

Ram Kumar Pathak Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jul-18-2012

Appellant : Ram Kumar Pathak

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. Abhijit Awasthi, Shri. Abhijit Awasthy

Judgement :

..1.. W.A.No.734/08 HIGH COURT OF MADHYA PRADESH: PRINCIPAL SEAT AT JABALPUR (M.P.) Writ Appeal No.734/2008 Dhaniram (dead) through L.Rs.

1. Ram Kumar Pathak s/o late Shri Dhaniram Pathak, aged about 56 years R/o H.No.2872, Purwa Garha, Jabalpur (M.P.) 2. Indra Kumar Pathak (dead) through L.Rs. a. Smt. Vijay Laxmi Pathak, widow of late Shri Indrakumar Pathak, aged about 59 years, R/o H.No.3445, Garha Ward, Purva Bramand Mohalla, Jabalpur (M.P.) b. Shri Rishi Pathak, s/o Late Shri Indra Kumar Pathak aged about 33 years, r/o H.No.3445, Garha Ward Purva Brahmand Mohalla, Jabalpur (M.P.). c. Shri Ashish Pathak, S/o late Shri Indra Kumar Pathak, aged 31 years r/o H.No.3445, Garha Ward, Purva Brahmand Mohalla, Jabalpur(M.P.) d. Shri Nitin Kumar Pathak, s/o Late Indra Kumar Pathak, aged about 28 years, r/o H.No.3445, Garha Ward Purva, Brahmanand Mohalla, Jabalpur.

3. Shri Hridaya Kumar Pathak s/o Late Shri Dhaniram Pathak, aged about 51 years, R/o H.No.2872, Purwa Garha, Jabalpur (M.P.) .Appellants/petitioners

Versus 1. State of M.P. through the Secretary to Government, Revenue Department Bhopal.

2. The Competent Authority under the Urban Land Ceiling Act, (Collectorate), Jabalpur Respondents PRESENT: Hon'ble Shri Justice Krishn Kumar Lahoti Hon'ble Justice Smt.Vimla Jain Shri Abhijit Awasthi, Counsel for appellant. Shri Vijay Pandey, Dy.Advocate General for respondents. ..2.. W.A.No.734/08

ORDER

(Passed on 18/7/2012) This writ appeal is directed against an order dated 12.4.2002 passed by the Single Bench in Writ Petition No.1449/2002 by which the writ petition preferred by the appellants, seeking following reliefs, was dismissed; (i) This Hon'ble court may be pleased to quash the order dated 22-11-1986 (Annexure P-5) passed by the Respondent No.2 being illegal and without jurisdiction and against the principles of law and be further pleased to declare that there is no surplus lands with the petitioner. (ii) Or, in the alternative the proceedings of the court of the Respondent No.2 may please be ordered to be abated in view of the provisions contained in Section 4 of the Repeal Act, 1999, (iii) any other relief which this Hon'ble court deems fit and proper in the circumstances of the case, (iv) the Respondents may be ordered to certify to this Hon'ble court all the records pertaining to this petition, (v) the cost of this petition may kindly be awarded to the petitioner.

2. Learned counsel for appellants has raised following contentions:- (i) That no notice under Section 10(5) of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Act.) was issued to the appellants/petitioner for taking possession of the land in question. (ii) The possession was never taken over from the appellants and the land were in possession of the appellants/petitioners till filing of petition, so proceedings shall be deemed to be pending as on the date when the Urban Land (Ceiling and Regulation) Repeal Act, 1999 came into force. It was submitted by the appellants that in view of the specific provisions as contained in the Urban Land (Ceiling and Regulation) Repeal Act, 1999, the proceedings shall be deemed to be abated.

3. Shri Vijay Pandey, learned Dy. Advocate General submitted that the learned Single Judge has rightly dismissed the petition as possession of the land was also taken in the year 1992. The petition was filed belatedly. It was further submitted by him that as per record received today, notice under Section 10(5) of the Act was issued on 29.2.1992 and thereafter possession was also taken. He has shown the record of the proceedings in which on 29.2.1992, notice was issued and it was served by affixure and thereafter, it was submitted that one document is available in the file showing that, the possession was ..3.. W.A.No.734/08 taken by the Naib Tahsildar. The possession was taken in the presence of witnesses Mangilal Kewat and Kanchedilal Kewat.

4. In this petition, following crucial questions arise for consideration by this Court :-
(i) Whether notice as required under Section 10(5) of the Act was issued and served on the appellants ?. (ii) Whether the possession of the land was taken from the appellants?. (iii) Whether proceedings were pending on the date when the Urban Land (Ceiling and Regulation) Repeal Act, 1999 came in force on 22.3.1999?.

5. Before considering aforesaid, we would like to refer earlier order passed by the Division Bench of this Court in this appeal on 16.5.2011; 16.5.2011 Shri Abhijit Awasthy, learned counsel for the appellant. Shri Sanjay Dwivedi, learned Government Advocate for the respondents/State. Despite this Court's repeated orders dated 16.2.2010, 19.2.2010, 11.5.2010 and 13.5.2011, the State respondents have failed to produce the original record to show whether the actual possession of the land in question pursuant to the order passed under Section 19(3) of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the 'Act') has been taken over or not. The learned counsel for the appellant vehemently contended that it was asserted in para 4 of the writ petition that the petitioner/appellant is in possession of the land as the same has not been taken over from him by any authority by following the procedure prescribed by Section 10(5) and (6) of the Act which has not been controverted by the respondents by giving a counter and the learned Single Judge has also not recorded any categorical finding that the possession has been taken over. In spite of repeatedly asking the respondents/State to produce the record and show the documents

witnessing the fact of taking over possession in accordance with the procedure prescribed under Section 10(5) of the Act, the State has failed to do so. In view of the aforesaid facts and circumstances and the Division Bench judgment of this Court dated 5.10.2009 rendered in the case of Deen Dayal and others v. State of M.P. and another (W.A.No.230/2006), it is directed that status quo in respect of the possession of the land in question as exists today shall be maintained by the parties until further orders. The learned Government Advocate may file a return within three weeks. Rejoinder, if any, be filed within two weeks thereafter. List the matter for final hearing after ensuing vacation.

6. Thereafter, the matter remained pending before this Court and inspite of our earlier orders, record was not produced. However, on last date of hearing, when argument had commenced, learned counsel for respondents had prayed ..4.. W.A.No.734/08 for short time for production of the record. Today, record has been shown, from which, we find that on 29.2.1992 the Naib Tahsildar had directed for issuance of the notice for possession of the land and the next date was fixed as 3.3.1992. The notice was affixed by the peon, but when and at what time it was affixed, whether in presence of witnesses notice was affixed or not, in the notice or reverse side of the notice, nothing could be revealed. Even the peon who had affixed the notice had not cared to call two independent witnesses to witness the fact that the notice was affixed at the conspicuous place of the house of the appellants. Thereafter though it is stated that on 3.3.1992, the possession was taken, but when the possession was taken, no date finds place in the aforesaid document and in whose presence, the possession was taken, no Panchnama was prepared. Apart from this, whether the appellants herein were tried to be served with the notice under Section 10(5) or with the possession warrant, nothing reveals. In absence of any notice to the appellants, the manner in which the notice was affixed or the possession has been stated to be taken, all these create a serious doubt about correctness of the proceedings.

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 affixture of notice at the house of the holder. The notice is also silent that on which date and at what time, the affixture was made. The possession was not taken from the holder. Though the Kotwar had signed the document but why two independent witnesses were No...5.. W.A.No.734/08 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. not the question remains whether on coming into force of Repeal Act, 199 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 not 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 ..6.. W.A.No.734/08 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. not 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.

10. In view of aforesaid, this appeal is allowed. The proceedings against the appellants are declared as abated. The appellants shall continue to be owner of the lands. If the respondents have taken possession of the land, they shall return the possession of the land to the appellants within a period of 90 days from today. No order as to costs. (Krishn Kumar Lahoti) (Smt.Vimla Jain) Judge Judge C.

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