Madhya Pradesh High Court
Smt. Mulla Bai vs The State Of Madhya Pradesh on 3 November, 2023
Author: Sanjay Dwivedi

1

IN THE HIGH COURT OF
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SANJAY DWIVEDI
ON THE 3RD OF NOVEMBER, 2023
WRIT PETITION No.2881 of 2014

BETWEEN:-

1. SMT. MULLA BAI WD/O SHRI PHOOLCHAND SEN, AGED ABOUT 65 YEARS, R/O VILLAGE PURVA, TAHSIL AND DISTRICT JABALPUR.

2. MUKESH KUMAR S/O LATE PHOOLCHAND SEN, AGED ABOUR 38 YEARS, R/O VILLAGE PURVA, TAHSIL AND DISTRICT JABALPUR.

3. VISHNU PRASAD S/O LATE PHOOLCHAND SEN, AGED BOUT 35 YEARS, R/O VILLAGE PURVA, TAHSIL AND DISTRICT JABALPUR.

(BY SHRI PANKAJ DUBEY AND SHRI VIRENDRA SINGH - ADVOCATES)
AND

1. STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL SECRETARY, REVENUE DEPARTMENT, MANTRALAYA, VALLABH BHAWAN, BHOPAL.

2. ADDL. COLLECTOR - CUM - COMPETENT AUTHORITY, URBAN LAND CEILING, JABALPUR

(BY SHRI GIRISH KEKRE - GOVERNMENT ADVOCATE)

.....

Reserved on : 18.08.2023
Pronounced on : 03.11.2023

.....

2

This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:

ORDER

This petition is of 2014. On 22.06.2021, it was directed to be listed for final hearing at motion stage. The record of ceiling case was also called for on 28.10.2022. On 14.03.2023, it is informed to the Court that record has been received in the office of Advocate General, but not available with the counsel for State, therefore, the matter was further adjourned and directed to be fixed for 23.03.2023. Although on 23.03.2023 the matter was taken up but since the Advocates were on strike, therefore, it was further adjourned for 21.04.2023. Thereafter, again it was fixed for 26.04.2023 and on 18.08.2023, since the parties agreed to argue the matter finally, therefore, it was accordingly finally heard.

2. To resolve the controversy involved in the instant case, certain important facts are required to be taken note of, which are as under:- (2.1) The petitioners are the owner of the land bearing Khasra Nos. 82, 85, 145/2 and 146/2, area measuring 1.816 hectares situated in village Purwa, Patwari Halka No.28, Tehsil and District Jabalpur. According to petitioner, they are still cultivating the land. (2.2) The land was originally owned by the husband of petitioner No.1 and father of petitioner Nos.2 & 3, namely, Shri Phoolchand Sen, who died on 11.10.1993, which is evident from Annexure-P/1 and thereafter his legal heirs are in possession of the land and they are cultivating the same.

(2.3) The petitioners have filed Khasra Panshala of the year 1985-86 to 1988-89 showing that the land was originally recorded in the name of Phullu Satia S/o Bhangi and Sarawati Bai wd./o Bhangi. The proceeding of Urban Land (Ceiling & Regulations) Act, 1976 (hereinafter referred to as the "Act, 1976) was initiated against the original land owner namely, Phoolchand Sen, who submitted return under Section 6 of Act, 1976. In the said return, he has mentioned that the land belongs to the joint hindu family, which comprises of his brother Rajju Satai and mother Saraswati Bai.

(2.4) In pursuance to the return submitted, the report was called for from the concerned Revenue Inspector, who in turn, submitted the same on 03.12.1983 saying that the land belongs to joint hindu family comprising of four coparceners namely, Fullu, Rajju, Sanai S/o Bhangilal and Saraswati Bai wd/o Bhangilal.

(2.5) The competent authority passed an order on 04.02.1984 (Annexure-P/5) on the basis of return submitted under Section 6 of the Act, 1976 holding that since the family consists of four units therefore, entitled to use the land with certain limits and as such, the land measuring 12,160.21 square meters, was declared surplus directing that draft statement be issued under Section 8(1) of the Act, 1976. (2.6) An appeal was preferred against the said order, but that appeal was dismissed and thereafter vide order dated 15.05.1989 (Annexure-P/6), the competent authority under provisions of the Act, 1976 directed the Tehsildar to take possession of the land. In pursuance to the same, the Tehsildar Nazul, Jabalpur took ex-parte possession of the land on 15.07.1989.

(2.7) In the possession letter, it is shown that the original owner has declined to sign the panchnama and only one witness has signed the same i.e Patwari of concerned village panchayat. The said possession letter is available on record as Annexure-P/7. (2.8) On 13.07.1989, notice was said to have been issued by the competent authority to Shri Phoolchand and was directed to handover the possession of the land to Tehsildar Nazul within a period of 30 days from the date of notice. But, according to the petitioners, notice dated 13.07.1989 was never served upon the original land owner,

despite that the competent authority on 07.02.1991 passed an order saying that the land is vested in the State.

3. As per the petitioners, neither any notice under Section 10(5) of the Act, 1976 has been issued nor possession was voluntarily handed over and thereafter no notice under Section 10(6) of Act, 1976 was issued. The original owner is still in physical possession of the land since 1993 and still they are cultivating the same. Application under Section 4 of the Repeal Act, 1999 was submitted by the petitioners before the competent authority in which the competent authority on 13.07.2011 (Annexure-P/11), but since the same has been rejected, therefore, this petition has been filed pointing out the illegalities and irregularities committed by the respondents/authorities that without following the mandatory procedure and principle of natural justice, the land of petitioners has been declared surplus and vested in the State.

4. It is shown in the petition that on 15.07.1989, the possession has been taken ex-parte but again in the notice issued on 07.02.1991 in Case No. 285/A90(B-9)/81-82, it is shown that the possession had been taken over of the land bearing Khasra Nos.82 and 85 of Village Purwa, whereas as per document Annexure-P/7 dated 15.07.1989, it is shown that the possession had been handed over, the petitioners therefore, are claiming that the documents are fabricated becuase no proceeding under provisions of the Act, 1976 initiated for taking possession of the land and no notices under Section 10(5) and 10(6) have been issued to the owner of the land. The original owner therefore, made an application before the competent authority but the competent authority vide order dated 13.07.2011 refused to interfere in the matter on the ground that the Repeal Act, 1999 came into force w.e.f. 17.02.2000 and after almost 11 years, nothing can be done and if the land is already vested in the State considering it to be of State, the Repeal Act, 1999 would not adversely affect the same.

5. The respondents have filed their preliminary objection/submission taking stand therein that the possession of the land had already been taken over under the provisions of the Act, 1976 somewhere in the year 1989, therefore, after such a long time, the said proceeding cannot be assailed. Further, the original owner expired on 11.10.1993 and thereafter petitioner No.1 being the wife and petitioner No.2 & 3 children of the original owner initiated proceeding challenging the same. According to the respondents, in the life time of original owner, no proceeding was initiated challenging the action of the respondents, therefore, at this juncture, the legal heirs of the original owner cannot challenge the said proceeding. The respondents have also annexed the documents i.e. notice of Section 10(5) as Annexure-R/1 and possession letter dated 15.07.1989 (Annexure-R/2). The delay in respect of filing the petition for challenging the order of 2011 is also raised by the respondents saying that the petition is of 2014 and the reasons explained therein for delay are also not proper and according to them, after 24 years of vesting the land in the State, such challenge cannot be made.

According to the respondents, the petition suffers from delay and laches, and as such, it deserves to be dismissed.

6. The petitioners in response to preliminary objection as raised by the respondents, filed reply along with certain documents saying that the land is still in their possession. The petitioners have stated that neither notices under Section 10(5) and 10(6) of the Act, 1976 were served upon them

nor any possession letter was prepared. According to the petitioners, as per Section 4 of the Repeal Act, 1999, if possession has been taken over illegally under the provisions of the Act, 1976 then that possession can be considered to be de facto possession and on the basis of same, the proceedings initiated can be quashed at any time.

7. In support of his submissions, Shri Dubey has placed reliance upon judgments reported in (1996) 8 SCC 259 (T.N Housing Board Vs. A Viswam), (1996) 4 SCC 2012 (Balmokand Khatri Educational & Industrial Trust Vs. State of Punjab) and (2013) 4 SCC 280 (State of Uttar Pradesh Vs. Hariram). According to him, it is obligatory for the authority to substantiate that possession under the provisions of the Act, 1976 has been taken voluntarily, but if not then issuance of notices under Sections 10(5) and 10(6) of the Act, 1976 is mandatory and if that is not done, then in view of Section 4 of the Repeal Act, 1999, the said proceeding can be declared abated. The petitioners have tried to convince this Court with regard to the effect of Repeal Act, 1999 and submitted that limitation is otherwise no bar in view of the law laid down by this Court in Writ Appeal No.509 of 2017 (Brijesh Gautam Vs. State of M.P & others) and W.A No.558 of 2016 (State of M.P & others Vs. Rajubai & others).

8. Shri Deuby, learned counsel for the petitioners has also drawn attention of this Court towards the provisions of the Repeal Act, 1999, especially Section 4, which I deem it expedient to quote hereinbelow:-

> "4. Abatement of legal proceedings,- All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any court, tribunal or other authority shall abate:
>
> Provided that this section shall not apply to the proceedings relating to sections 11,12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority."

As per Shri Dubey, if the possession 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 then the proceeding of the Act, 1976 stands abated. He submitted that possession does not mean de facto possession, but it has to be taken over by the State by following due procedure.

9. I have considered the rival submissions made by learned counsel for the parties and perused material available including the original record of the case produced by the State. However, the record produced by the State is not related with the ceiling proceeding. The record is confined to the fact that authorities have determined the compensation, but that has been disputed and denied by the land owner and therefore, they moved an application for correction of revenue entries and declaring the proceeding of acquisition abated as per Section 4 of the Repeal Act, 1999.

10. Considering the rival submissions made by learned counsel for the parties and on perusal of record, it is clear that the petitioners are raising dispute with regard to vesting of their land in the

State in pursuance to the proceeding initiated under the provisions of the Act, 1976. The challenge is made mainly on the ground that no possession was taken by the respondents from the original land owner and also of his successor (the present petitioners). The petitioners have contended that they have been fighting against the respondents for vesting of their land and asking for correction of revenue entries on the ground that the land has never been vested in the State for the reason that the possession has never been taken and no mandatory requirement i.e. issuing notice under Sections 10(5) and 10(6) has been followed. The issue has been raised before the authority pointing out that possession is still with the petitioners and as such, as per Section 4 of the Repeal Act, 1999, the proceeding initiated by the respondents under the provision of the Act, 1976 be declared abated but the competent authority refused to entertain the objection and request for correction of revenue entries on the ground that the land is shown to have been vested in the State as per the provisions of the Act, 1976.

11. Despite issue raised in the petition, there is no specific answer as to when notices of Section 10(5) and 10(6) were issued to the land owner and also to the fact that after following mandatory requirement and due procedure, possession has been taken over. As per available document filed by the petitioners i.e. Annexure-P/6 which is a letter dated 15.05.1989, the land measuring 12160.29 square meters of Khasra Nos.82 and 85 Bandobast No.162, Village Purwa has been declared sur-

plus and the same has been vested in the State. But from Annexure-P/9 dated 07.02.1991, it reveals that the possession is yet to be taken. Mean- ing thereby, the documents relating to respondent/State are contrary to each other, not affirming as to when possession was taken over. Even in the reply submitted by the respondents, there is only a letter i.e. Annex- ure-R/1 dated 13.06.1989 showing that as per the provisions of Section 10(3) of the Act, 1976 possession ex-party taken because the land owner refused to hand over the possession voluntarily.

12. Section 10 of the Act, 1976 which reads as under:-

> "10(3) At any time after the publication of the notification under sub-section (1) the competent authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified."

clearly reveals that after issuing notice under Section 10(3) of the Act, 1976 if possession is not voluntarily handed over, notice under Section 10(5) is issued asking the land owner to surrender or deliver the possession to the officer duly authorized by the State Government within a period of 30 days of service of notice. Sub-section (6) of Section 10 of the Act, 1976 provides if person refused to hand over the possession after receiving notice of sub-section (5) of Section 10, then possession is taken forcefully issuing notice under sub-section (6) of Section 10 of the Act, 1976.

13. In the present case, no such proceeding and required notices are available on record and even in the reply, it is not specified as to when notices of Section 10(5) and 10(6) were issued to the land owner.

14. The Supreme Court in a case of Hariram (supra) has clearly laid down that issuing notices under Sections 10(5) and 10(6) of the Act, 1976 is a mandatory requirement and if possession is shown to have been taken would be considered to be de facto possession and as such, those proceedings can be declared abated as per the provisions of Section 4 of the Repeal Act, 1999.

15. This Court on earlier occasion has considered this aspect in W.P. No.4342 of 2022 (Shri Manoj Patel and others Vs. State of M.P. and others) and relying upon the decision of the Supreme Court in a case of Hariram (supra) has observed as under:-

> "12. It is already settled that if de facto possession is taken, the same cannot be considered to be a legal possession and after enforcement of the Act, 1999, proceeding initiated under the provisions of the Act, 1976 can be declared abated. In Hariram (supra), the Supreme Court has not only discussed the impact of Section 3 of the Act, 1999, but also dealt with a situation when a de facto possession over a vacant land has been taken by the State. In the said case, the Supreme Court has observed as under:
>
> "41. Let us now examine the effect of Section 3 of Repeal Act 15 of 1999 on sub-section (3) of Section 10 of the Act. The Repeal Act, 1999 has expressly repealed Act 33 of 1976. The objects and reasons of the Repeal Act have already been referred to in the earlier part of this judgment. The 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. The 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 landowner or holder can claim the benefit of Section 4 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 [State of U.P. v. Hari Ram, (2005) 60 ALR 535] 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 4 of the Repeal Act. However, there will be no order as to costs."

(Emphasis Supplied) From the facts and circumstances available in the present case, it is clear that after initiating the proceeding by the respondents declaring the land to be surplus and vested in the State under the provisions of the Act, 1976, possession over the same has not been taken by them and as per the requirement of law, after enforcement of the Act, 1999, the said proceeding can be considered to be illegal and further, in view of the provisions of Section 4 of the Act, 1999, it can be declared to be abated. The Division Bench of this Court in W.A.

No.509/2017 [Brijesh Gautam Vs. State of M.P. & others] relying upon a Division Bench decision of this Court passed in W.A. No.558/2016 [State of M.P. & Ors. Vs. Rajubai and others] has observed that if possession is refused to be handed over then issuance of notice under Section 10(6) of the Act, 1976 is a mandatory requirement and if that has not been done, then the possession shown to have been taken by adopting other modes, is absolutely illegal. Furthermore, in a Division Bench decision of this Court passed in W.A. No.734/2008 [Ram Kumar Pathak and others Vs. State of M.P. and another], the Appellate Court has observed as under:-

"8. Now the question remains whether on coming into force of Repeal Act, 1999 whether the proceedings were pending? In this case, no notice under Section 10(5) of the Act was served upon the appellants while it was the mandatory requirement of the law to serve this notice. Even for the sake of arguments, if it is assumed that the notice dated 29.2.1992 was issued to the appellants, even then 30 days' notice was the mandatory requirement of the law and until and unless a notice of 30 days could have been issued, the provision shall be deemed to be not complied with. Factually, neither notice under Section 10(5) was served upon the appellants nor any notice before handing over possession was given to the appellants. Neither the notice under Section 10(5) of the Act nor the warrant of possession bears the signature of the appellants. Apart from this, the possession which was stated to be taken on 3.31992 was not in the presence of witnesses. Even if it is assumed that the two names which are appearing in the notice were witnesses, but no particulars of the witnesses are on record. No specific Panchnama was prepared on the spot that in the presence of these witnesses, the possession was taken. When, at what time and in whose presence, the possession was taken, letter of possession is silent. In view of non-compliance of mandatory provision as contained under Section 10(5) of the Act or the suspicious circumstances in taking possession, it is apparent that the factual possession on the spot was not taken. Apart from this, the appellants/petitioners from the very inception were claiming their possession on the land and had come forward with the plea that the appellants were dispossessed after interim order in this appeal. The fact which has been established is that no factual possession was taken from the appellants and they continued to be in possession till filing of the appeal which was filed on 24.6.2002 after coming into force of Repeal Act, 1999. In aforesaid circumstances, the appellants were in possession of the land, as on the date, on which the Repeal Act, 1999 came into force. In such circumstances, it can very well be said that the proceedings were pending on the date when the Repeal Act came into force. If the appellants remained in possession of the land and their possession was not disturbed, then they were entitled to retain the land and the proceedings shall be deemed to have been abated

[See: Vinayak Kashinath Shilkar Vs. Deputy Collector and Competent Authority & others (2012) 4 SCC 718].

9. Now the question remains whether there were any laches on the part of the appellants in filing the writ petition? So far as the contention of respondents that the possession was already taken on 3.3.1992 and the petition was filed belatedly, is concerned, we have already recorded the finding that no notice under Section 10(5) of the Act was served upon the appellants and in fact the appellants were in possession of the land, then there were no laches on the part of the appellants in filing the writ petition. The learned Single Judge has dismissed the writ petition without considering the merits of the case merely on the ground of laches, which order cannot be affirmed. In aforesaid circumstances, we find that the proceedings were pending as on the date when the Repeal Act had come into force. The appellants were in possession of the land on the date when this appeal was filed, so the appellants are entitled for the benefit of the Repeal Act, 1999."

13. So far as the case of Lalji Choubey (supra) on which learned Government Advocate has placed reliance is concerned, the same has no application in the present case for the reason that in the said case, the High Court has considered the fact that a notice under Section 10(5) of the Act, 1976 was issued to the land owner and only after getting it served, possession over the land was taken and the revenue entries were corrected accordingly, but here in this case as is clear from the record itself, no notice under Sections 10(5) and 10(6) of the Act, 1976 was ever issued to the original land owner. Here in this case, admittedly the possession over the land in question has been taken by the respondents/authority under the provisions of the Code, 1959 that too after taking shelter of Section 35(2) and as such, the respondents from very inception proceeded contrary to the settled principle of law which is purely illegal and cannot be sustainable in the eyes of law. Thus, this Court has no hesitation to hold that the proceeding initiated by the respondents in respect of vesting the land in question in the State under the provisions of the Act, 1976 is illegal as it was done without following due procedure."

16. This Court further in W.P. No.1432 of 2022 (Chiranji Lal Kumhar Vs. State of Madhya Pradesh and others), taking into account the order passed by the Division Bench of this Court while dealing with the said possession and also about the de facto possession, has observed as under:-

"12. The Division Bench of this Court in Writ Appeal No.558/2016 (State of M.P. and Others Vs. Rajubai and others) and Writ Appeal No.867/2015 (State of M.P. and Others Vs. Thamman Chand Koshta), considering the respective provision has observed as under:-

"08. Before we examine the respective contention of the parties, the relevant provisions of the Statute need to be reproduced:-

10. Acquisition of vacant land in excess of ceiling limit.-- (1) As soon as may be after the service of the statement under Section 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that--

(i) such vacant land is to be acquired by the concerned State Government; and

(ii) the claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land, to be published for the information of the general public in the Official Gazette of the State concerned and in such other manner as may be prescribed.

(2) After considering the claims of the persons interested in the vacant land, made to the competent authority in pursuance of the notification published under sub-section (1), the competent authority shall determine the nature and extent of such claims and pass such orders as it deems fit.

(3) At any time after the publication of the notification under sub-section (1), the competent authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to in the notification published under sub-section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified. (4) During the period commencing on the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made under sub-section (3),--

(i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void; and

(ii) no person shall alter or cause to be altered the use of such excess vacant land.

(5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice. (6)If any person refuses or fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary.

Explanation.--In this section, in sub-section (1) of Section 11 and in Sections 14 and 23, "State Government", in relation to--

(a) any vacant land owned by the Central Government, means the Central Government;

(b) any vacant land owned by any State Government and situated in a Union territory or within the local limits of a cantonment declared as such under Section 3 of the Cantonments Act, 1924 (2 of 1924) means that State Government.

09. In terms of Section 10 (1) of the Act, it was incumbent upon the competent authority to give notice to all person interested in such vacant land either personally or through their agent by giving particulars of their interest as is required to be given under Section 10 of the Act. Since the petitioner was in possession and such possession having been recognized by virtue of an order passed by the Tehsildar on 29th October, 1987, thus the writ petitioner was an interested party and hence the notice was required to be issued before publication of notification under Section 10(3) of the Act.

10. Still further, in terms of sub Section (5) of Section 10 of the Act, the competent authority is required to serve a notice in writing to deliver possession, who may be in possession of the land which vested in the State Government. The writ petitioner was in possession of the land which is evident from the mutation sanctioned on 29.10.1987. It was only on 15.2.1999 (Annexure R-4), the request of the petitioners not to take possession was declined for the reason that the land vest with the State under the Act. Such order, in fact, approves the possession of the petitioners over the land in question. Still further the Panchnama (Annexure R-3) again shows that the land was in possession of the writ petitioners, therefore, in the absence of notice as required under sub Section (5) of Section 10 of the Act, the land would be covered by Section 3 of the repealing Act as it will not vest with the State.

11. The Hon'ble Supreme Court in a judgment reported as (2013) 4 SCC 280 State of U.P. Vs Hari Ram in the context of the Act, held that the de-facto possession is required to be taken by the State and not de jure. The Court held that the Act deals with deemed vesting or deemed acquisition, but the keeping in view the provisions of the Act, unless the possession is taken in terms of Section 10 (5) of the Act, the land cannot be said to be vested with the State Government. The proceedings of taking possession Annexure-R3 shows that it is only a paper possession without taking actual possession from the land owner and without giving notice to person who is in possession. The person in possession is required to be given notice under sub-sections (5) and (6) of Section 10. The relevant extract from the Supreme Court judgment read as under :-

> "30. Vacant land, it may be noted, is not actually acquired but deemed to have been acquired, in that deeming things to be what they are not. Acquisition, therefore, does not take possession unless there is an indication to the contrary. It is trite law that in construing a deeming provision, it is necessary to bear in mind the legislative purpose. The purpose of the Act is to impose ceiling on vacant land, for the acquisition of land in excess of the ceiling limit thereby to regulate construction on such lands, to prevent concentration of urban lands in the hands of a few persons, so as to bring about equitable distribution. For achieving that object, various procedures have to be followed for acquisition and vesting. When we look at those words in the above setting and the provisions to follow such as sub-sections (5) and (6) of Section 10, the words "acquired" and "vested" have different meaning and content. Under Section 10(3), what is vested is de jure possession not de facto, for more reasons than one because we are testing the expression on a statutory hypothesis and such an hypothesis can be carried only to the extent necessary to achieve the legislative intent.

31. The 'vesting' in sub-section (3) of Section 10, in our view, means vesting of title absolutely and not possession though nothing stands in the way of a person voluntarily surrendering or delivering possession. The court in Maharaj Singh v. State of UP and Others (1977) 1 SCC 155, while interpreting Section 117(1) of U.P. Zamindari Abolition and Land Reform Act, 1950 held that 'vesting' is a word of slippery import and has many meaning and the context controls the text and the purpose and scheme project the particular semantic shade or nuance of meaning. The court in Rajendra Kumar v. Kalyan (dead) by Lrs. (2000) 8 SCC 99 held as follows:

> "We do find some contentious substance in the contextual facts, since vesting shall have to be a "vesting" certain. "To vest, generally means to give a property in." (Per Brett, L.J. Coverdale v. Charlton. Stroud's Judicial Dictionary, 5th edn. Vol. VI.) Vesting in favour of the unborn person and in the contextual facts on the basis of a subsequent adoption after about 50 years without any authorization cannot however but be termed to be a contingent event. To "vest", cannot be termed to be an executor devise. Be it noted however, that "vested" does not necessarily and always mean "vest in possession" but includes "vest in interest" as well.

33. Before we examine sub-section (5) and sub-section (6) of Section 10, let us examine the meaning of sub-section (4) of Section 10 of the Act, which says that during the period commencing on the date of publication under sub-section (1), ending with the day specified in the declaration made under sub-section (3), no person shall transfer by way of sale, mortgage, gift or otherwise, any excess vacant land, specified in the notification and any such transfer made in contravention of the Act shall be deemed to be null and void. Further, it also says that no person shall alter or cause to be altered the use of such excess vacant land. Therefore, from the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made in sub- section (3), there is no question of disturbing the possession of a person, the possession, therefore, continues to be with the holder of the land.

Peaceful dispossession

34. Sub-section (5) of Section 10, for the first time, speaks of "possession" which says that where any land is vested in the State Government under sub-section (3) of Section 10, the competent authority may, by notice in writing, order any person, who may be in possession of it to surrender or transfer possession to the State Government or to any other person, duly authorised by the State Government.

35. If de facto possession has already passed on to the State Government by the two deeming provisions under sub-section (3) of Section 10, there is no necessity of using the expression "where any land is vested" under sub-section (5) of Section

10. Surrendering or transfer of possession under sub-section (3) of Section 10 can be voluntary so that the person may get the compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-section (5) of Section 10 to surrender or deliver possession. Sub-section

(5) of Section 10 visualises a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession. Forceful dispossession

36. The Act provides for forceful dispossession but only when a person refuses or fails to comply with an order under sub- section (5) of Section 10. Sub-section (6) of Section 10 again speaks of "possession" which says, if any person refuses or fails to comply with the order made under sub-section (5), the competent authority may take possession of the vacant land to be given to the State Government and for that purpose, force

--as may be necessary--can be used. Sub-section (6), therefore, contemplates a situation of a person refusing or fails to comply with the order under sub-section (5), in the event of which the competent authority may take possession by use of force. Forcible dispossession of the land, therefore, is being resorted to only in a situation which falls under sub-section (6) and not under sub-section (5) of Section 10. Sub-sections (5) and (6), therefore, take care of both the situations i.e. taking possession by giving notice, that is, "peaceful dispossession" and on failure to surrender or give delivery of possession under Section 10(5), then "forceful dispossession" under sub- section (6) of Section 10.

37. The 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 in the landholder being dispossessed without notice, therefore, the word "may" has to be read as "shall"."

12. Since the revenue record records the possession of the writ petitioners and also the proceedings to take over possession, therefore, the writ petitioner was entitled to a notice to deliver possession to the State in terms of Section 10(5) of the Act and on failure of the writ petitioners to hand over possession to use force in terms of Sub Section 6 of Section 10 of the Act. Since the Repeal Act contemplates that if possession has not been taken, the land will not vest with the State Government. Therefore, the land in question would not vest with the State Government."

13. This Court has decided several writ petitions dealing with the same issue, relying upon the Division Bench judgment and also the judgment of the Supreme Court. This Court in W.P. No.13623/2019 (Komal Kewat and Others Vs. State of M.P. and another) after taking a similar view has observed as under:- "18. The application filed under Section 4 was rejected on the ground that the case of the petitioners falls within the purview of section 3(1) (a) of the Act, 1999 which reads thus:-

> "3(1) (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."

However, Section 4 of the Act, 1999 under which application is filed provides as under:-

> "4. Abatement of legal proceedings.- All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any court, tribunal or other authority shall abate :
>
> Provided that this section shall not apply to the proceeding relating to sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority."

But the Supreme Court in the case of Hariram (supra) has observed as under:-

"Voluntary Surrender

31. The 'vesting' in sub-section (3) of Section 10, in our view, means vesting of title absolutely and not possession though nothing stands in the way of a person voluntarily surrendering or delivering possession. The court in Maharaj Singh v. State of UP and Others (1977) 1 SCC 155, while interpreting Section 117(1) of U.P. Zamindari Abolition and Land Reform Act, 1950 held that 'vesting' is a word of slippery import and has many meaning and the context controls the text and the purpose and scheme project the particular semantic shade or nuance of meaning. The court in Rejender Kumar v. Kalyan (dead) by Lrs. (2000) 8 SCC 99 held as follows:

> "28. ....We do find some contentious substance in the contextual facts, since vesting shall have to be a "vesting" certain. "To vest, generally means to give a property in." (Per Brett, L.J. Coverdale v. Charlton. Stroud's Judicial Dictionary, 5th edn. Vol. VI.) Vesting in favour of the unborn person and in the contextual facts on the basis of a subsequent adoption after about 50 years without any authorization cannot however but be termed to be a contingent event. To "vest", cannot be termed to be an executor devise. Be it noted however, that "vested" does not necessarily and always mean "vest in possession" but includes "vest in interest" as well."

32. We are of the view that so far as the presentcase is concerned, the word "vesting" takes in every interest in the property including de jure possession and, not de facto but it is always open to a person to voluntarily surrender and deliver possession, under Section 10(3) of the Act.

33. Before we examine sub-section (5) and sub 13 Writ Petition No.13623/2019 section (6) of Section 10, let us examine the meaning of sub-section (4) of Section 10 of the Act, which says that during the period commencing on the date of publication under sub- section (1), ending with the day specified in the declaration made under sub-section (3), no person shall transfer by way of sale, mortgage, gift or otherwise, any excess vacant land, specified in the notification and any such transfer made in contravention of the Act shall be deemed to be null and void. Further, it also says that no person shall alter or cause to be altered the use of such excess vacant land. Therefore, from the date of publication of the notification under sub- section (1) and ending with the date specified

in the declaration made in sub-section (3), there is no question of disturbing the possession of a person, the possession, therefore, continues to be with the holder of the land.

Peaceful dispossession

34. Sub-section (5) of Section 10, for the first time, speaks of "possession" which says where any land is vested in the State Government under sub-section (3) of Section 10, the competent authority may, by notice in writing, order any person, who may be in possession of it to surrender or transfer possession to the State Government or to any other person, duly authorized by the State Government.

35. If de facto possession has already passed on to the State Government by the two deeming provisions under sub section (3) to Section 10, there is no necessity of using the expression "where any land is vested" under sub- section (5) to Section 10.

Surrendering or transfer of possession under sub section (3) to Section 10 can be voluntary so that the person may get the compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-section (5) to Section 10 to surrender or deliver possession. Sub section (5) of Section 10 visualizes a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession. Forceful dispossession

36. The Act provides for forceful dispossession but only when a person refuses or fails to comply with an order under sub-section (5) of Section 10. Sub-section (6) to Section 10 again speaks of "possession" which says, if any person refuses or fails to comply with the order made under sub-section (5), the competent authority may take possession of the vacant land to be given to the State Government and for that purpose, force - as may be necessary - can be used. Sub-section (6), therefore, contemplates a situation of a person refusing or fails to comply with the order under sub-section (5), in the event of which the competent authority may take possession by use of force. Forcible dispossession of the land, therefore, is being resorted only in a situation which falls under sub-section (6) and not under sub section (5) to Section 10. Sub- sections (5) and (6), therefore, take care of both the situations, i.e. taking possession by giving notice that is "peaceful dispossession" and on failure to surrender or give delivery of possession under Section 10(5), than "forceful dispossession" under sub-section (6) of Section 10. 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 10 is that it might result the land holder being dispossessed without notice, therefore, the word 'may' has to be read as 'shall".

19. The aforesaid view of the Supreme Court given in case of Hari ram (supra) has been further followed by a Three Judge Bench of the Apex Court in the case of D.R. Somayajulu (supra). The

relevant portion of case of D.R. Somayajulu (supra) is reproduced as under:-

> "26. In State of U.P. v .Hari Ram (2013) 4, this Court considered the question with regard to "deemed vesting" under Section 10(3) of ULCR Act in the context of saving clause in the Repeal Act, 1999. This Court held that for the purpose of saving clause under the repeal Act 1999, de facto possession is required to be taken by the State and not de jure. In paragraphs (31), (34) and (35) of Hari Ram case [State of U.P. v. Hari Ram, (2013) 4 SCC 280 : (2013) 2 SCC (Civ) 583] this Court held as under:- (SCC pp. 296-97) "31. The "vesting" in sub-section (3) of Section 10, in our view, means vesting of title absolutely and not possession though nothing stands in the way of a person voluntarily surrendering or delivering possession. The Court in Maharaj Singh v. State of U.P. [(1977) 1 SCC 155] :
>
> (1977) 1 SCR 1072] while interpreting Section 117(1) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 held that "vesting" is a word of slippery import and has many meanings and the context controls the text and the purpose and scheme project the particular semantic shade or nuance of meaning....

34. Sub-section (5) of Section 10, for the first time, speaks of "possession" which says that where any land is vested in the State Government under sub-section (3) of Section 10, the competent authority may, by notice in writing, order any person, who may be in possession of it to surrender or transfer possession to the State Government or to any other person, duly authorised by the State Government.

35. If de facto possession has already passed on to the State Government by the two deeming provisions under sub-section (3) of Section 10, there is no necessity of using the expression "where any land is vested" under sub- section (5) of Section 10. Surrendering or transfer of possession under sub- section (3) of Section 10 can be voluntary so that the person may get the compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-section (5) of Section 10 to surrender or deliver possession. Sub-section (5) of Section 10 visualises a situation of surrendering and delivering possession, peacefully while subsection (6) of Section 10 contemplates a situation of forceful dispossession."

The first respondent placed much reliance on the observations in paragraph 42 of Hari Ram case [State of U.P. v. Hari Ram, (2013) 4 SCC 280 :

(2013) 2 SCC (Civ) 583] which reads as under:-

"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. The 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 landowner or holder can claim the benefit of Section 4 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."

The contention of the first respondent is that possession of the surplus land was never surrendered to the Government and the above observations in Hari Ram's case are squarely applicable and by virtue of the repeal Act, land ceiling proceedings stood abated."

20. Furthermore, the Division Bench of this Court in case of Ram Kumar Pathak Vs. State of Madhya Pradesh and Others, Writ Appeal No. 734/2008 has dealt with the circumstance as to when proceeding initiated under the provisions of the Act, 1976 can be abated and also dealt with the situation as to under what circumstance in view of the provisions of Repeal Act, 1999, the proceeding can be considered to be pending elaborating the scope of Section 10(5) of the Act, 1976. The observation of the Division Bench reads as under:-

> "7. Section 10(5) of the Act provides as under:- "10. Acquisition of vacant land in excess of ceiling limit:- .....
>
> (5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorized by the State Government in this behalf within thirty days of the service. Aforesaid provision specifically provides that a notice of minimum 30 days was required to be served on the holder, but as is apparent from the perusal of order- sheet that on 29.2.1992, the notice was issued and the date of delivery of possession was fixed as 3.3.1992. It appears that only 4 days notice was issued to the holder and the order-sheet was written for taking over the possession. It is also apparent that notice under Section 10(5) of the Act was not served upon the holder. When the notice was served by affixture also does not find place in the notice. Even the person who had affixed the notice did not care to call two independent witnesses to witness affixure of notice at the house of the holder. The notice is also silent that on which date and at what time, the affixure was made. The possession was not taken from the holder.Though the Kotwar had signed the document but why two independent witnesses were not called.

Though two names are appearing in the notice but without any particulars. Why the holder was not called for handing over the possession?, nothing is available on record. Apart from this, no proper Panchnama was drawn for taking possession of the land. These facts show that in fact possession of the land was not taken on 3.3.1992 as stated in the reply by the respondents. When possession of the land was not taken after issuance of due notice under Section 10(5) of the Act, in accordance with law, the proceedings shall be deemed to be pending as on the date when the Urban Land (Ceiling and Regulation) Repeal Act, 1999 came into force. When the proceedings were pending as on

22.3.1999, then in view of the Repeal Act of 1999, the proceedings shall be deemed to be abated.

8. Now the question remains whether on coming into force of Repeal Act, 1999 whether the proceedings were pending? In this case, no notice under Section 10(5) of the Act was served upon the appellants while it was the mandatory requirement of the law to serve this notice. Even for the sake of arguments, if it is assumed that the notice dated 29.2.1992 was issued to the appellants, even then 30 days' notice was the mandatory requirement of the law and until and unless a notice of 30 days could have been issued, the provision shall be deemed to be not complied with. Factually, neither notice under Section 10(5) was served upon the appellants nor any notice before handing over possession was given to the appellants. Neither the notice under Section 10(5) of the Act nor the warrant of possession bears the signature of the appellants. Apart from this, the possession which was stated to be taken on 3.3.1992 was not in the presence of witnesses. Even if it is assumed that the two names which are appearing in the notice were witnesses, but no particulars of the witnesses are on record. No specific Panchnama was prepared on the spot that in the presence of these witnesses, the possession was taken. When, at what time and in whose presence, the possession was taken, letter of possession is silent. In view of non-compliance of mandatory provision as contained under Section 10(5) of the Act or the suspicious circumstances in taking possession, it is apparent that the factual possession on the spot was not taken. Apart from this, the appellants/petitioners from the very inception were claiming their possession on the land and had come forward with the plea that the appellants were dispossessed after interim order in this appeal. The fact which has been established is that no factual possession was taken from the appellants and they continued to be in possession till filing of the appeal which was filed on 24.6.2002 after coming into force of Repeal Act, 1999. In aforesaid circumstances, the appellants were in possession of the land, as on the date, on which the Repeal Act, 1999 came into force. In such circumstances, it can very well be said that the proceedings were pending on the date when the Repeal Act came into force. If the appellants remained in possession of the land and their possession was not disturbed, then they were entitled to retain the land and the proceedings shall be deemed to have been abated [See: Vinayak Kashinath Shilkar Vs. Deputy Collector and Competent Authority & others (2012) 4 SCC 718]." [Emphasis Supplied]

21. This Court in case of Smt. Ratto Bai Vs. State of M.P. and Others, Writ Petition No. 1476/2015 decided by order dated 22.10.2018 has while dealing with the same issue, finally observed that proceedings of the Act, 1976 are abated for the reason that the respondent/authority did not follow the required mandatory provisions of Sections 10(5) and 10(6) of the Act, 1976 showing land vested in the State as possession has already been taken over.

22. Considering the submissions made by learned counsel for the parties and the documents available on record and the view taken by the Supreme Court and the High Court in that regard, this Court has no hesitation to say that the order passed by the competent authority, which is impugned in this petition, is contrary to law. The competent authority proceeded in the matter taking the view that the land after issuing notice under Section 10(3) of the Act, 1976 is vested in the State, although this view of the respondents is absolutely unsustainable for the reason that the documents submitted by the petitioners show the contrary picture of the case. The report of the revenue officers indicate that the petitioners have never been dispossessed from the land and have been cultivating

the same, getting crops from the land in question and the competent authority itself sought guidance from the highest authority of the revenue Department that in the existing circumstances as to how the defect committed by the authority by not following the mandatory provisions of Sections 10(5) and 10(6) of the Act, 1976 can be meeted out and despite that, application under Section 4 of the Repeal Act filed by the petitioners has been rejected. The reply filed by the State is also silent in respect of the issues on which petitioners have attacked on the conduct of the respondents and also on the order passed by the competent authority. Therefore, in the existing circumstances, I am of the opinion that the petition deserves to be and is hereby allowed."

17. The Supreme Court recently in a case of State of U.P. & Anr. Vs. Ehsan & Anr. (Civil Appeal No.5721 of 2023) dealing with the same issue relying upon the decision of Hariram (supra) has observed as under :-

> "30. No doubt, in a writ proceeding between the State and a landholder, the Court can, on the basis of materials/evidence(s) placed on record, determine whether possession has been taken or not and while doing so, it may draw adverse inference against the State where the statutory mode of taking possession has not been followed [See State of UP Vs. Hari Ram (supra)]."……..

18. Although, the Supreme Court in the said case has also observed that if the writ court finds it difficult to determine such question, either for insufficient/ inconclusive materials/ evidence(s) on record or because oral evidence would also be required to form a definite opinion, it may relegate the writ petitioner to a suit, if the suit is otherwise maintainable, but in the present case, despite placing sufficient material and specific pleading that possession has not been taken over till now and the land is still in possession of the petitioners. The photographs with regard to using the land by the petitioners are also available on record, but no material is produced by the State showing that they have followed the statutory procedure for taking possession of the land. There is no notice under Sections 10(5) and 10(6) of the Act, 1976 ever issued and no material substantiating that the same was served upon the petitioners is produced by the State.

19. Under the existing circumstances, when the petitioners have come up with a specific stand saying that the possession is still with them and claiming that the possession over the land of the State authority is only on paper and the same is de facto possession for the reason that the mandatory requirement has not been followed by the authority and even after approaching the same, it is claimed by the land owner that the possession is still with them and the authority failed to enter into said field and to ascertain their possession over the land. Meaning thereby, the authority knowing fully well that the possession is not with them, refused to ascertain the said fact and as such, in view of the settled principle of law, this Court has no hesitation to hold that the proceeding initiated under the provisions of the Act, 1976 is illegal and it can be declared abated in pursuance to the provisions of the Repeal Act, 1999.

20. Ex consequentia, the petition is allowed directing respondent No.2/Addl. Collector-cum-Competent Authority, Urban Land Ceiling, Jabalpur, to correct the revenue records and record the name of petitioners as Bhumi Swami over the land belonging to Khasra Nos.82 and

85, area measuring 12160.21 square meters, Bandobast No.162, Village Purwa, Tehsil and District Jabalpur, by deleting the name of State.

21. The aforesaid proceeding be completed by the said authority within a period of three months from the date of submitting a copy of this order.

22. With the aforesaid observations, the petition filed by the petitioners stands allowed and disposed of. No order as to cost.

23. The record called from the office of respondent No.2 be returned to the counsel for the State for its transmission.

(SANJAY DWIVEDI) JUDGE tarun/ ac/-

Digitally signed by ANIL CHOUDHARY Date: 2023.11.04 11:17:00 +05'30'