Appeal against the judgment decreeing a suit for declaration and permanent injunction in favor of respondents, concerning the ownership and possession of land in Bhopal, which had been declared surplus under the Urban Land Ceiling Act, 1976.

Headnotes:

Quashing of Government Orders – Ownership and Possession of Land – First Appeal against Trial Court Decree – Land in Bhopal under Urban Land Ceiling Act, 1976 – High Court upholds trial court's decree in favor of respondents – Orders by state authorities regarding land declared null and void post-repeal of Urban Land Ceiling Act, 1999 – Respondents' ownership and possession rights over disputed land confirmed. [Paras 1-22]

Validity of Government Action – Post-Repeal Scenario – Analysis – High Court finds actions of state authorities invalid post-repeal of Urban Land Ceiling Act, 1999 – No lawful basis for state's claim over the land post-repeal – Upholds the trial court's findings on ownership and possession by respondents. [Paras 11, 15, 16]

Decision – Dismissal of Appeal – High Court dismisses appeal by state – Affirms trial court's decree favoring respondents – Respondents retain

ownership and possession of the disputed land – State's orders post-1999 repeal found ineffective. [Paras 21-22]

Referred Cases:

- State of M.P. Vs. Ghisilal (Civil Appeal No. 2153/2012)
- State of U.P. Vs. Hari Ram (2013) 4 SCC 280
- State of U.P. and Another Vs. Ehsan and Another, 2023 SCC Online 1331

Representing Advocates:

For Appellants: Shri Ramji Pandey, Government Advocate

For Respondents: Shri Siddharth Sharma, Advocate

J U D G E M E N T

This first appeal under Section 96 of the Code of Civil Procedure, 1908 has been filed by the appellants/State being aggrieved by the impugned judgment, dated 30.04.2005 passed by Fourth Additional District Judge, Bhopal (M.P.) in Civil Suit No. 123-A/2004 (Chetan Godani & Ors. Vs. State of M.P. & Ors.), whereby suit filed for declaration and permanent injunction by the respondents has been decreed and they have been declared as owner and possession holder of the suit land bearing Khasra No. 115/1/2 situated at Village Bagh Sewaniya, Patwari Halka No. 20 area 1.56 acres, Vikas Khand Fanda, Tehsil Huzur, District Bhopal and letter, dated 15.05.2001 and 18.05.2001 issued by appellant/defendants declared as null and void and issued permanent injunction against the appellants that they will not interfere in the peaceful possession of the respondents/plaintiffs in suit property.

2. Brief facts of the case are that the plaintiffs have purchased the suit land bearing Khasra No. 115/1/2 area 1.56 acres situated at Bag-sevaniya, Rajasva Nirikshak Mandal No.2, Anand Nagar, Patwari Halka No. 20 area 1.56 acres, Vikas Khand Fanda, Tehsil Huzur, District Bhopal (M.P.) (hereinafter referred to as 'suit property') from previous owner Kasturba Grah Nirman Sahkari Samiti Maryadit, Bhopal vide registered sale deed (Ex.P-2), dated 02.09.2000. Accordingly, plaintiffs are the owner and possession holder of the suit property from the date of execution of the sale deed i.e. 02.09.2000. It is further pleaded that suit land was previously owned by Shri Nirbhay Singh and after death of Shri Nirbhay Singh, legal representatives of Shri Nirbhay Singh i.e. Sajjan Singh, Gajraj Singh, Lakhon Singh and Makhan Singh became the owner of the suit land. Previous owner of the suit land had filed

a return under the provision of Urban Land Ceiling Act before the Competent Authority and Competent Authority has declared the suit land as surplus land and ordered to record the suit land in the name of Government of M.P., which was challenged before the Court of Additional Commissioner, Bhopal Division, Bhopal, which was decided by order dated, 18.08.1986 (Ex.P-4) and order, dated 06.04.1985 (Ex.P-6C) passed in Case no.88/84/A-90/C-2 by "Competent authority Nagar Bhoomi Seema Adhiniyam, Bhopal," declaring the suit land as surplus was quashed and the matter was remanded back to defendant No.2-Competent Authority Nagar Bhoomi Seema Adhiniyam, Bhopal for adjudication of the case on merits and pass a speaking order. After that defendant No.2 passed an order on 22.04.1999 (Ex.P-5C) in Case No.376/1999 by releasing the whole land 71071.63 sq. mt. including Kh. No.115 by declaring it as not surplus as per Urban Ceiling Act, 1976. After passing the order, dated 22.04.1999 by Competent Authority (defendant No.2/respondent No.2) in case No. 376/1999 under Section 6 of the Act, and in case No. 88/1984 under Section 10(1) of the Act vide order, dated 22.04.1999, original owner approached the Tehsildar, Bhopal on 29.05.2000 for mutation of land in their names, then Tehsildar, Bhopal has passed the order, dated 29.05.2000 and recorded the name of Nirbhay Singh in all revenue records and vide order, dated 12.06.2000, legal representatives of Nirbhay Singh were recorded in revenue records.

3. It is also the case of the plaintiffs/respondents that Kasturba Grah Nirman Sahkari Samiti Maryadit, Bhopal have purchased the suit land from legal representatives of Nirbhay Singh vide registered sale-deed (Ex.P-8C) and suit land was mutated vide order, dated 25.07.2000 in the name of Kasturba Grah Nirman Sahkari Samiti Maryadit, Bhopal. After that, plaintiffs/respondents have purchased the suit land vide registered sale deed, dated 02.09.2000 (Ex.P-2) from Kasturba Grah Nirman Sahkari Samiti Maryadit, Bhopal after carefully examining the title documents and revenue records and after execution of the sale-deed, their names were mutated in revenue records vide order, dated 06.10.2000. After purchasing of the suit land, plaintiffs/respondents have approached the Nazul Officer, Bhopal to get N.O.C. with respect to the suit land in favour of plaintiffs/respondents. After following due process, Nazul Officer, Bhopal has issued N.O.C. No. 90/Nazul/B/121/2000-2001, dated 31.03.2001 which is Ex.P-13.

4. Thereafter Appellant no.2 sent a letter, dated 15.05.2001 to Appellant no.3 to record the suit land in the name of Government of M.P. without giving

any opportunity of hearing to the plaintiffs/respondents. Defendant No.2 communicated to defendant No.3 that order, dated 22.04.1999 has been set aside. On the basis of letter, dated 15.05.2001, defendant No.3 passed the order, dated 18.05.2001 in relation to suit land including Kh. No. 115/1/1 and Kh. No. 115/2 total area-4.76 acres and issued a letter no. 467 dated 18.05.2001 stating that they are proceeding for cancellation of N.O.C., which was earlier issued, and have also accused the plaintiffs/respondents that they are encroaching upon the Government Land. Thereafter, the plaintiffs/respondents have filed the civil suit before the trial Court praying that order, dated 15.05.2001 and 18.05.2001 be set-aside and for deletion of title of the suit property in favour of appellants and issue permanent injunction against the defendants.

5. Defendants/appellants have filed their written statement and denied the averments mentioned in the plaint and pleaded that the suit land was earlier recorded in the name of Sajjan Sing S/o Nirbhay Singh and was declared as surplus land under the Urban Ceiling Act, 1976 in the year 1990 and on 24.11.1990, Government took possession over the suit property and was recorded as owner and possession holder of the suit property. While ordering the release of land of Nirbhay Singh in favour of transferees, due to a clerical error instead of half of 17.91 acres of land, whole land i.e. 17.91 acres was released. It is also pleaded that Commissioner, Bhopal has cancelled the order of Competent Authority (defendant No.2/respondent No.2) saying that order is not a speaking order. It is also pleaded that order was not with respect to the whole of the suit property and it was a clerical error, by which whole land ad-measuring 17.91 acres was released and defendants/appellants has acted in illegal manner and after extending opportunity of hearing order was passed and prayed for dismissal of the suit.

6. Trial Court has framed the issues on the pleadings of the parties and recorded the statements adduced by learned counsel for the parties and after hearing arguments on behalf of parties, passed the impugned judgment and decree in favour of plaintiffs/respondents. Being aggrieved by the impugned judgment and decree, appellants have preferred this appeal.

7. Learned counsel for appellants submitted that the impugned judgment and decree has been passed without jurisdiction. Learned trial Court has failed to take cognizance of material evidence adduced by the appellants in the case. He further submitted that the learned trial court has no jurisdiction to declare the suit land under the ownership and possession of the appellants as they have no title due to lack of ownership of Nirbhay Singh. The suit land

belongs to State of M.P., which was taken over in possession under the provisions of Section 10(5)/10(6) of the Urban land Ceiling Act 1976, in the year 1990 from late Shri Sajjan Singh and late Shri Sajjan Singh had never challenged the statement under Section 9 of the Act and taking over the possession of the land under Section 10 of the aforesaid Act. Hence, impugned judgment and decree is bad in law and is liable to be set aside. In support of his arguments, learned Government Advocate placed reliance on judgment of **Hon'ble Apex Court passed in Civil Appeal No. 2153/2012 (State of M.P. Vs. Ghisilal) judgment dated 22/11/2021.**

8. Learned counsel for the respondents submits that previous owners and the present respondents have been in continuous and un-interrupted possession of the land till date and are cultivating the same and physical possession of lands has not been taken over till date. It is also submitted that as per settled principle of law laid down in **State of UP Vs. Hari Ram (2013) 4 SCC 280**, the only course of action available to the State Government for taking over the possession of the land was by serving a notice under Section 10(5) of the Act and in this case no such notice under Section 10(5) was ever served to the respondents. In support of his contentions, learned counsel for the respondents placed reliance on **Dhaniram (dead) through L.Rs.- Ram Kumar Pathak & Ors. vs. State of M.P. & Anr. 2012 SCC Online MP 5050** and **State of U.P. and another Vs. Ehsan and another, 2023 SCC Online 1331**. Learned counsel for the appellants placed reliance upon the judgment of Hon'ble Supreme Court in **Civil Appeal No.2153 of 2012 (SC)**.

9. I have considered the arguments of learned counsel for the parties, perused the record and gone through the citations upon which reliance has been placed by the counsel for the parties.

10. Respondents/Plaintiffs in support of his pleadings has recorded the statement of Ashok Gupta (P.W.-1), Power of Attorney holder of Amit Gupta (Plaintiff no.2) and exhibited documents Ex.P-1 to Ex.P-15. Appellants/Respondents in support of his pleading has recorded the statement of Tehsildar and O.I.C. of the case Shri C.P. Nigam (D.W.-1) and exhibited documents Ex.D-1 to Ex.D-9.

11. It is not in dispute that previously suit land was in the possession and ownership of the Nirbhay Singh. It reveals from Ex.P-6C (Notice under Section 10 of the Urban Ceiling Act, 1976) that 71071.63 sq. mt. land belonging to Nirbhay Singh s/o Moolchand was declared as surplus and against this notification, Chairman of Parvati Grah Nirman Sahkari Samiti and members along with their counsel appeared, and objection was filed and competent authority has passed the order, dated 06.05.1985 and rejected their objection. It is pertinent to mention here that the alleged notice under the

Act was issued and served to Nirbhay Singh has not been exhibited and proved before the Trial Court on behalf of Appellants/State.

12. Order, dated 06.05.1985 passed by competent authority was challenged before Additional Commissioner, Bhopal in Case no.297/84/85 which was disposed by order, dated 18.08.1986 (Ex.P-4) and order passed in Case no.88/84/A-90/C-2, dated 06.05.1985 was set-aside whereby 71071.63 sq. mt. land was declared as surplus and remanded the matter with the direction to pass an speaking order on merits. In compliance of order of Additional Commissioner, Competent Authority has passed the order, dated 22.04.1999 (Ex.P-5C) and released the land 71071.63 sq. mt belonging to Nirbhay Singh s/o Moolchand. This fact has also been admitted by D.W.-1 in para 16 of his cross-examination.

13. It reveals from (Ex.P-3C) that land Khasra no.115 area-4.76 acres/1.927 hectare was mutated in the name of Nirbhay Singh son of Moolchand vide order, dated 29.05.2000 and vide order, dated 12.06.2000 the above land was mutated in the name of legal representatives of Nirbhay Singh i.e. Sajjan Singh, Jagdish Prasad and Ors.

14. Vendor of the plaintiffs have purchased 3.12 acres out of 4.76 acres of Kh, No.115 from legal representatives of Nirbhay Singh through a registered sale deed, dated 13.06.2000 (Ex.P-8C). After that the plaintiffs have purchased the suit land from Kasturba Grah Nirman Sahkari Samiti vide registered sale deed, dated 02.09.2000 (Ex.P-2) and land was mutated in the name of plaintiffs and N.O.C. dated 31.03.2001 (Ex.P-13) was issued in the name of the Plaintiffs by the Nazul Officer, Bhopal.

15. It reveals from note-sheet, dated 16.05.2001 (Ex.D-8) that on the letter no.243, dated 15.5.2001 issued by the office of competent authority- Nagar Bhoomi Seema, Bhopal, Case no.21/A-6-A/2000-01 was registered in the Court of Naib Tehsildar and vide order, dated 18.05.2001, suit land including Kh. No.115/1/1 and 115/2, total area-4.76 acres land be recorded in the name of Government of M.P. Urban Ceiling. It does not reveal from Ex.D-8 that prior to passing of the order, dated 18.05.2001 and 15.05.2001 any opportunity was given to the affected parties i.e. plaintiffs in the case under Section 10(5) of the Act of 1976. It is pertinent to mention here that the land was already freed from Ceiling proceedings vide order, dated 22.04.1999 (Ex.P-5C) and both these orders have been passed well after "The Urban Land (Ceiling and Regulation) Repeal Act, 1999", hereinafter referred to as "Repeal Act of 1999" came into force, thereby rendering any order passed thereafter as ex-facie illegal. D.W.-1 has admitted in para- 13 of his

cross-examination that Urban Land Ceiling Act was repealed on 17th February, 2000, therefore such an order could not have been passed by the authorities. D.W.-1 has admitted in para 19 and 25 of his cross-examination that order, dated 22.04.1999 was never challenged before any court through appeal, revision or review, and therefore it has attained finality.

16. As per the case of defendants/appellants that the possession of 3.480 hectare/34805.53 sq. mt. land (including suit property) was taken on 24.11.1990 (Ex.D-4) from Sajjan Singh, whereas it reveals from the Ex.P-4, Ex.P-5 and Ex.P-6 that proceeding regarding declaring as surplus the land ad-measuring 71071.63 sq. mt. of the ownership of Nirbhay Singh son of Moolchand had been initiated. It reveals from the above documents that land relating to Kh. No.115 was included in the above proceedings. Hence, documents Ex.D-2, Ex.D-3, Ex.D-4 are contradictory to Ex.P-4, Ex.P-5, and Ex.P-6 and therefore cannot be relied upon. D.W.-1 has admitted in para-26 of his examination that in Ex.D-5 (Copy of Khasra panchshala 1987-1988 to 1989-1990) wheat crops were planted over the suit property Therefore, the possession has not been taken by the State as per the requirements of Section 10(3) of the Act of 1976. He has also admitted in the same paragraph that there is no signature of land owner in Ex.D-4 (Kabzanama) and except the signature of revenue authority; there are no sign of any witnesses or panch who were present on spot at the time of taking over the possession.

17. It is also pertinent to mention here that appellants have not produced any documentary evidence relating to payments made towards taking over of the surplus land to the previous land owner i.e. Nirbhay Singh or Sajjan Singh. Hence the appellants have also failed to show that they have paid any compensation to land owners Nirbhay Singh or Sajjan Singh in lieu of the surplus land. Also, when Additional Commissioner, Bhopal has passed the order, dated 18.08.1986 (Ex.P-4) and set-aside the order, dated 06.05.1985 passed by Competent Authority Nagar Bhoomi Seema, Bhopal, in that case possession could not have been taken over by the Competent Authority. 18. Hon'ble Apex Court in the case of **State of U.P. and Another Vs. Ehsan and Another, 2023 SCC Online 1331** has held that civil suit could be instituted by the petitioner to protect his interest. Para Nos. 26 and 27 of the said judgment is reproduced here as under:-

26. Before we proceed further on the aforesaid issue, it would be useful to examine whether at the time of filing the third writ petition, the original petitioner had an alternative remedy of a suit to seek appropriate relief for protecting his rights, if any, over the land in dispute. In this regard, we may observe that ordinarily a suit to question the orders passed, and consequential notifications issued, under the Ceiling Act, 1976 is barred,

inasmuch as the Ceiling Act, 1976 is a self-contained Code and any orders passed thereunder are subject to statutory appeal etc. For the same reason, a suit may not lie to declare that surplus land, which has been notified as such under Section 10 (3) of the Ceiling Act, 1976, is free from ceiling for failure to take actual possession prior to enforcement of the Repeal Act, 1999. (See : *State of M.P. v. Ghisilal 14* ; *Competent Authority, Calcutta, Under The Urban Land (Ceiling and Regulation) Act, 1976 v. David Mantosh 15*; and *Saurav Jain v. A.B.P. Design 16*).

27. However, in our view, on the aforesaid principle a suit on the cause of action shown in the third writ petition would not have been barred. Because, here, in the earlier round of litigation (i.e., writ petition No. 9702 of 1987), the High Court had already made a declaration that if actual possession of the surplus land has not been taken prior to the cut-off date (i.e., 11.1.1999) specified in the Repeal Act, 1999, the proceedings under the Ceiling Act, 1976 would abate, and if actual possession had been taken by the cut-off date, it will not abate. In view of this conditional declaration, a further declaration in respect of validity of the orders passed, and notifications issued, under the Ceiling Act, 1976, was not required, therefore a court of competent jurisdiction could have entertained a suit and grant such relief, as may be warranted, dependent on its determination whether actual possession of the surplus land was taken or not, before the cut-off date. In this view of the matter, in our considered view, on the cause of action disclosed in the third writ petition, the first respondent could have instituted a suit to protect his interest, if any, in the land in dispute.
(Emphasis supplied)

19. Hence, arguments of learned counsel for appellants that the impugned judgment is passed without jurisdiction has no merit in the light of judgment of Hon'ble Apex Court in the case of **State of U.P. and Another Vs. Ehsan and Another (supra)**.

20. In case of **State of U.P. Vs. Hari Ram, (2013) 4 SCC 280**, Hon'ble Apex Court has held that ceiling proceedings would abate in all cases where factual possession had not been handed over or delivered to the State Government before the date of coming into force of Repeal Act, 1999, by virtue of Section 4 of Repeal Act, 1999, since, such pending or incomplete ceiling proceedings, would not be saved by Section 3 of the Repeal Act, 1999.

21. As discussed above, in my considered opinion, the findings on issues no.1, 2 and 3 of trial court are based on proper appreciation of evidence and settled principles of law as well as provisions of law. Hence, no interference is required.

22. Accordingly, appeal sans merit and is hereby dismissed. Accordingly, decree be drawn. 23. No order as to cost.

