



A.F.R.

Reserved

Court No. - 21

Case :- WRIT - C No. - 12696 of 2009

Petitioner :- Mohammad Suaif And Another

Respondent :- State Of U.P. Thru Secy. Urban Planning And Others

Counsel for Petitioner :- Pankaj Agrawal, Madhusudan Dixit

Counsel for Respondent :- C.S.C.

With

Case :- WRIT - C No. - 12665 of 2009

Petitioner :- Imranulla And Another

Respondent :- State Of U.P. Thru Secy. Urban Planning And Others

Counsel for Petitioner :- Pankaj Agrawal, Madhusudan Dikshit

Counsel for Respondent :- C.S.C.

With

Case :- WRIT - C No. - 12695 of 2009

Petitioner :- Haseen Fatima And Another

Respondent :- State Of U.P. Thru Secy. Urban Planning And Others

Counsel for Petitioner :- Madhusudan Dikshit, Pankaj Agrawal

Counsel for Respondent :- C.S.C.

Hon'ble Pradeep Kumar Singh Baghel, J.

Hon'ble Pankaj Bhatia, J.

(Delivered by Hon. Pankaj Bhatia, J.)

Heard learned counsel for the petitioners and learned counsel for the State.

The present petition has been filed by the petitioners mainly seeking a writ of mandamus declaring the entire proceedings initiated against the petitioners under the Urban Land (Ceiling and Regulation) Act No.36 of

1976 as abated in view of the Repealing Act of 1999.

The facts in brief, in all the above said three writ petitions, narrated separately, are being decided together by this common judgement.

The facts in the case of Mohammad Suaif, Writ Petition No.12696 of 2009, are as under:-

The original land holding was held by the grand father of the petitioner late Anwarul Haq who was the original tenure holder of Khasra Plot nos.219, 220(M), 221(M), 277(M), 184/1, 185/1(M), 561/3(M), 210/1(M), & 276, total measuring 1789.92 Sq. Meters situated at village Dara Shivpuri Swadvai District Saharanpur. After his death, his three sons became the owners of the entire property and ultimately the property was succeeded by the petitioners. It is stated that the petitioners filed return under Section 6 (1) of the Urban Land (Ceiling and Regulation) Act No.33 of 1976 (herein after referred to as 'the Act') and a draft statement was prepared under Section 8 (3) of the said Act. The land was declared as surplus land on 23.3.1979 by the competent authority under the Urban Land Ceiling Act. It is specifically averred that the names of the petitioners continued in the revenue records and a specific assertion is made that the petitioners are in actual physical possession of the plots in question. It is stated that as on the date of Repeal of the Act, the petitioner's name was duly recorded over the property in dispute and the name of State Government was not mutated in the revenue record nor was the actual physical possession taken nor was any possession ever given by the petitioners in respect of the said property.

The State of Uttar Pradesh has filed a counter affidavit stating that a notice under Section 10 (5) of the Act, was sent to the petitioners on 7.2.1996 which was served on Ikramul Haq on 12.11.1996 through the process server and on 9.2.1987, the possession was taken voluntarily in accordance with law. There is no denial of the averments that as on

the date of Repeal, the name of the State Government was not mutated in the revenue records. However, it has been stated that on 28.1.2002 the land in question was transferred to Saharanpur Development Authority and is under control of the said development authority. The State Government has relied upon an Annexure (CA-1 to the counter affidavit) showing the manner of taking possession. A perusal of the said annexure reveals that no description has been given as to who has taken the possession and even the name of the person given possession is not recorded in the said possession note. No signatures of Lekhpal or the Accountant are borne out from the perusal of the possession memo. The said possession memo is dated 9.2.1987. The said possession memo states that a declaration of possession was made.

The facts in Writ Petition No.12665 of 2009 filed by Imranullah, are as under:-

Anwarul Haq was the original tenure holder of Khasra Plot Nos.219, 220(M), 221(M), 277(M), 184/1, 185/1(M), 561/3(M), 210/1(M) & 276, situated at village Dara Shivpuri Swadvai District Saharanpur and after his death, his three sons inherited the entire property. The tenure holders filed their return under Section 6 (1) of the Urban Land (Ceiling and Regulation) Act, 1973 and after the scrutiny, a draft statement was prepared under Section 8 (3) of the Act. Subsequently vide order dated 22.5.1997 passed under Section 8 (4) of the Act, the objections filed by the petitioners were rejected. It is specifically stated that even after the passing of the order under section 8 (4) of the Act, the names of the petitioners were recorded in the revenue records over the said plots and it is specifically stated that at the time of coming into force of the Repeal Act, the name of the petitioners were duly recorded over the property in question and the name of the State was not mutated in the revenue records nor any possession was ever given by the petitioners and the petitioners still continue to be in the actual physical possession of the plots in question.

A counter affidavit has been filed on behalf of the State Government stating that a notice under Section 10 (5) of the Act was issued on 7.10.1986 which was served upon the tenure holder personally on 12.11.1986 and thereafter a possession was given voluntarily over the surplus land on 9.2.1987 and the name of the State Government was recorded on 20.3.1998 and also that the possession has been transferred to Saharanpur Development Authority on 28.1.2002. The State has filed a document as Annexure-CA-1 to demonstrate that the possession was given voluntarily under Section 10 (5) of the Act. The Annexure-CA-1 to the counter affidavit shows that the possession was taken on 9.2.1987 however, the name of person taking possession is not recorded neither the name of the person giving the possession nor his signatures are recorded and even the said possession memo does not bear the signatures of the Lekhpal who is said to have taken the possession. The possession memo further records that a declaration of possession was made through the said document.

The facts, in Writ Petition No.12695 of 2009 filed by Haseen Fatima, are as under:-

The petitioner claims to be the owner by virtue of succession to the property owned by the grand father of the petitioner late Anwarul Haq bearing Plot nos.219, 220(M), 221(M), 277(M), 184/1, 185/1(M), 561/3(M), 210/1(M), & 276, total measuring 1789.92 Sq. Meters situated at village Dara Shivpuri Swadvai District Saharanpur. The grand father of the petitioner had filed return under Section 6 (1) of the Act and after the scrutiny of the return, the competent authority had prepared a draft statement under Section 8 (3) of the Act. It is stated that even after declaring the land as surplus, the names of the ancestors of the father of the petitioner were duly recorded in the revenue records and even at the time of enforcement of the Repealing Act, the names of the petitioner were duly recorded over the property in dispute and the name of the State Government was not mutated in the

revenue records nor any possession was handed over by the petitioners with respect to the said property. It is specifically stated that the actual physical possession has never been taken and the petitioners are still in actual physical possession over the property in question and by virtue of the Repealing Act, the entire proceedings stand abated.

The State Government has filed its counter affidavit stating that after the passing of the order dated 9.8.1979 under Section 8 (4) of the Act publication was made in the Government Gazette on 26.8.1985 under Section 10 (3) of the Act. It is further stated that there after a notice under Section 10 (5) of the Act was issued on 7.10.1986 and was served upon the tenure holder personally on 18.10.1986 and thereafter the possession was taken on 9.2.1987 and the mutation was done on 31.1.1998. It is further brought on record that the possession was handed over to the Saharanpur Development Authority, Saharanpur on 28.1.2002. The State Government also annexed a possession memo as CA-1 to the counter affidavit which reveals that on 9.2.1987, the possession was taken by representatives of the Collector. It further records that Surjeet Singh, the land record Inspector, Halqa Lekhpal Naseebuddin prepared the map on the spot and in the presence of Shobha Ram, Anurakshak received the possession from Arun Kaushik and the possession was declared. The said possession memo does not record the signatures of the Halqa Lekhpal and does not record the names of the person giving the possession or the person taking the possession.

The common thread of facts in all the above three cases are that the possession is said to have been taken voluntarily under Section 10 (5) of the Act, there are no signatures of the person giving the possession, the possession is not taken by the Collector, there is no authorization in favour of any person taking possession by the State Government or by the Collector and in all the cases the Collector has not taken the possession himself.

Sri Madhusudan Dixit, counsel for the petitioners has specifically argued that the actual physical possession had never been taken from the petitioners even the symbolic possession referred to in the counter affidavit cannot be termed as a possession taken in accordance with law for the reason that the same has never been taken from the tenure holders and the same has not even been taken by the person authorized under the Act to do so. Sri Dixit further argued that in terms of the provisions of the Act and the relevant procedure prescribed thereunder, it is only the Collector who is empowered to take possession and he does not have any authority to further delegate his power, as such the possession memo relied upon by the respondents cannot be termed as possession in accordance with law. It is also argued that in the cases where possession is not being given by the tenure holders voluntarily under Section 10 (5) of the Act, it was incumbent upon the respondents to have issued notice under Section 10 (6) of the Act for taking the actual physical possession which has not been done, admittedly, in the present case as such the proceedings initiated under the Urban Land (Ceiling and Regulation) Act stood abated by virtue of the Repealing Act.

The petitioners in support of his contention, has relied upon judgements of the Hon'ble Supreme Court as well as Allahabad High Court, in the case of *State of Uttar Pradesh Vs. Hari Ram (2013) 4 Supreme Court Cases 280, State of Uttar Pradesh and another Vs. Nek Singh 2010 LawSuit (All) 3581, Ram Chandra Pandey Vs. State of U.P. through Secretary, Avas, Lucknow 2010 (82) ALR 136, Ram Singh & others Vs. State of U.P. and others 2013 (120) RD 389, Lalji Vs. State of U.P. and 2 others 2018 LawSuit (All) 1276*, and the judgement of the Hon'ble Supreme Court in the case rendered in Special Leave to Appeal (C) No.38922 of 2013, *State of Uttar Pradesh and another Vs. Vinod Kumar Tripathi & others*.

The standing counsel has argued that in view of the fact that the

symbolic possession has already been given to the Saharanpur Development Authority, the writ petitions are liable to be dismissed and has placed reliance of the judgement in the case of ***State of Assam Vs. Bhaskar Jyoti Sarma and others***, the judgement of this Court in Writ-C No.31059 of 2015 ***Jagdish Chandra Vs. State of U.P. & 2 others***, Writ-C No.69503 of 2005 ***Smt. Savitri Singh and others Vs. State of U.P. and others***, and Civil Misc. Writ Petition No.28180 of 2007 ***Suresh Kumar and others Vs. State of U.P. and others***. The State Government has also relied upon the judgement of the Hon'ble Supreme Court in the case of ***State of U.P. and others Vs. Surendra Pratap & others 2016 Lawsuit (SC) 501***.

The Urban (Ceiling and Regulation) Act was promulgated as Act No.33 of 1976 and it came into force on 17.2.1976. The object of the Act was to provide for imposition of ceiling of vacant land in urban conglomeration and for acquisition of such lands which were held in excess of the ceiling limits.

In terms of Act No.33 of 1976 by virtue of powers conferred under Section 35 of the said Act. The State of Uttar Pradesh issued specific directions prescribing the manner for taking possession known as the Uttar Pradesh Urban Land Ceiling (Taking of Possession, Payment of Amount and Allied Matters) Directions, 1983.

The Act No.33 of 1976 was repealed by Section 2 of the Repeal Act, 1999 and the said Repeal Act was adopted in the State of Uttar Pradesh on 18.3.1999. By virtue of Section 3 of the Repeal Act, savings clause was provided, Section 3 of the Repeal Act, 1999 is being quoted herein below:-

"Section 3 in The Urban Land (Ceiling and Regulation) Repeal Act, 1999

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 the State Government or any person duly authorized 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 authorized 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."

The relevant directions issued under Section 35 of the Act No.33 of 1976 known as The Uttar Pradesh Urban Land Ceiling (Taking of Possession payment of amount and Allied Matters) Directions, 1983 (Directions issued by the State Government under Section 35 of the Act, 1976) are quoted herein below:-

The Uttar Pradesh Urban Land Ceiling (Taking of Possession payment of amount and Allied Matters) Directions, 1983 (Directions issued by the State Government under Section 35 of the Act, 1976):

“In exercise of the powers under Section 35 of the Urban Land (Ceiling and Regulation) Act, 1976 (Act No.33 of 1976), the governor is pleased to issue the following directions relating to the powers and duties of the Competent Authority in respect of amount referred to in Section 11 of the aforesaid Act to the person or persons entitled thereto:

1. Short title, application and Commencement –These directions may be called the Uttar Pradesh Urban Land Ceiling (Taking of Possession Payment of Amount and Allied Matters Directions, 1983)

2. The provisions contained in this direction shall be subjected to the provisions of any directions or rules or orders issued by the Central Government with such directions or rules or orders.

3. They shall come into force with effect from the date of publication in the Gazette.

2. Definitions:-

3. Procedure for taking possession of vacant Land in excess of Ceiling Limit-(1) The Competent Authority will maintain a register in Form No.ULC -1 for each case regarding which notification under sub-section (3) of Section 10 of the Act is published in the Gazette.

4. (2) an order in Form No.ULC-II will be sent to each land holder as prescribed under sub-section (5) of Section 109 of the Act and the date of issue and service of the order will be entered in Column 8 of Form No.ULC-1.

(3) On possession of the excess vacant land being taken in accordance with the provisions of sub-section (5) or sub-section (6) of Section 10 of the Act, entries will be made in a register in Form ULC-III and also in Column 9 of the Form No.ULC-1. The Competent Authority shall in token of verification of the entries, put his signatures in column 11 of Form No.ULC-1 and Column 10 of Form No.ULC-III.

Form No.ULC-1 Register of Notice u/s 10-(3) and 10(5)

1	2	3	4	5	6	7	8
	Serial No. of Register of Receipt Serial No. of Register of Taking Possession	Case number	Date of Notification u/s 10 (3)	Land to be acquired village Mohali	Date of taking over possession	Remarks	Signature of competent Authority

Form NO. ULC-II

*Notice order u/s 10(5)
(See clause (2) of Direction (3))*

In the Court of Competent Authority

U.L.C.

No..... Date

Sri/Smt.....T/o

In exercise of the powers vested un/s 10(5) of the Urban Land Ceiling and Regulation Act, 1976 (Act No.33 of 1976, you are hereby informed that vide Notification No..... dated under section 10(1)

published in Uttar Pradesh Gazette dated... following land has vested absolutely in the State free from all encumbrances as a consequence Notification u/s 10(3) published in Uttar Pradesh Gazette dated Notification No..... dated With effect from you are hereby ordered to surrender or deliver the possession of the land to the Collector of the District Authorised in this behalf under Notification No.324/II-27- U.C.77 dated February 9, 1977, published in the gazette, dated March 12, 1977, within thirty days from the date of receipt of this order otherwise action under sub-section (6) of Section 10 of the Act will follow.

Description of Vacant Land

<i>Location</i>	<i>Khasra number identification</i>	<i>Area</i>	<i>Remarks</i>
1	2	3	4

Competent Authority

.....

.....

Dated.....

Copy forwarded to the Collector with the request that action for immediate taking over of the possession of the above detailed surplus land and its proper maintenance may, kindly be taken an intimation be given to the undersigned along with copy of certificate to verify.

Competent Authority

.....

.....”

Based upon the facts in the writ petitions above, as well as the statutory provisions extracted above, the questions to be determined by this Court are;

- i) whether the possession taken by the State Government can be termed as a valid possession in accordance with law provided under the Act No.33 of 1976 read with the Uttar Pradesh Urban Land Ceiling (Taking of Possession, Payment of Amount and Allied Matters) Directions, 1983 ?

- ii) whether the possession not taken inconsonance with the provisions of the Act and Directions can be termed to be a legal possession ?
- iii) whether the subsequent transfer of the land to Saharanpur Development Authority can be a sole ground for denying the reliefs to the petitioners ?
- iv) what would be the effect of the Repeal Act, in the event the possession is held not to be taken in accordance with the statutory provisions ?
- v) whether the judgment of the Supreme Court in the case of ***State of Assam Vs. Bhaskar Jyoti Sarma and others (2015) 5 Supreme Court Cases 321*** can be applied to the cases arising in the State of Uttar Pradesh ?

Testing the facts and the law as pleaded and argued by the counsels at the bar, it is clear that the possession said to be taken vide the possession memo annexed as Annexure-CA-1 to all the writ petitions by the standing counsel has not been taken by the Collector and have admittedly been taken by the representatives of the Collector. It is further clear that the possession was not voluntarily handed over by the land owners as none of the possession memo bears the signatures of the land owners or their representative. No notice under Section 10 (6) of the Act has been issued in any of the three cases. The perusal of the said possession memo makes it clear that the possession has not been taken by the Collector and thus is not in accordance with the provisions of Section 10 (5) of the Act No.33 of 1976 read with the Directions issued under Section 35 of the Act. The directions issued under Section 35 of the Act by the State Government have already been quoted above.

The Supreme Court in the case of ***State of Uttar Pradesh Vs. Hari Ram (Supra)*** while interpreting the true import of Section 10 (5) & 10

(6) of the Act, and the effect of Repeal Act has laid down as under:-

“37. Requirement of giving notice under sub-sections (5) and (6) of Section 10 is mandatory. Though the word ‘may’ has been used therein, 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. Effect of non-issue of notice under sub-section (5) or sub-section (6) of Section 11 is that it might result the land holder being dispossessed without notice, therefore, the word ‘may’ has to be read as ‘shall’.

38. Above reasoning is in consistence with the Directions 1983 which has been issued by the State Government in exercise of powers conferred under Section 35 of the Act. Directions clearly indicate that the procedure for taking possession of the vacant land in excess of the prescribed ceiling limit, which reads as under:

The Uttar Pradesh Urban Land Ceiling (Taking of Possession payment of amount and Allied Matters) Directions, 1983 (Directions issued by the State Government under Section 35 of the Act, 1976):

“In exercise of the powers under Section 35 of the Urban Land (Ceiling and Regulation) Act, 1976 (Act No.33 of 1976), the governor is pleased to issue the following directions relating to the powers and duties of the Competent Authority in respect of amount referred to in Section 11 of the aforesaid Act to the person or persons entitled thereto:

.....

39. The above-mentioned directives make it clear that sub-section (3) takes in only de jure possession and not de facto possession, therefore, if the land owner is not surrendering possession voluntarily under sub-section (3) of Section 10, or surrendering or delivering possession after notice, under Section 10(5) or dispossession by use of force, it cannot be said that the State Government has taken possession of the vacant land.

40. The scope of Act 33 of 1976 came up for consideration before this Court on few occasions, reference may be made to certain judgments, even though there has been no elaborate discussion of the provision of the Act and its impact on the Repeal Act. Reference may be made to Pt. Madan Swaroop Shrotiya Public Charitable Trust v. State of U.P., Ghasitey Lal Sahu and Another v. Competent Authority, Mukarram Ali Khan v. State of Uttar Pradesh and Vinayak Kashinath Shilkar v. Deputy Collector and Competent Authority.

Effect of the Repeal Act

41. *Let us now examine the effect of Section 3 of the Repeal Act 15 of 1999 on sub-section (3) to Section 10 of the Act. The Repeal Act 1999 has expressly repealed the Act 33 of 1976. The Object and Reasons of the Repeal Act has already been referred to in the earlier part of this Judgment. Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute and the facts of the particular case.*

42. *The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. **On failure to establish any of those situations, the land owner or holder can claim the benefit of Section 3 of the Repeal Act.** The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 4 of the Repeal Act.*

43. *We, therefore, find no infirmity in the judgment of the High Court and the appeal is, accordingly, dismissed so also the other appeals. No documents have been produced by the State to show that the respondents had been dispossessed before coming into force of the Repeal Act and hence, the respondents are entitled to get the benefit of Section 3 of the Repeal Act. However, there will be no order as to costs."*

The aspect of taking possession was also extensively dealt with by the Hon'ble Supreme Court in the judgment of **State of U.P. Vs. Hari Ram (Supra)** where the Hon'ble Supreme Court after analysing the scheme of the Act held that the vesting of the property in the context of the provisions of the Act No.33 of 1976, the Repeal Act as well as the Directions issued under Section 35 of Act No.33 of 1976 has to be 'actual possession' and not 'symbolic possession'. However, it is open to the land owner to voluntarily deliver the possession under Section 10 (5) of the Act.

The perusal of the said provisions noted above, makes it clear that the competent authority by making the Rules has authorized only the

Collector to take the possession with no authority for further sub delegation given to the Collector either under the Act or under the Directions referred to above.

It is well settled that a delegatee cannot sub-delegate his power without their being specific authority as has been held in the case of ***State of Bombay Vs. Shiva Balak, AIR 1965 SC 661*** and in the case of ***NGEF Vs. Chandra, 2005 Vol. 8 SCC page 219.***

The State Government issued a Government Order No. 2228/आठ-6-15- 124 यूसी/13 dated 29th September, 2015 accepting the judgment of the Hon'ble Supreme Court in the case of ***State of Uttar Pradesh Vs. Hari Ram (Supra)*** and necessary directions were issued to take steps for compliance and decision in terms of the directions in the case of ***State of Uttar Pradesh Vs. Hari Ram (Supra)***. Copy of the said Government Order dated 29.9.2015 is quoted herein below:-

संख्या – 2228/आठ-6-15-124 य_wसी/13

प्रेषक,

पनधारी यादव

सचिव,

उत्तर प्रदेश शासन।

सेवा मे,

जिलाधिकारी,

गोरखपुर, वाराणसी, इलाहाबाद, लखनऊ, कानपुर

आगरा, मेरठ, मुरादाबाद, अलीगढ, बरेली, सहारनपुर।

आवास एवं शहरी नियोजन अनुभाग-6 लखनऊ : दिनांक 29 सितम्बर 2015

विषय नगर भूमि (अधिकतम सीमा एवं विनियमन) निरसन अधिनियम, 1999 तत्कम में निर्गत शासनादेश तथा मा0 उच्चतम न्यायालय के निर्णय दिनांक 11.03. 2013 के सम्बन्ध में।

महोदय,

उपयुक्त विषय पर मुझे यह कहने का निर्देश हुआ है कि भारत सरकार के अधिनियम संख्या-15/1999 दिनांक 18.03.1999 द्वारा नगर भूमि (अधिकतम सीमा एवं विनियमन) अधिनियम 1976 को निरसित करते हुए नगर भूमि (अधिकतम सीमा एवं विनियमन) निरसन अधिनियम 1999 प्राख्यापित किया गया जिसके क्रम में शासनादेश संख्या- 502/9- न0 भू0-99-21यू0 सी0/99, दिनांक 31.03.1999 द्वारा उक्त निरसन अधिनियम को उत्तर प्रदेश राज्य में अंगीकृत किया गया। निरसन अधिनियम 1999 की धारा-3 में यह प्राविधान है कि मूल अधिनियम का निरसन निम्नलिखित को प्रभावित नहीं करेगा-

(1) (क) धारा-10 की उपधारा- (3) के अधीन ऐसी रिक्त भूमि का निहित होना, जिसका कब्जा राज्य सरकार या राज्य सरकार द्वारा इस निमित्त सम्यक रूप से अधिकृत किसी व्यक्ति या सक्षम प्राधिकारी ने ले लिया है।

(ख) धारा- 20 की उपधारा- (1) के अधीन छूट देने संबंधी किसी आदेश या उसके अधीन की गयी किसी कार्यवाही की किसी न्यायालय के किसी निर्णय में उसके विरुद्ध किसी बात के होते हुए भी विधिमान्यता:

(ग) धारा- 20 की उपधारा- (1) के अधीन प्रदान की गयी छूट की शर्त के रूप में राज्य सरकार को किया गया कोई संदाय:

(2) जहां-

(क) मूल अधिनियम की धारा-10 की उपधारा (3) के अधीन किसी भूमि को राज्य सरकार में निहित होना मानी गयी है किन्तु जिसका कब्जा राज्य सरकार या राज्य सरकार द्वारा इस निमित्त सम्यक रूप से प्राधिकृत किसी व्यक्ति या सक्षम प्राधिकारी द्वारा नहीं लिया गया : और

(ग) ऐसी किसी भूमि के बाबत जिसके लिए राज्य सरकार द्वारा किसी रकम का संदाय कर दिया गया है तब तक प्रत्यावर्तित नहीं की जाय और जब तक कि राज्य सरकार को संदाय की गयी रकम का यदि कोई हो, प्रतिदाय नहीं कर दिया जाता।

उक्त के क्रम में शासनादेश संख्या-777/9न0भू0-135 यू0 सी0/99 दिनांक 09.02.2000, शासनादेश संख्या -1623/9- न0भू0-2000 दिनांक 09.08.2000 एवं शासनादेश संख्या- 190/9-आ-6- 2001 दिनांक 24.01.2001 निर्गत किये गये जिसमें मुख्य रूप से यह व्यवस्था की गई कि मूल अधिनियम धारा -8 (4) के अन्तर्गत जो भूमि रिक्त घोषित की गई थी और धारा-10 (3) के अन्तर्गत राज्य में निहित हो चुकी थी एवं धारा-10 (5) की कार्यवाही का आदेश हो चुका था परन्तु इस भूमि पर राज्य सरकार का कब्जा प्राप्त नहीं हो सका था, ऐसी भूमि के सम्बन्ध में मूल भूधारक को अदा की गई धनराशि भूधारक द्वारा वापस करने पर भूमि मूल भूधारक को प्रत्यावर्तित की जा सकती है किन्तु अदा की गई धनराशि भू- धारक द्वारा वापस न करने की दशा में भूमि पर कब्जा किये जाने के सम्बन्ध में विधि अनुसार अग्रिम कार्यवाही अमल में लायी जाय। यह भी व्यवस्था की गई कि जिस भूमि के सम्बन्ध में धारा-10 (5) की कार्यवाही के उपरान्त धारा-10 (6) की कार्यवाही पूर्व हो चुकी है और भूमि पर राज्य सरकार द्वारा कब्जा लिया जा चुका है वह सरप्लस भूमि अन्तिम रूप से राज्य सरकार में निहित मानी जायेगी।

3. नगर भूमि सीमारोपण- गोरखपुर, वाराणसी, इलाहाबाद, लखनऊ, कानपुर, आगरा, मेरठ, मुरादाबाद, अलीगढ़, बरेली, सहारनपुर में लम्बित अर्बन सीलिंग प्रकरणों का समुचित रूप से निस्तारण ने होने की स्थिति में भू-धारकों/वादियों द्वारा मा0 उच्च न्यायालय में अधिक संख्या में रिट याचिकाये योजित की जा रही है। नगर बस्ती

कार्यालयों द्वारा रिट याचिकाओं में विभागीय पक्ष समयान्तर्गत साक्ष्यों सहित प्रबलता से प्रस्तुत न किये जाने के कारण मा० न्यायालय द्वारा पारित आदेशों के क्रम में शासन को असमंजसपूर्ण स्थिति का सामना करना पड़ रहा है।

4. अर्बन सीलिंग के अन्य प्रकरण में राज्य सरकार द्वारा मा० उच्चतम न्यायालय नई दिल्ली में विशेष अनुमति याचिका संख्या-12960/2008 उत्तर प्रदेश राज्य बनाम हरीराम योजित की गयी। कालान्तर में अन्य जनपदों के अर्बन सीलिंग से संबंधित प्रकरणों में योजित विशेष अनुमति याचिकाएँ उक्त विशेष अनुमति याचिका से क्लब की गयी। उक्त विशेष अनुमति याचिका संख्या-12960/2008 तथा उससे क्लब अन्य विशेष अनुमति याचिकाओं में पारित मा० उच्चतम न्यायालय के निर्णय दिनांक 11.03.2013 में अर्बन सीलिंग से संबंधित प्रकरणों में मार्गदर्शक सिद्धान्त प्रतिपादित किये गये हैं। निर्णय दिनांक 11.03.2013 का महत्वपूर्ण एवं क्रियात्मक अंश निम्नवत है:-

प्रस्तर- 39

The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub section (5) of Section 10 or forceful dispossession under sub section (6) of Section 10. On failure to establish any of those situations, the land owner or holder can claim the benefit of Section 3 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 3 of the Repeal Act.

प्रस्तर- 40

We, therefore, find no infirmity in the judgment of the High Court and the appeal is, accordingly dismissed so also the other appeals. No documents have been produced by the State to show that the respondents had been dispossessed before coming into force of the Repeal Act and hence, the respondents are entitled to get the benefit of Section 3 of the Repeal Act. However, there will be no ore as to cost.

5. नगर भूमि (अधिकतम सीमा एवं विनियमन) निरसन अधिनियम, 1999 में विहित प्राविधान तथा तत्कम में निर्गत शासनादेश दिनांक 09.02.2000, शासनादेश दिनांक 09.08.2000 एवं शासनादेश दिनांक 24.01.2001 स्वतः स्पष्ट है। विशेष अनुमति याचिका संख्या-12960/2008 उत्तर प्रदेश राज्य बनाम हरीराम तथा उससे क्लब अन्य विशेष अनुमति याचिकाओं में पारित मा० उच्चतम न्यायालय के निर्णय दिनांक 11.03.2013 में उल्लिखित सिद्धान्त/आदेश भी स्वतः स्पष्ट है।

6. कृपया नगर भूमि (अधिकतम सीमा एवं विनियमन) निरसन अधिनियम, 1999 तथा उक्त शासनादेश दिनांक 09.02.2000, शासनादेश दिनांक 09.08.2000 एवं शासनादेश दिनांक 24.01.2001 में विहित व्यवस्था, विशेष अनुमति याचिका संख्या-12960/2008 उत्तर प्रदेश राज्य बनाम हरीराम में पारित मा० उच्चतम न्यायालय के निर्णय दिनांक 11.03.2013 में उल्लिखित सिद्धान्तों/आदेशों के आलोक में लम्बित प्रकरणों में **Legal ingredients** देखते हुए आवश्यक कार्यवाही की

जाय ।

भवदीय
ह0 अपठनीय
(पनधारी यादव)
सचिव

संख्या एवं दिनांक तदैव ।

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित ।

1. निदेशक नगर भूमि सीमारोपण , उ0 प्र0 जवाहर भवन— लखनऊ
2. सक्षम प्राधिकारी नगर भूमि सीमारोपण गोरखपुर, वाराणसी, इलाहाबाद, लखनऊ, कानपुर, आगरा, मेरठ, मुरादाबाद, अलीगढ, बरेली, सहारनपुर ।
3. मुख्य स्थायी अधिवक्ता मा0 उच्च न्यायालय, इलाहाबाद
4. गार्ड फाईल ।

आज्ञा से
(कल्लू प्रसाद द्विवेदी)
उप सचिव ।

In the present case the documents annexed by the State Government and relied upon by them to show the possession, do not in any manner demonstrate that the possession was, peacefully and voluntarily, given by the land owner as the possession memo does not bear any signature of any of the land owner or even does not record that the possession was voluntarily given to the State authority. Thus, on two grounds i.e. possession not taken by the person authorized under the Act and the possession not given in accordance with Section 10 (5) of the Act, the possession in the present case as taken by the State is held to be wholly illegal.

The next case relied upon by the counsel for the petitioners is ***State of Uttar Pradesh and another Vs. Nek Singh (Supra)***, this Court extensively considered all the judgments and held as under :-

“9. Otherwise also, the statutory benefit of the Repealing Act is also available to the landholder-respondent in the fact-situation of the matter, as the taking of the “possession” in the present case was

neither de jure nor de facto. The term “possession” as per **sections 3 and 4 of the Repealing Act and section 10(6)** of the U.L.C.R Act means and implies the lawful “possession” after “due compliance of the statutory provisions”. In *State of U.P v. Boon Udhyog (P) Ltd.* . **1999 4 AWC 3324 para 16**, a Division Bench of this Court has held that where possession has been taken, its legality is to be decided on merits. Similarly, another Division Bench of this Court in **State of U.P v. Hari Ram . 2005 60 ALR 535.**, has held that “in case possession is purported to be taken under section 10(6) of the Act, still Court is required to examine whether ‘taking of such possession’ is valid or invalidated on any of the considerations in law. If Court finds that one or more grounds exist which show that the process of possession, though claimed under section 10(5) or 10(6) of the Act is unlawful or vitiated in law, then such possession will have no reorganization in law and it will have to be ignored and treated as of no legal consequence”. On examination of the facts on record, it is crystal clear that the possession allegedly taken on 23.1.1986 was unlawful for plurality of reasons which are—Firstly, the possession allegedly taken on 23.1.1986 was pursuant to the CA's order dated 19.12.1985 under section 10(5) which was addressed to deceased Dhan Singh and, therefore, it was nullity and non est factum having no legal consequence and the possession taken on the basis was also void. Secondly, as per the Government Order dated 9.2.1977 issued by the State Government (filed with Supplementary Counter Affidavit and taken on record), the Collector was alone authorised under section 10(6) of the U.L.C.R Act to take possession on behalf of the State Government, but in the instant case, the possession was taken by the Tehsil officials and not by the Collector or the Additional Collector or by the Competent Authority himself. The Collector could not have delegated his authority to anyone else as a delegate could not have further delegated in view of the maxim—*Delegatus non potest delegare*. As such, the taking of possession by the Tehsil Officials was per se illegal being not as per the authorisation dated 9.2.1977 and, therefore, had no consequences. Thirdly, the possession was taken on 23.1.1986, while the alleged affixation of the order dated 19.12.1985 under section 10(5) of the U.L.C.R Act was made on 9.1.1986 by the process-server and, as such, the possession was taken on 23.1.1986 only after the expiry of 14 days instead of the statutory period of 30 days as enjoined in section 10(5) of the U.L.C.R Act. Fourthly, the possession certificate (Annexure-7 to the WP) did not mention the factum of ‘taking’ possession, and it merely stated the factum of the transfer of possession to the State Government. Needless to say that unless the possession was first ‘taken’, the same could not have been ‘transferred’ to the State Government. The plain reading of the possession certificate does not show taking of possession from the occupants and, therefore, it cannot be termed as a possession certificate under section 10(6). Fifthly, the stand of the State

Government before the Appellate Authority was that the State Government has “taken over only symbolic possession over the plots in question and the same cannot be treated physical possession”. If it be so, then also, it would not be deemed to be “possession” within the meaning of section 10(6) of the U.L.C.R Act which meant actual and physical possession and not symbolic one.”

Counsel for the petitioners also placed reliance upon the judgment of this Court in the case of **Ram Chandra Pandey Vs. State of U.P. and others 2010 (82) ALR 136** wherein this Court considered the scope of directions issued by the State Government under Section 35 of the 1976 Act, held as under :-

"In the background of the facts of this case and the submissions made by the learned counsel for the parties as well as on perusal of the record produced by the learned Standing Counsel, especially the document by which possession of the land is said to have been taken from the grand father of the petitioner late, Dhani Ram, we are not satisfied that actual physical possession of the plots in question was ever taken by the State Government. From the record, we find that the memo of possession prepared in the present case is nothing but a mere noting of three officials of the State Government made on 2.4.1992, which is also not on the proper format and appears to have been prepared by the State officials in their office, and as such no authenticity can be attached to the same. On such memorandum, there is no signature of the grand father of the petitioner (late Dhani Ram) or any independent person to show that actual physical possession had been delivered to the State Government. More so, the name of late Dhani Ram continued in the revenue record till his death in the year 1995 and thereafter the name of the petitioner was admittedly recorded in the Khasra and Khatauni in the year 1996, which continued so till the passing of the ex-parte order in 2004, where after also the land revenue was being accepted from the petitioner."

Counsel for the petitioners has relied upon the observations of the Supreme Court of India, passed in Special Leave to Appeal (C) No.38922 of 2013, in the case of **State of U.P. and another Vs. Vinod Kumar Tripathi and others**, held as under :-

“Heard.

From perusal of notice issued under section 10(5) of Urban Land (Ceiling and Regulation) Act, 1976 (“ULC Act” for short), from the original record, the competent authority has authorised the District

Magistrate to take possession of the land declared as surplus under Section 10(3) Notification, vide notification no. 324/I-L-27-U.C.77 dated 9.2.1977, which was published on 12.3.1977. As could be seen from the possession certificate under Section 10(6) of the repealed ULC Act, District Magistrate, who has been authorised possession of the land in question was not taken. The Tehsildar was given liberty to make the mutation proceedings and make entry in the revenue records after taking over possession as provided under Section 10(6) of ULC Act, and inform the same to the competent authority. The possession of the land in question is not taken from the declarant or his legal representatives in accordance with Section 10(6) of the ULC Act, from the original record it is noted that, there is no signature of taking over possession from the declarant or the legal representatives, more so, the competent authority has no power to nominate officer on behalf of the State Government to take possession as provided under Section 10(6) of the ULC Act, therefore, we are not inclined to interfere with the impugned order.

The special leave petition is dismissed accordingly.

Heard.

Delay condoned.

From the perusal of the original record with regard to notice, it was issued on 28.10.1993 under Section 10(5) of the Urban Land (Ceiling and Regulation) Act, 1976 (Now repealed) much after the purported possession has been taken is shown as on 30.12.1988, therefore, in fact, and in law no possession is taken by either the competent authority or any authorised person in terms of Section 10(6) of the ULC Act.

In view of the above, we are not inclined to interfere with the order passed by the High Court.

The special leave petition is dismissed. Consequently, the pending applications are disposed of.

Heard.

Our attention was drawn to section 10(5) notice and section 10(6) of the Urban Land (Ceiling and regulation) Act, 1976 for taking over possession. From the original record, it is brought to our notice that under Section 10(5) of the Act, the authorisation was given by the competent authority to the District Magistrate to take over possession, the competent authority has no power to nominate officer on behalf of the State Government to take possession as provided under Section 10(5) of the ULC Act, therefore, the possession is not taken in terms of Section 10(6) of the Act.

In view of the above, we are not inclined to interfere with the order of the High Court.

The special leave petition is dismissed accordingly.

Heard.

As could be seen from the original record, possession of the land in question is taken neither by the competent authority or his authorised his representative by following the procedure as laid down under Section 10(5) and 10(6) of the Urban Land (Ceiling and Regulation) Act, 1976 (now repealed), therefore, the impugned order cannot be interfered, hence, the special leave petition is liable to be dismissed and is hereby dismissed accordingly.”

Counsel for the petitioners has placed reliance in the case of **Mohd. Islam and 3 others Vs. State of U.P. and 2 others** (Writ C No.15864 of 2015) wherein in a similar circumstances, this Court has held as under:-

“44. Since, in the present case, neither factum of taking actual physical possession by Competent Authority under Ceiling Act has been fortified by placing any document nor factum of possession of Development Authority at any point of time has been shown, therefore, argument advanced by learned Standing Counsel on the basis of State of Assam (supra) will not help.

45. Viewed from the above exposition of law we find in the present case that no such exercise of issuing notice under Section 10(6) of the Act, 1976 and thereafter execution of memo on the spot had taken place which is mandatory for ceiling authorities as admittedly the original tenure-holder and then his successors had never voluntarily surrendered the possession of land. In the absence of voluntary surrender of possession of surplus land, the authorities were required to proceed with forcible possession. The document of possession memo would not by itself evidence the actual taking of possession unless it is witnessed by two independent persons acknowledging the act of forcible possession. As discussed above in the earlier part of this judgment we are not able to accept the alleged possession memo worth calling a document as such in the absence of certain requisites, nor does it bear the details of witnesses who signed the document. It bears mainly signatures of Chackbandi Lekhpal, a person taking possession and then the document has been directed to be kept on file. This is no way of taking forcible possession nor, a

document worth calling possession memo. A mere issuance of notification under Section 10(3) and notice under Section 10 (5) regarding delivery of possession does not amount to actual delivery of possession of land more especially in the face of the fact that the tenure-holder had in fact not voluntarily made surrender of possession of surplus land and no proceeding under Section 10(6) had taken place.

46. Since we have held that possession memo dated 20.06.1993 is not a possession memo and is a void document for want of necessary compliance under Section 10(6) of the Act, 1976, the petitioners are entitled to the benefit under Section 4 of the Repeal Act, 1999 that came into force w.e.f. 20.03.1999.

47. We may also place on record that respondents claim that possession of land in question was handed over to Saharanpur Development Authority pursuant to Government Order dated 29.12.1984 but here also we find that no material has been placed on record to show that any such actual physical possession was handed over to Saharanpur Development Authority and the said authority is in de facto possession of land in dispute. Except bare averment made in the counter affidavit respondent have not chosen to place anything on record to support the stand that de facto possession over land in dispute is that of Saharanpur Development Authority. Therefore even this stand has no legs to stand and is rejected.”

The next judgment relied upon by the counsel for the petitioners is **Ram Singh and others Vs. State of U.P. and others 2013 (120) RD 389**, wherein this Court has held as under:-

“36. It is a matter of common notice and also matter of record that large number of cases which earlier came before this court and were decided and even at present also on getting the record it is clear that proceedings are either without any notice on the land holders or after the notice to the dead person or after the notice but not the proper service stating the name of the witnesses and their details and in most of the cases proceedings did not progress after the notice under Section 10(5) of the Urban Land (Ceiling and Regulation) Act 1976 and if there is notice under Section 10(6) of the Act it again do not contain proper service with the name/identity of the witnesses. For taking Dakhal document demonstrates the authority signing the paper is not competent. The emphasis on the word 'actual physical possession' has some special meaning and thus that rules out the paper possession and it is for this reason it has

been said that mere entry will not reflect taking of actual physical possession.

37. We can safely assume that nobody is going to leave the possession just on mere asking by a notice under Section 10(5) of the Act. It is highly improbable to accept and believe that a notice under Section 10(5) of the Act is given and the person proceeds to surrender and deliver the possession to the State or to a person duly authorized.

38. The Law Courts has always expected the strict proof of taking possession under the Rural Ceiling also having found it to be a confiscatory law. The land owned by any person might be coming down from the time of their ancestors will be so easily and conveniently surrendered as is being stated by the State in the counter affidavit is a matter of surprise. The factum of actual possession which has a vital role on the right of Landholder certainly has to be actual physical possession and that too in accordance with law and therefore that permits a big room of inquiry in all respect and the court having not found any positive material and any overt act to show dispossession of the landholder has to lean in their favour and thus in view of the repeal of the Urban Land (Ceiling and Regulation) Act, 1976 a person having continued in possession will continue with his rights.

39. The court feels that after imposition of ceiling on agricultural land by the State Government and its success in getting the land and its distribution to the weaker class the demand for imposing of ceiling on urban properties was also felt with the growing population and for orderly development of the urban areas and also to take measures to regulate social control over the resources of urban land besides other allied purposes. After lapse of reasonable time for various kind of pressures and we do not exactly know the object but primarily for the reasons stated in the Repeal Act the Urban Land (Ceiling and Regulation) Repeal Act, 1999 came into force.

*40. It is to be observed that all the decided cases on the point have interpreted the possession as **'actual physical possession' and not only paper/symbolic**. There being no specific provision for taking over possession of the surplus land direction was issued named as 'U.P. Urban Land Ceiling (Taking of Possession, Payment of Amount and Allied Matters) Directions, 1983. For payment of compensation and procedure for taking possession of the vacant land and its manner has been dealt in great detail in the decision given by this court in the case of Ram Chandra Pandey (Supra).*

41. *If we read the relevant provisions of the U.P. Urban Land (Ceiling and Regulation) Act, 1976 and U.P. Urban Land (Ceiling and Regulation) Repeal Act 1999 then it will be clear that mere vesting of the land declared surplus under the Act without taking de facto possession is of no consequence and land holder shall be entitled to the benefit of Repeal Act. The effect of the Repeal Act is further clear that if the land owner remains in physical possession then irrespective of his land being declared surplus and/or entry being made in favour of the State in Revenue Records, he will not be divested of his rights. Even if compensation is received that also that will not disentitle him to claim the benefit if compensation is refunded, provided he is in actual physical possession. Payment of compensation has no co-relation with the taking of actual physical possession as with the vesting of land compensation becomes payable which can be paid without taking actual physical possession.*

42. *It is not to be emphasised again and again that irrespective of vesting of land the State or the competent authority authorizes by the State is to establish taking of actual physical possession from the landholders, after following due procedure and therefore, in all the cases there has to be a verification about continuance of actual physical possession as claimed by the landholder or its taking over as claimed by the State as provided in law and it is accordingly rights of the parties are to be governed."*

Counsel for the respondents on the other hand, has vehemently relied upon the judgment of the Supreme Court in the case of ***State of Assam Vs. Bhaskar Jyoti Sarma and others (2015) 5 Supreme Court Cases 321***. The said case arose from the ceiling proceeding initiated in the State of Assam. The Supreme Court was confronted with a case where the ceiling authorities had taken possession which was not resisted by the land holder. It was specifically argued before the Supreme Court in the said case, as under:-

"The case of the appellant is that actual physical possession of the land was taken over on 7th December, 1991 no matter unilaterally and without notice to the erstwhile land owner. That assertion is stoutly denied by the respondents giving rise to seriously disputed question of fact which may not be amenable to a satisfactory determination by the High Court in exercise of its writ jurisdiction. But assuming that any such determination is possible even in

proceedings under Article 226 of the constitution, what needs examination is whether the failure of the Government or the authorised officer or the competent authority to issue a notice to the land owners in terms of Section 10(5) would by itself mean that such dispossession is no dispossession in the eye of law and hence insufficient to attract Section 3 of the Repeal Act. Our answer to that question is in the negative."

A distinct feature in the State of Assam and State of Uttar Pradesh is that specific directions have been issued in the State of Uttar Pradesh under Section 35 of the Urban Ceiling Act providing for the manner of taking possession and conferring the power only on the Collector to take possession. Thus, in the State of Uttar Pradesh, the Collector was delegated by the State Government to take possession in terms of an order passed under Section 35 of the Act whereas there was no such directions issued in the State of Assam. Thus, the question of "***Delegatus non potest delegare***" i.e. the principles that a delegatee cannot further delegate was neither raised before the Supreme Court nor was it decided in the said judgment. In that background, the Supreme Court held as under :-

"In the case at hand if the appellant's version regarding dispossession of the erstwhile owner in December 1991 is correct, the fact that such dispossession was without a notice under Section 10(5) will be of no consequence and would not vitiate or obliterate the act of taking possession for the purposes of Section 3 of the Repeal Act. That is because Bhabadeb Sarma-erstwhile owner had not made any grievance based on breach of Section 10(5) at any stage during his lifetime implying thereby that he had waived his right to do so."

The Supreme Court also in the said case recorded that the question of dispossession of the owner or the transferee was never agitated or determined by the High Court in the writ petition filed by the transferee. In this context, the Supreme Court noted as under:-

"We cannot, however, ignore the fact that the question of dispossession of the owner or the transferee was never agitated or determined by the High Court in the writ petition filed by the transferee. We could appreciate the argument if the issue regarding dispossession had been raised and determined by the Courts in the previous litigation. That

was, however, not so, apparently, because the question of dispossession was not relevant in the proceedings initiated by the transferees who were challenging the vesting order on the ground of their having purchased the surplus land from the owner. That attempt failed as the Court found the sale in their favour to be void. The question of dispossession relevant to Section 3 of the Repeal Act thus never arose for consideration in those proceedings. It will, therefore, be much too farfetched an inference to provide a sound basis for either the High Court or for us to hold that dismissal of the writ petition filed by the purchasers in the above circumstances should itself support a finding that possession had indeed been taken over. Having said that we must hasten to add that even the Division Bench has while reversing the view taken by the single bench not recorded any specific finding to the effect that possession had actually continued with the erstwhile owner even after the vesting of the land under Section 10(3) and the proceedings dated 7th December, 1991."

In the said case, the Supreme Court also recorded as under:-

"19. In support of the contention that the respondents are even today in actual physical possession of the land in question reliance is placed upon certain electricity bills and bills paid for the telephone connection that stood in the name of one Mr. Sanatan Baishya. It was contended that said Mr. Sanatan Baishya was none other than the caretaker of the property of the respondents. There is, however, nothing on record to substantiate that assertion. The telephone bills and electricity bills also relate to the period from 2001 onwards only. There is nothing on record before us nor was anything placed before the High Court to suggest that between 7th December, 1991 till the date the land in question was allotted to GMDA in December, 2003 the owner or his legal heirs after his demise had continued to be in possession. All that we have is rival claims of the parties based on affidavits in support thereof. We repeatedly asked learned counsel for the parties whether they can, upon remand on the analogy of the decision in the case of *Gyanaba Dilavarsinh Jadega (supra)*, adduce any documentary evidence that would enable the High Court to record a finding in regard to actual possession. They were unable to point out or refer to any such evidence. That being so the question whether actual physical possession was taken over remains a seriously disputed question of fact which is not amenable to a satisfactory determination by the High Court in proceedings under Article 226 of the Constitution no matter the High Court may in its discretion in certain situations upon such determination. Remand to the High Court to have a finding on the question of dispossession, therefore, does not appear to us to be a viable solution."

The Supreme Court in the case of ***Hari Ram (Supra)*** had specifically

dealt with the provisions of the Ceiling Act and the orders passed under Section 35 of the Act and had also specifically held that it is only the Collector alone who is delegated the power by the State Government to take possession without there being any power on the Collector to further sub-delegate. There being no such provision/order in the State of Assam, we are afraid the ratio relied upon in the case of ***State of Assam (Supra)*** has no applicability to the facts of the case relating to State of Uttar Pradesh.

The next judgment relied upon by the standing counsel is in the case of ***Jagdish Chandra Vs. State of U.P. & 2 others***, passed in Writ C No.31059 of 2015 wherein this Court relying upon the judgment in the case of ***State of Assam (supra)*** held as under:-

“25. In view of above discussion, we do not find any manifest error in decision taken by District Magistrate/Collector that since actual physical possession of land in dispute stood transferred to KDA before enforcement of Repeal Act, 1999 and petitioner could place no material to show that actual physical possession was taken by State or KDA, sometime after enforcement of Repeal Act, 1999, the petitioner is not entitled to claim any benefit under Repeal Act, 1999. The view taken by District Magistrate/Collector cannot be said to be erroneous in any manner and warrants no interference. There is no error apparent on the face of record in the order passed by District Magistrate/Collector warranting any interference.”

The facts being different in the present case, it can be safely said that the above judgment has no applicability to the case in hand.

The High Court also followed the judgment of another Division Bench in the case of ***Raisuddin and others Vs. State of U.P. and others***, passed in Writ C No.33071 of 2015 wherein the High Court has recorded as under:-

“20. Possession if taken, even if there is some defect with regard to notice under Section 10(5) or 10(6) of Act, 1976 would not attract Section 3 of Repeal Act, 1999 is the view taken by Division Bench of this Court in Shiv Ram Singh Vs. State of U.P. and others, 2015(5) AWC 4918 and Polu and others Vs. State

of U.P. and another (Writ Petition No. 20035 of 2013), decided on 03.11.2016. In Shiv Ram Singh (*supra*) we find that original record produced before Division Bench also shows compliance of directions of 1983 and this is evident from para 10 of judgment which reads as under:

"10. In the present case, the learned Chief Standing Counsel has produced the original file for the perusal of the Court. **The material before the Court indicates that the Directions of 1983 were duly observed.** Direction 3(2) envisages that an order in Form ULC-II has to be sent to each land holder as prescribed under Section 10(5) and the date of issue and service of the order is to be entered in Column 8 of Form ULC-I. This procedure has been complied and we may only note that a copy of the original ULC-II register has been produced for the perusal of the Court. Similarly, direction 3(3) contemplates that on possession of the excess vacant land being taken in accordance with the provisions of sub-section (5) or sub-section (6) of Section 10, entries will be made in a register in Form ULC-III. The original Form ULC-III has similarly been produced before the Court. Entries have been made in compliance with direction 3 both in ULC-II and ULC-III registers. In the present case, it is also clear from the record that on 14 February 1992, a communication was addressed by the Competent Authority to the Tehsildar drawing attention to an earlier letter dated 25 February 1987 and requesting that possession of the land be taken over. A copy of the letter dated 25 February 1987 forms part of the original record which was produced by the learned Chief Standing Counsel. On 25 June 1993, possession of the land was taken over. The possession receipt has been duly executed by the Naib Tehsildar and by the Kanoongo. In this view of the matter, we are unable to accept the contention of the petitioner that possession of the land was not taken over prior to the date of the Repeal Act."

21. Court after having recorded finding that possession in fact was taken prior to 18.03.1999, denied benefit of Section 3 of Repeal Act, 1999."

The facts of the case in hand are entirely different from the facts of the case quoted above and as such the ratio cannot be applied to the present case.

Based upon the above judgments, the standing counsel has strenuously argued that the writ petition deserves to be dismissed and this Court should follow the judgment in the case of State of Assam and as

applied and followed by this Court in the case of *Jagdish Chandra Vs. State of Uttar Pradesh (Supra)* and *Raisuddin and others Vs. State of U.P. and others (supra)*.

From the arguments made at the bar and the judgments relied upon, it is clear that two lines of judgments have been passed; First following the case of *State of Uttar Pradesh Vs. Hari Ram (Supra)* and Second set following the judgment of the Supreme Court in the case of *State of Assam Vs. Bhaskar Jyoti Sarma and others (supra)*. The said two judgments of Hari Ram and State of Assam are based upon the facts of the case pertaining to the cases arising from the State of Uttar Pradesh and those arising from the State of Assam. A clear distinction in the said cases is that in the case of State of Uttar Pradesh specific order has been passed in terms of the powers conferred under Section 35 of the Act delegating the function of taking possession upon the Collector alone without there being any further power of sub-delegation whereas there is no such order/instruction in the State of Assam.

The Supreme Court in the case of *Hari Ram (Supra)* had specifically dealt with the provisions of the Ceiling Act and the orders passed under Section 35 of the Act and had also specifically held that it is only the Collector alone who is delegated the power by the State Government to take possession without there being any power on the Collector to further sub-delegate. There being no such provision/order in the State of Assam, we are afraid the ratio relied upon in the case of *State of Assam (Supra)* has no applicability to the facts of the case relating to State of Uttar Pradesh.

Thus, the questions to be considered in cases arising out of State of Uttar Pradesh are the effect of taking possession without following the procedure prescribed by the State Government in exercise of its power conferred under Section 35 of the Act and the consequence of not following the said procedure.

It is well settled principles that "*Delegatus non potest delegare*" meaning a delagatee cannot further delegate is a settled position of law as held by the Hon'ble Supreme Court in the case of *State of Bombay Vs. Shiva Balak, AIR 1965 SC 661* and in the case of *NGEF Vs. Chandra, 2005 Vol. 8 SCC page 219*. The directions issued by the State Government under Section 35 of the 1976 Act are clearly statutory in nature and in terms thereof even the Collector does not have the power to further sub-delegate.

The facts, in the present case clearly demonstrate that the possession has not been taken in accordance with the statutory directions issued under Section 35 of the Act, there is no power vested with the Collector to sub delegate, his power for taking of possession to any officer, and in fact there is nothing on record to demonstrate that the Collector had authorized any one to take possession (even if there was no power with the Collector to do so).

The perusal of the documents relied upon by the State Government to demonstrate that the possession was taken does not even bears the signature of the persons giving the possession and in one of the case even of the person taking the possession. Admittedly, no notices have been issued under Section 10 (6) of the 1976 Act, thus this Court is constrained to hold that possession has not been taken by the State Government in accordance with law and the directions issued, by the State Government. The State Government has even failed to demonstrate that they are in actual physical possession, thus, the only conclusion derived is that the petitioners are entitled to the benefits of Section 3 of the Repeal Act.

Thus, the questions framed are answered as under:-

(i) The possession taken by the State Government cannot be termed as a valid possession in accordance with law provided under the Act No.33 of 1976 read with the Uttar Pradesh Urban Land Ceiling

(Taking of Possession, Payment of Amount and Allied Matters) Directions, 1983.

(ii) The possession which is not taken in consonance with the provisions of the Act and Directions cannot be termed to be a legal possession in accordance with law.

(iii) Subsequent transfer of land to Saharanpur Development Authority cannot be a ground for denying the reliefs in the case where the possession is held to be taken in derogation of the Act No.33 of 1976 read with the Directions, 1983.

(iv) It is held that the Repeal Act will apply with full force and in the event the possession is not taken in accordance with the statutory provisions.

(v) It is held that the judgment of the Supreme Court in the case of *State of Assam Vs. Bhaskar Jyoti Sarma (supra)* has no applicability to the cases arising in the State of Uttar Pradesh in view of Uttar Pradesh Urban Land Ceiling (Taking of Possession, Payment of Amount and Allied Matters) Directions, 1983.

Consequently, the writ petitions are allowed with the directions to the State Government to correct the revenue records accordingly.

No order as to costs.

Order Date :- 07.5.2019

Hasnain