2026:AHC:120380-DB

AFR
Reserved On: 02.12.2025
Delivered On: 25.05.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 23827 of 2010

Ram Autar and Ors.

…..Petitioner(s)

Versus

State of U.P. Thru. Secr. Ministry of Urban Devp. and Ors.

…..Respondent(s)

Counsel for Petitioner(s)	:	A.K. Pandey, J.J. Munir, Pooja Agarwal, R P Rajan
Counsel for Respondent(s)	:	Abhinava Krishna Srivastava, Arun K. Singh Deshwal, C.S.C., Dharmendra Singh Chauhan, P.k. Singh, Pradeep Kumar Singh

In Chamber

HON'BLE SARAL SRIVASTAVA, J.
HON'BLE SUDHANSHU CHAUHAN, J.
(Delivered by Hon’ble Sudhanshu Chauhan,J.)

1. Heard Ms. Pooja Agarwal, learned counsel for the petitioners and Sri M.C. Chaturvedi, learned Additional Advocate General, assisted by Sri Mohan Srivastava, learned Standing Counsel and Sri Abhinava Krishna Srivastava, learned counsel for the respondent Development Authority.

2. The present writ petition has been filed challenging the proceedings initiated against the petitioners under the Urban Land (Ceiling and Regulation) Act, 1976 and also seeking a direction to restrain the respondents from interfering with the peaceful possession of the

petitioners over the land being Gata Nos. 773 and 789 situated in Village Sonakpur, Tehsil and District-Moradabad.

3. Case of the petitioners is that Gokul was the original tenure holder of the land in dispute being part of Gata Nos. 773 and 789 having an area of 7114.40 sq. meters situated in Village Sonakpur, Tehsil and District-Moradabad. Gokul was succeeded by four sons namely, Chhokhelal, Sohan Lal, Dalpat and Ramgopal. The petitioner nos. 1 to 9 are the descendants of sons of late Gokul and the petitioner no. 10 is the son of late Gokul. It is stated that the order under Section 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the Act, 1976") was passed behind the back of predecessor of the petitioners. Further the order under Section 8(4) was communicated vide notice dated 26.07.1980.

4. It is stated that the predecessors of the petitioners were in possession of the land in dispute and continue to remain in possession thereof. In this regard, the petitioners have relied upon the khatauni of the Fasli year 1382-87 as well as khatauni of the Fasli year 1414-1419, wherein the land in dispute is recorded in the name of petitioners and their predecessors.

5. The petitioners further state that the alleged possession memo dated 27.08.1984 does not bear signature of the land owners and the independent witnesses and as such is a bogus document. The name of the petitioners and their predecessors have continued to be recorded in the revenue records and as such it is beyond doubt that the petitioners are in possession of the land in dispute. It is also the case of the petitioners that the provisions of the U.P. Urban Land Ceiling (Taking of Possession, Payment of Amount and Allied Matters), Directions, 1983 issued under Section 35 of the Act, 1976 have not been complied with.

6. The petitioners also state that when the authorities started interfering in the possession of the petitioners, it was only thereafter that the petitioners came to know about the orders passed under the Act, 1976. The petitioners in this regard had also filed a representation dated 05.02.2010 before the competent authority-respondent no. 2 for abatement of the proceedings of the ceiling case. However, as no action was taken, hence, the petitioners were compelled to file the present writ petition.

7. One of the submissions made by the petitioners is that the land in dispute lies beyond the perimeter of 1 km from the erstwhile Nagar Palika, Moradabad and as such does not fall within the limits of the urban agglomeration. In this regard, the petitioners have relied upon the report of the Naib Tehsildar dated 08.02.1979 in Case No. 978/4248 (State vs. Ratan Lal), wherein Gata Nos. 612 to 882 of Village Sonakpur, District Moradabad, were held to be beyond the perimeter of 1 km of the erstwhile Nagar Palika, Moradabad. A similar report dated 10.05.1979 of the Naib Tehsildar had also been filed in Case No. 305/944 (State Vs. Jathu). It is submitted that it was only on the basis of the report of the Naib Tehsildar that Gata Nos. 612 to 882, situated in Village Sonakpur District Moradabad were exempted under the Act, 1976.

8. It is also stated that respondent no. 2 in Case No. 234/1250/3050 (State vs. Fakhira) vide letter dated 06.04.1992 had held the land in the said case to be exempted under the Act, 1976 as it fell beyond the perimeter of 1 km of Nagar Palika, Moradabad. Hence, it is stated that the land in dispute should be exempted from proceedings under the Act, 1976. Further the District Magistrate vide order dated 04.08.2016 had exempted a similarly situated land comprised in Gata No. 798 from the Act, 1976.

9. Besides, the petitioners also rely upon a map of delimitation of Nagar Palika Moradabad prepared in the year 1967, which shows that the

Village Sonakpur was beyond the perimeter of 1.5km from the outer limits of Nagar Palika. In this regard the petitioners have also relied upon the scheme of delimitation of Nagar Nigam Moradabad, 2017 wherein the Village Sonakpur does not fall within the limits of Nagar Nigam Moradabad. The petitioners state that Village Sonakpur falls under Gram Panchayat Sonakpur Dehat and as such no proceedings could have been taken place in respect of land in dispute of the petitioners under the Act, 1976.

10. Per contra, it is the case of the State-respondents that in Ceiling Case No. 2770/3627 (State Vs. Gokul) notice under Section 8(3) was issued on 14.04.1980 and served upon Sohan Lal, son of Gokul. However, as no objections were filed, order under Section 8(4) was passed on 24.06.1980 declaring 7114.40 sq. meters of land as vacant surplus. Final statement under Section 9 was issued on 26.07.1980. Thereafter notification under Sections 10(1) and 10(3) were published in the State Gazette on 29.08.1981 and 10.03.1984 respectively. Notice under Section 10(5) was issued on 11.04.1984 and served upon the wife of the original land holder, Smt. Leelawati on 16.04.1984. Subsequent thereto the possession of the land was taken vide order dated 27.08.1984 and the land was recorded in the name of State in the revenue records. Thereafter the possession of the land was transferred to Moradabad Development Authority-respondent no. 3 vide transfer memo dated 18.01.1990.

11. It is stated that the alleged report of the Naib Tehsildar dated 08.02.1979 was never accepted by competent authority and was not taken into cognizance by the competent authority while passing the order dated 15.02.1979 under Section 8(4) of the Act, 1976 in the concerned ceiling case. Moreover, the authenticity of the alleged report dated 08.02.1979 is extremely doubtful as the report is cryptic and runs only in a few lines yet suggests that as many as 271 plots (Gata Nos. 612 to 882) have been exempted from the Act, 1976. Similarly, the report dated 10.05.1979 was also not accepted by the competent authority in the order

dated 10.04.1992 passed in Ceiling Case No. 305/994 (State Vs. Jathu) wherein the competent authority had relied upon the report dated 07.04.1992 prepared by the draftsman.

12. In respect of the letter dated 06.04.1992 relied by upon the petitioners, it is contended that the same was never dispatched and the authenticity of the said letter is doubtful. Further, there was no occasion for exempting Gata Nos. 612 to 882 from urban ceiling and no order has been passed by the respondent no. 2 while taking into consideration the said reports of Naib Tehsildar as relied on by the petitioners.

13. As far as the order dated 04.08.2016 passed by the District Magistrate, Moradabad is concerned, it is contended that in three ceiling cases the land holders were recorded tenure holders of Gata No. 798 while the ceiling proceedings inadvertently had taken place in respect of Gata No. 792, which was not the land of the land owners, it is under the said circumstances that Gata No. 798 was exempted from proceeding under the Act, 1976 as no proceedings had taken place in respect of the same.

14. It is also stated that in Ceiling Case No. 234/1250/3050 (State Vs. Fakira), it was held by the competent authority that Gata Nos. 867 and 845 were found to be beyond the urban agglomeration and as such the land was exempted from the Act, 1976, which is not so in the case of the petitioners where the land is situated within 1km of urban agglomeration. Further the Gazette notification under Section 2(n) of the Act, 1976 was published on 30.09.1978, in pursuance thereof the concerned authorities at Bareilly got a map prepared of the urban agglomeration area of Moradabad wherein Village Sonakpur was shown to be included in the urban agglomeration and the rate of compensation payable was also determined. Besides, the respondents also rely upon the report of Tehsildar Sadar, Moradabad to show that Gata Nos. 612 to 882 fall within the perimeter of 1km of Nagar Nigam, Moradabad. It is

categorically stated that only the land falling under the Gata Nos. 845, 847, 866 and 867 in Village Sonakpur, District Moradabad had been exempted from the Act, 1976.

15. Besides attention is also drawn to the fact that the petitioners in response to the notice dated 22.03.1997 under Section 11(7) had sought time to file objections vide application dated 05.04.1997. Besides, legal heirs of the original tenure holder had filed Writ Petition No. 62393 of 2013 (Gokul and others Vs. State of U.P. and others) with regard to land in Ceiling Case No. 2770/3627 and the same was dismissed as infructuous.

16. Further the revenue entries in the name of the State were duly recorded in the mutation register (R-6) on 09.02.1996 at serial no. 26. Besides, the respondents have also filed the photographs of the land in dispute to show their possession over the land.

17. The respondent no. 3-Mordadabad Development Authority has supported the stand taken by the State and has further stated that the ceiling land in Village Sonakpur and adjoining areas fall under a residential scheme Sonakpur Awasiya Yojana. For this purpose, respondent no. 3 has also acquired and taken possession of the adjoining land (not covered under the Act, 1976) measuring 20.75 hectares through acquisition and transfer.

18. It is stated that respondent no. 3 has spent an amount of about Rs. 84 crores for the development of the said residential scheme. The respondent no. 3 has filed the summary of expenditure incurred and the lay out plan of the scheme to show that the land in dispute falls under the said residential scheme, which was advertised on 24.01.2013 thereby inviting applications for allotment of plots.

19. It is also stated that the fact regarding taking over possession of the land in dispute has duly been recorded in ULC Form-1 under the Directions, 1983. Besides, judgment of Coordinate Benches arising out of proceedings under the Act, 1976 in respect of Village Sonakpur and adjoining areas wherein the writ petitions have been dismissed have also been relied upon by the respondent no. 3-Moradabad Development Authority.

20. Lastly, it is contended that the present writ petition has been filed after a delay of 30-35 years after the land in dispute was declared vacant surplus and as such is liable to be dismissed only on the ground of delay and laches.

21. It is the contention of the petitioners that the petitioners have continued to remain in possession of the land in dispute and in view of the provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 the proceedings of ceiling case stand abated and the petitioners are entitled to remain in possession of the land in dispute. It is further contended that no proceedings under Section 10 (6) of the Act, 1976, ever took place and the petitioners or their predecessors at no point of time had handed over the possession of the land in dispute to the respondent. The aforesaid fact is evident from the perusal of the possession memo, which does not bear the signature of the petitioners or their predecessors and as such it is evident that de facto possession of the land was never taken by the respondent.

22. On the other hand the contention of the respondents is that the proceedings under the Act, 1976 stood concluded with the taking over of the possession of the land in dispute on 27.08.1984 and apparently the possession of the land is with the respondent no.3-authority and the same falls under a residential scheme, hence, proceedings under the Act, 1976 stood concluded prior to the enforcement of the Repeal Act, 1999. Further the present writ petition is bound to be dismissed solely on the

ground of delay and laches having been filed after a lapse of about 26 years after taking possession of the land in dispute.

23. It is evident from the records that the land holder Gokul passed away after filing of the ceiling return under Section 6(1) of the Act,1976. Subsequently the name of his son Sonhal Lal, Dalpat and Ramgopal were substituted in his place. The perusal of the order dated 24.06.1980 passed under Section 8(4) further reveals that the notice under Section 8(3) was sent through registered post but was returned unserved and was subsequently served personally on 23.04.1980. The petitioners on the other hand state that the order under Section 8(4) was passed behind the back of the petitioners. Further the petitioners have themselves relied upon the notice under Section 9 dated 26.07.1980. It is not disclosed by the petitioners as to how and when the petitioners came to know about the final statement prepared under Section 9.

24. It has been contended on behalf of the respondents that the notice under Section 10(5) dated 11.04.1984 was served personally on Leelawati, the wife of the original land holder on 16.04.1984. However, the perusal of notice under Section 10(5) reveals that it has not been signed / received. by any of the land holders or any person on their behalf. Further the possession memo dated 27.08.1984 bears the signature of two witnesses but has not been signed by the land holder or any person on their behalf. It is admitted by the parties that no proceedings under Section 10(6) of the Act, 1976 had ever taken place. Thereafter the notice under Section 11 (8) dated 22.03.1997 was served upon Chokhe, son of Gokul on 29.03.1997 and the petitioners vide the letter dated 12.04.1997 had sought time to file objections to the notice under Section 11 (8). The service report dated 19.03.1997 and the copy of the objection dated 05.04.1997 have duly been brought on record. The petitioners have denied the service of notice under Section 11 (8) and the application seeking time to file objections.

25. As far as the revenue records are concerned, the petitioners claim that their names continued to be recorded in the revenue records for a

substantial passage of time even after the enforcement of the Repeal Act, 1999. Although it is the stand of the respondent that the land in dispute comprised in Gata No. 789 and Gata No. 773 was duly recorded in the mutation register (R-6) in the name of the State as, "Competent Authority, Urban Ceiling" at serial no. 26 on 09.12.1996. However, neither of the parties from the records have been able to demonstrate as to when the revenue entries were recorded in the name of the State in the revenue records in respect of the land in dispute.

26. Be that as it may the respondents in the supplementary counter affidavit dated 19.06.2023 in respect of recording the name of the State Government in the revenue records have stated as under:

"3. That in the case of Ram Autar being writ petition no. 23827 of 2010 the name of the State Government was recorded in the Revenue records pertaining to the land in question, in the year 2018. In support thereto the Khatoni fasli year 1426-1431 are being enclosed herewith and marked as ***Annexure No. SCA-1*** *to this affidavit.*

4. That the Khasra for the aforesaid land in question was also rectified. A copy of the Khasra fasli year 1427 showing the name of urban ceiling duly recorded over the land in question is being enclosed herewith and marked as Annexure No. SCA-2 to this affidavit."

27. Hence, as per own showing of the respondents, the revenue entries were mutated in the name of the State in respect the land in dispute in the year 2018, while the present writ petition was pending. Hence, in view of the above admission on behalf of the respondents, it is beyond doubt that the revenue entries continued in the name of the petitioners or their predecessors for a substantial passage of time even after coming into force of the Repeal Act, 1999.

28. As far as the question of possession is concerned, the respondents in the site plan Sonakpur Awasiya Yojna have tried to demonstrate open land and nala are existing over Gata No. 789 and school is shown to be situated over Gata no. 773. The respondents in this regard have also relied upon a report of the Advocate Commissioner filed in Writ C No.

758850 of 2013 (Babu and others v. State of U.P. and others) on the directions of this Court wherein a mention of Gata No. 773 and Gata No. 789 is also made. The report in respect of two gatas is reproduced herein below:

773	The total area of plot No. 773 is 0.223 hectare and the surplus declared area is 0.043 hectare. This plot is also covered with private abadi as shown in Enclosure No.1 to this report.
789	The total area of plot no. 789 is 0.559 hectare and the whole land declared as surplus. The 24 meter wide Moradabad Delhi bye-pass passes through the said plot. The plot contains chambers of sewer line and high tension line passes over it.

Thus as per own showing of the respondents a private abadi was situated over gata no. 773 in December, 2014 when the inspection was carried out and 24 meters wide Moradabad bypass was to pass through Gata No. 789 besides the chambers of sewer line and high tension lines were also situated over the aforesaid gata.

29. In this regard a report dated 28.11.2022 prepared by Secretary, respondent no. 3-authority is also relevant and has been relied upon by the respondents and the same reads as under:

"गाटा सं*0-773*-

गाटा सं*0-773* का कुल रकबा राजस्व अभिलेखों के अनुसार *0.3640* हैक्टे० है, जसमें अर्बन सीलिंग की *3642.30* वर्ग मी० अर्थात गाटे की सम्पूर्ण भूमि प्राधिकरण की कब्जा प्राप्त भूमि है, जिसका कब्जा प्राधिकरण को दिनांक *18.01.1990* को हस्तान्तरित किया गया है। जिसमें कुछ भाग पर प्राधिकरण द्वारा सोनकपुर आवासीय योजना के अन्तर्गत नाली, सड़क आदि का निर्माण कराया गया है तथा कुछ भाग पर अवैध रूप ने प्राइवेट आबादी बनी हुई है।

गाटा सं*0-789*-

गाटा सं*0-789* का कुल रकबा राजस्व अभिलेखों के अनुसार *0.5590* हैक्टे० है, जिसमें अर्बन सीलिंग की *5584.86* वर्ग मी० अर्थात गाटे की सम्पूर्ण भूमि प्राधिकरण की कब्जा प्राप्त भूमि है, जिसका कब्जा प्राधिकरण को दिनांक *18.01.1990* को हस्तान्तरित किया गया है। जिस पर प्राधिकरण द्वारा सोनकपुर आवासीय योजना के अन्तर्गत नियोजित करते हुए नाली, सड़क आदि विकास कार्य कराये गये है।"

Thus, as far as Gata No. 773 is concerned there was private abadi existing over the said gata and on Gata 789 it is alleged that development works in the shape of drains, roads, etc had been carried out.

30. Interestingly, the respondent no.3 authority in its counter affidavit apparently seems to admit the possession of the petitioners over Gata No. 773 although it is alleged that the construction so raised is nothing but a trespass. The relevant part of paragraph 10 of the counter affidavit filed on behalf of respondent no.3 is reads as under:

"10. That accordingly it is not open to the original land holder or his successor petitioners to claim any advantage of the provisions of the Urban Land Ceiling (Repeal Act 1999) or claim a writ of mandamus from this Hon'ble High Court against the respondents for not interfering with their possession by challenging part of the proceedings of Ceiling Case No. 2770/3627 in as far as it relates to plot no. 773-A. It is further submitted that some times after the conclusion of the aforesaid proceedings, the petitioners appear to have encroached upon the aforesaid land by raising some unauthorized construction without the knowledge of the respondent's authorities and have now come up in the present writ petition to claim advantage of the Repeal Act 1999. Thus on the date of the writ petition the status of the petitioner is that of a rank trespasser over the stretch land and hence the petitioners do not deserve any sympathy from this Hon'ble Court and the above noted writ petition being misconceived deserves to be dismissed."

Under the circumstances, it is evident that construction has been raised by the petitioner over the said plot, even though allegedly unauthorised.

31. Besides both the parties have also filed the photographs of the land in dispute claiming that they are in possession of the land in dispute. We are well aware of the fact that usually photographs should not be relied upon as an evidence of possession of a particular party over the land, however, in the present case both the parties have relied upon a similar set of photographs in respect of Gata No. 789 and as such there can be no controversy that the photographs filed by the respective parties pertain to the same piece of land. The photographs of Gata No. 789 relied upon by the petitioners shows that there is a bridge in the background and crop is standing over the vacant land. The respondents on the other hand have filed the photographs of Gata no. 789 with the supplementary counter affidavit dated 29.11.2022 sworn by the then

Principal Secretary, Housing and Urban Planning Department, Government of Uttar Pradesh wherein the same bridge is shown in the background and the land is lying vacant with no crop standing over it, the photograph is dated 24.11.2022. Besides there are no signs of any development having taken place over the said piece of land or in the vicinity thereof be it in the shape of drains, road, residential plots etc. other than the electricity lines running over the same, which are also existing in the photograph of Gata no. 789 relied upon by the petitioners.

32. In the photograph of Gata no. 773 relied upon by the respondents filed with the above said supplementary counter affidavit dated 29.11.2022 shows that houses and shops/ abadi along with road are existing over the said plot, the photograph is dated 24.11.2022. Thus, it is apparent from the photograph of Gata No. 773 relied upon by the respondents that a private abadi along with road exist over the said plot.

33. Before we advert to the law in respect of taking over of possession by the State under the Act, 1976, and the effect of Repeal Act, 1999, we would like to consider to another question raised by the petitioner regarding the land in dispute being situated beyond the urban agglomeration. In this regard the petitioner has relied upon the reports of Naib Tehsildar dated 08.02.1979 and 10.05.1979 filed in two ceiling cases as well as letter dated 06.04.1992 issued by the competent authority besides the map of Nagar Palika, Moradabad prepared in the year 1967 and the map of delimitation of Nagar Nigam, Moradabad of the year 2017.

34. On the contrary the respondents state that none of the reports dated 08.02.1979 and 15.02.1979 of the Naib Tehsildar have been relied upon by the Competent Authority while deciding the two ceiling cases. Besides the respondent have also relied upon the gazette notification dated 30.09.1978 to show that Village Sonakpur is within urban agglomeration of district Moradabad. Moreover we are of the view that the said pleas have been raised by the petitioner rather belatedly and ought to have been raised at the relevant point of time during the

proceedings under the Act,1976, moreover, the pleas so raised involve disputed questions of fact which we do not need to decide in proceedings under Article 226 of the Constitution of India.

35. As far as the contention of the respondents that the petitioners had filed Writ Petition No. 62393 of 2013 (Gokul and others Vs. State of U.P. and others) is concerned, the petitioners have refuted the same. The respondents have also not brought the memo of the aforesaid writ petition on record. Moreover, the records reveal that Gokul had passed away shortly after the commencement of proceedings under the Act, 1976 and as such could not have filed a writ petition in the year, 2013. Hence, the aforesaid contention of the respondents is of no consequence as far as outcome of the present writ petition is concerned.

36. We now advert to the law laid down by the Apex Court in respect of the transfer of possession to the State under the Act, 1976 and the effect of the Repeal Act, on the proceedings so initiated. The Apex Court in the case of State of U.P. v. Hariram, 2013 (4) SCC 280 has held as under:

“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 10 is that it might result in the landholder being dispossessed without notice, therefore, the word "may" has to be read as "shall".

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 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 added)

37. Further the Apex Court in the case of **A.P. Electrical Equipment Corporation v. Tehsildar and others, 2025 SCC Online SC 447** while relying upon the law laid down in the case of Hari Ram (supra) has held as under:

"20. Thus, by virtue of the provisions of Section 3 of the Repeal Act, 1999, if possession of vacant land has been taken over on behalf of the State Government before the coming into force of the Repeal Act, 1999, the repeal of the Principal Act would not affect the vesting of such land under sub-section (3) of Section 10 of Act, 1976. Hence, the issue as to whether actual possession of land declared excess under the Act has been taken over or not assumes great significance after the coming into force of the Repeal Act, 1999 inasmuch as if possession has not been taken over, the proceedings would abate under Section 4 of the Repeal Act, 1999 and the ownership of the land, if vested in the State Government under Section 10 (3) of the Act, 1976 would be required to be restored to the original land-holder subject to repayment of any amount that has been paid by the State Government with respect to such land

25. Thus, applying the principle of strict construction as explained in the aforesaid two decisions, the authorities are required to act strictly in accordance with the statutory provisions. Thus, when sub-section (5) of Section 10 mandates giving notice of an order under the said sub-section to the person in possession, the same is required to be complied with in its true letter and spirit. Considering the nature of rights involved, mere issuance of notice without service thereof, cannot be said to be due compliance with the provisions of the statute. Besides, the provisions of subsection (6) of Section

10 can be resorted to only if the person fails to comply with an order under sub-section (5) thereof, within a period of thirty days of service of notice. Hence, possession cannot be taken over under Section 10(6) of the Act, 1976 unless a period of thirty days from the date of service of notice has elapsed. In absence of service of notice under sub-section (5) of Section 10, there will be no starting point for calculating the period of thirty days. In other words, time will not start running, hence the question of taking over possession under sub-section (6) of Section 10 of the Act, 1976 will not arise at all. In this view of the matter, in the case on hand, it was not open to the respondent authorities to resort to the provisions of sub-section (6) of Section 10 of the Act, 1976 without first strictly complying with the provisions of sub-section (5) thereof. Hence, such action being in contravention of the statutory provisions cannot be sustained and deserves to be struck down.

41 The propositions of law governing the issue of possession in context with Sections 10(5) and 10(6) respectively of the Act, 1976 read with Section 3 of the Repeal Act, 1999 may be summed up thus:

[1] The Repeal Act, 1999 clearly talks about the possession being taken under Section 10(5) or Section 10(6) of the Act, 1976, as the case may be.

[2] It is a statutory obligation on the part of the competent authority or the State to take possession strictly as permitted in law.

(3) In case the possession is purported to have been taken under Section 10(6) of the Act, 1976 the Court is still obliged to look into whether "taking of such possession is valid or invalidated on any of the considerations in law."

[4] The possession envisaged under Section 3 of the Repeal Act, 1999 is de facto and not de jure only.

[5] The mere vesting of "land declared surplus" under the Act without resuming "de facto possession" is of no consequence and the land holder is entitled to the benefit of the Repeal Act, 1999.

[6] The requirement of giving notice under sub-sections (5) and (6) of Section 10 respectively is mandatory. Although the word "may" has been used therein, yet the word "may" in both the sub-sections should be understood as "shall" because a Court is obliged to decide the consequences that the legislature intended to follow from the failure to implement the requirement.

[7] 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 18th March 1999.

[8] The State has to establish by cogent evidence on record that there has been a voluntary surrender of vacant land or surrender land delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10.

53. Thus, it would all depend on the nature of the question of fact. In other words, what is exactly, that the writ court needs to determine so as to arrive at the right decision. If the only issue, that revolves around the entire debate is one relating to actual taking over of the physical possession of the excess land under the provisions of sub-sections (5) and (6) of Section 10 of the Act, 1976 respectively, then in such circumstances, the writ court has no other option but to go into the factual aspects and take an appropriate decision in that regard. The issue of possession, by itself, will not become a disputed question of fact. If all that has been said by the State is to be accepted as a gospel truth and nothing shown by the landowner is to be looked into on the ground that a writ court cannot go into disputed questions of fact, then the same may lead to a serious miscarriage of justice.

54 We are of the considered opinion that the issue as regards taking over of the actual physical possession of the excess land in accordance with the provisions of sub-sections (5) and (6) of Section 10 of the Act, 1976 could be said to be a mixed question of law and fact and not just a question of fact. Mixed question of law and fact refers to a question which depends on both law and fact for its solution. In resolving a mixed question of law and fact, a reviewing court must adjudicate the facts of the case and decide relevant legal issues at the same time. Mixed questions of law and fact are defined "as questions in which the historical facts are admitted or established, the rule of law is resolved and the issue is whether the facts satisfy the statutory standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated[Bausch & Lomb v. Unites States C.I.T. 166, 169 (Ct. Int'l Trade 1997]"

(emphasis added)

38. Recently the Apex Court in the case of **Dalsukhbhai Bachubhai Satasia and others v. State of Gujarat and others, 2026 SCC Online SC 25** while considering the provisions of the Act, 1976 and the Repeal Act, 1999 had held as under:

"18.1 We, therefore, see that the requirement of issuance of notice under Section 10(5) is mandatory and must be issued to the person(s) actually in possession of the concerned land. This is clear from the wording of the statute ("order any person who may be in possession of it"), which are Interpreted by this Court in Hari Ram. This Court opined that the importance of delivering notice lay in avoiding a situation where a person is "dispossessed" without notice which would be in violation of the principles of natural justice, thereby clearly envisioning that the possessor must be served with notice.

19.2 The delivery of notice to the person in possession was therefore unequivocally held to be mandatory. Indeed, the emphasis was on the service of notice on the possessor, as opposed to mere issuance of the same. In the absence of such service of notice, any attempt at forced dispossession was held to be contrary to the statute and hence illegal.

19.3. This Court reiterated the conclusion in Hari Ram, i.e., that if possession has not been taken over by the State Government, then the proceedings under the Act would abate under Section 4 of the Repealing Act. The "mere vesting of the vacant land with the State Government by operation of law, without actual possession, is not sufficient". This Court in AP Electrical phrased the conclusion of Hari Ram in the following manner:

……..

29....To put it in other words, the mere paper possession would not save the situation for the State Government unless the State is able to establish by cogent evidence that actual physical possession of the entire land was taken over by evicting each and every person from the land. The onus is on the State to establish that actual physical possession of the excess vacant land was taken over before the repeal."

22.4. Therefore, as per the provisions of Sections 10(3) and 10(5) of the ULC Act, the subject land, despite having 'vested' (along with acquisition of title or interests) in the State Government, was not in the possession of the

Government. Further, possession was not taken by any of the three possible means, i.e., voluntary transfer by the appellants, issuance of notice under Section 10(5) to the appellants followed by peaceful transfer or forceful acquisition of possession under Section 10(6) of the ULC Act. The possession of the land continues with the appellants herein till date.

22.5. Such a scenario is clearly one where the provision of abatement under Section 4 of the Repealing Act applies. The proviso to Section 4 states that the section would not apply to proceedings under Sections 11, 12, 13 and 14 of the ULC Act relating to land that has already been taken possession of by the State Government. Therefore, the proviso has no applicability to the facts at hand and the benefit of abatement under the section would apply wholesale.

22.6 That the approach to be had with cases such as the present one is also evident upon a reading of Sections 3 and 4 of the Repealing Act. Clearly, the legislative intent is that in cases where lands were deemed to have been vested but possession was not yet transferred as on date of enforcement of the Repealing Act (such as the present case), the lands were to remain in possession of the private parties. Section 3 (2) of the Repealing Act prescribes the procedure to be followed in specific types of situations, I.e., where amounts paid by the State Government must be refunded. This is not so in the present case. However, the underlying concepts are clear that vesting and possession are distinct and that without the latter, the private parties have a claim over continuing to be in possession. This is subsequently further emphasised in Section 4 of the Repealing Act, as explained earlier under which proceedings abate as a result."

39. Now if we advert to the facts of the present case on the touchstone of law laid down by the Apex Court, as discussed above, the requirement of giving notice under Section 10 (5) and Section 10 (6) is mandatory. Admittedly in the present case there has been no forceful dispossession under Section 10 (6). As far as the notice under Section 10 (5) is concerned, the respondents claim that the same was served upon Smt. Leelavati, wife of land holder and the petitioners have denied the receipt of the notice, however, the perusal of the notice, annexed as Annexure No C.A-3 to the counter affidavit of respondent no.3- authority reveals that it has not been received by the landholders or any other person on

their behalf. It is not the case of either of the parties that the possession memo dated 27.08.1984 issued in pursuance to the notice under Section 10 (5) was served on the land holders although it has been endorsed by two witnesses. Thus, the mandatory requirement of delivery of notice under Section 10 (5) to the petitioners not not been complied with.

40. Although it is vehemently argued on behalf of the respondents that the petitioners and their predecessors were well aware of the proceedings under the Act, 1976 but had never objected to the same and reliance is also placed upon the fact that the notice under Section 11 (8) dated 12.03.1997 was served upon the land holders and time was sought to file objections. We are afraid, even if, the said contention is taken to be correct, the same would be of no assistance to the respondents on two counts; firstly the burden lay upon the respondents to prove that they had taken possession of the land in dispute in accordance with the provisions of the Act, 1976, which the respondents have failed to discharge for reasons above, and secondly even after issuance of notice under Section 11 (8) there is nothing on record to demonstrate that payment of Sandeya Dhanrashi/ compensation has been made to the petitioners. Hence, even if the petitioners were aware of the proceedings under the Act, 1976 the same would not absolve the State of its obligation to have taken the de facto possession of the land in dispute in due accordance with the provisions of the Act, 1976 and to prove the same in the present proceedings.

41. We also cannot lose sight of the fact that the entries in the revenue records were made in the name of the State admittedly sometime in the year 2018 as per own showing of the respondents. We are also aware of the fact that the mutation of entries in the revenue records do not create or extinguish the title over the land nor it has any presumptive value on the title and the revenue entries only enable the person in whose favour mutation is made to pay the land revenue. But at the same time entries in revenue records raise a presumption in regard to possession, but it is beyond any doubt or dispute that such a presumption is rebuttable. The

Apex Court in this regard in the case of **State of Haryana & Anr. V. Amin Lal (since deceased) through his L.Rs& Ors.**, decided on 19.11.2024 had held as under:-

"8.2 The plaintiffs relied on jamabandi entries to establish their ownership. The jamabadi for the year 1969-70 (Exhibit P1) records the name of Shri Amil Lal as owner to the extent of half share. Revenue records are public documents maintained by government officials in the regular course of duties and carry a presumption of correctness under Section 35 of the Indian Evidence Act, 1872. While it is true that revenue entries do not by themself confer title, they are admissible as evidence of possession and can support a claim of ownership when corroborated by other evidence."

42. Further reliance is placed upon revenue entries being recorded in the name of the State in the mutation register (R-6) on 09.02.1996 is also of little consequence, as it is an outcome of internal papers work between two offices of the State. Further the petitioners or any prudent person would have come to know about the mutation of entries only when the same were recorded in the revenue records and the same was admittedly done in the year 2018.

43. Under the circumstances the revenue entries having continued in the name of petitioners upto the year 2018, a presumption may be drawn that the possession of the land in dispute continued with the petitioners and it is for the respondents to rebut the presumption so made by placing evidence that the possession is with the respondents.

44. In view of above the next question that follows to be decided is as to whether the respondents have been able to prove their possession over the land in dispute at the time of enforcement of the Repeal Act, 1999. Admittedly the land in dispute is comprised in two plots being Khasra No. 773 and Khasra No. 789.

45. As far as the Khasra No. 773 is concerned in the report of the Advocate Commissioner relied upon by the respondents private abadi existing over the same. In the report of the Secretary of the respondent

no.3 authority it is stated that the construction of drain, road, etc has been carried out over the said plot and on a part thereof there is an illegal private abadi. The respondent authority in its counter affidavit has also admitted that the petitioner appears to have encroached upon the aforesaid land by raising some unauthorised constructions. We failed to understand as to how the petitioners would have raised constructions over the said plot after the enforcement of Repeal Act, 1999 when the same was in possession of the respondents-authority and a residential scheme was planned over it. Thus, the contention of the respondents holds little water, moreso when private abadi is situate over the said plot. Even in the photographs of the aforesaid plot relied upon by the respondents houses and shops along with road are shown to be existing over the same. Under the circumstances, it cannot be said that the respondents are in possession of the land comprised in Gata No. 773 and it is beyond doubt that private abadi is existing over the same.

46. As far as the Gata No. 789 is concerned in the report of the Advocate Commissioner relied upon by the respondents Moradabad Delhi Bypass, passes over the said plot, besides chambers of sewer line and high tension lines passing over the same. Further in the report of the Secretary of the respondent authority construction of drain, road, etc has been carried out over the said plot. Further in the photographs relied upon by the respondents vacant plot of land is shown to be existing over the said plot with high tension lines with no development work in the shape of roads, drain, etc existing over the same and in its vicinity. Further in the photographs relied upon by the petitioner of the very same plot, crops are shown to be standing over the same. Hence, it is beyond doubt that no development has taken place over the Gata No. 789 as alleged by the respondents and agricultural activities are being carried out over the same.

47. Thus for the reasons detailed above, the respondents have failed to prove that they are in possession of the land in dispute, in fact the

respondents have failed to establish a prima facie case to demonstrate that the are in possession of the land in dispute.

48. Another question raised before us and vehemently argued on behalf of the respondents that the present writ petition is liable to be dismissed solely on the ground of delay the petitioners having approached this Court after a delay of about 30 years after the land was declared to be vacant surplus and after about 25 years since the possession of the land was taken over by the respondents.

49. Before we consider the factual aspects of the controversy in respect to delay the respondents amongst others have heavily relied upon the law laid down by the Apex Court in the case of **State of Assam v. Bhaskar Jyoti Sarma 2015 (5) SCC 321** in that regard. The law laid down by the Apex Court in the said case came to be considered in the case of **Dalsukhbhai Bachubhai Satasia (supra)** wherein the Apex Court had held as under:-

"19.5. This Court in AP Electrical examined a prior decision of this Court in State of Assam v. Bhaskar Jyoti Sarma, (2015) 5 SCC 321 ("Bhaskar Jyoti Sarma"), since it appeared to "at the first blush create an impression that the dictum as laid In Hari Ram has been diluted". It assessed the effect of Bhaskar Jyoti Sarma on the dictum on Hari Ram as follows.

"33. We quote few relevant paras of the said judgment as under:

XXX

15. The High Court has held that the alleged dispossession was not preceded by any notice under Section 10(5) of the Act. Assuming that to be the case all that it would mean is that on 7th December, 1991 when the erstwhile owner was dispossessed from the land in question, he could have made a grievance based on Section 10(S) and even sought restoration of possession to him no matter he would upon such restoration once again be liable to be evicted under Sections 10(5) and 10(6) of the Act upon his failure to deliver or surrender such possession. In reality therefore unless there was something that was inherently wrong so as to affect the very process of taking over such as the identity of the land or the boundaries thereof or any

other circumstance of a similar nature going to the root of the matter hence requiring an adjudication, a person who had lost his land by reason of the same being declared surplus under Section 10(3) would not consider it worthwhile to agitate the violation of Section 10(5) for he can well understand that even when this Court may uphold his contention that the procedure ought to be followed as prescribed. It may still be not enough for him to retain the land for the authorities could the very next day dispossess him from the same by simply serving a notice under Section 10(5). It would, in that view, be an academic exercise for any owner or person in possession to find fault with his dispossession on the ground that no notice under Section 10(5) had been served upon him.

16. The issue can be viewed from another angle also. Assuming that a person in possession could make a grievance, no matter without much gain in the ultimate analysis, the question is whether such grievance could be made long after the alleged violation of Section 10 (5). If actual physical possession was taken over from the erstwhile land owner on 7th December, 1991 as is alleged in the present case any grievance based on Section 10 (5) ought to have been made within a reasonable time of such dispossession. If the owner did not do so, forcible taking over of possession would acquire legitimacy by sheer lapse of time. In any such situation ther owner or the person in possession must be deemed to have waived his right uner Section 10 (5) of the Act. Any other view would, in our opinion, give a license to a litigant to make a grievance not because he has suffered any real prejudice that needs to be redressed but only because the fortuitous circumstances of a Repeal Act tempted him to raise the issue regarding his dispossession being in violation of the prescribed procedure.

17. Reliance was placed by the respondents upon the decision of this Court in Hari Ram's Case (supra). That decision does not, in our view, lend much assistance to the respondents. We say so, because this Court was in Hari Ram's case (supra) considering whether the work 'may' appearing in Section 10 (5) gave to the competent authority the discretion to issue or not to issue a notice before taking physical possession of the land in question under Section 10 (6). The question whether breach of Section 10 (5) and possible dispossession itself or render it non est in the eyes of law did not fall for consideration in that case. In our opinion, what Section 10 (5) prescribed is an ordinary and logical course of action that ought tobe followed before the authorities decided to use force to dispossess the occupant under Section

10(6). In the case at hand if the appellant's version regarding dispossession of the erstwhiel 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 Sharma-erstwhile owner had not make any grievance based on breach of Section 10 (5) at any stage during his lifetime implying thereby that he had waived hig right to do so.

(Emphasis supplied)

34. We have supplied emphasis on paras 15 and 17 of Bhaskar Jyoti Sharma (supra) referred to above, for the purpose of highlighting that Hari Ram (supra) has not been diluted in any manner. We are of the firm view that Hari Ram (supra) holds the field even as on date. The statements of law in Hari Ram (supra) are absolutely correct.

35. If two decisions of this Court appears inconsistent with each other, the High Courts are not to follow one and overlook the other, but should try to reconcile and respect them both and the only way to do so is to adopt the wise suggestion of Lord Halsbury given in Quinn v. Leathem,[1901] A.C. 495 and reiterated by the Privy Council in Punjab Cooperative Bank Ltd. v. Commr. of Income Tax, Lahore AIR 1940 PC 230:

"…. every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions, which may be found there, are not intended to be expositions of the whole law, but governed or qualified by the particular facts of the case in which such expressions are to be found." and follow that decision whose facts appear more in accord with those of the case at hand."

20. We are inclined to agree with this view of this Court in AP Elettrical regarding the effect of Bhaskar Jyoti Sarma on the dictum in Hari Ram. In the former, de facto possession had actually been transferred to the State Government. Albelt, this was done by force in contravention of the requirement to mandatorily issue notice under Section 10(5) of the ULC Act. In this regard, this Court held that if the objection regarding the non-compliance with Section 10(5) is not made within a "reasonable time", then the right to so object is "waived".

20.1. However, the facts of Hari Ram (and indeed, the present case) are different insofar as de facto possession was not transferred, by force or otherwise. Therefore, the question is not whether an actual transfer of possession by force is vitiated by a delay in raising objections to the transfer. Rather, the question is whether actual possession has been transferred at all, if no process of transfer has been conducted under the various provisions of Section 10 of the ULC Act. Therefore, the dictum in Hari Ram stands undisputed by the judgment in Bhaskar Jyoti Sarma.

20.4. We find that this view is in accordance with the prior dictum of this Court in Hari Ram, and agrees with the same. At this juncture, we find it appropriate to briefly go through certain other pronouncements of this Court, all of which are aligned on the necessity of serving notice on the possessor under Section 10(5); the difference between vesting and possession' the difference between de jure and de facto possession and the effect of the Repealing Act."

50. Now we advert to the question of delay in view of observations made above, for the reasons above we have already held that the notice under Section 10 (5) and the possession memo was not served upon the petitioners or his predecessors. Further even if the notice under Section 11 (8) was served upon the land holders on 22.03.1997, we cannot lose sight of the fact that the Act, 1976 was repealed in the State on 18.03.1999 and till then or thereafter no payment of Sandeya Dhanrashi/ compensation was made to the petitioners. It has also been concluded that the respondents have failed to prove their possession over the land in dispute. Further as per the own showing of the respondents entries in the revenue records were mutated in the name of the State in the year 2018.

51. Under the circumstances, there is no reason to disbelieve the contention of the petitioner that it was only when the respondents had started interfering in the possession of the petitioners that the petitioner had approached the Competent Authority-respondent no.2 and had subsequently filed the present writ petition in the year 2010.

52. Thus, in view of the above, it cannot be held that there has been delay on the part of the petitioners in approaching this Court in view of the fact that the petitioners continued to remain in possession of the land in dispute prior to and after the enforcement of the Repeal Act, 1999 and revenue entries also remained in the name of the petitioners and the petitioners approached this Court shortly after their possession was sought to be disturbed.

53. Further the respondents have placed reliance upon the judgment of Coordinate Benches of this Court where the land in question was similarly situated in village Sonakpur, District Moradabad and was transferred by the State to Moradabad Development Authority after culmination of proceedings under the Act, 1976. However, we find that the facts of the cases so relied upon by the respondents are clearly distinguishable.

54. **In Writ C No. 1106 of 2010 (Kailash and another Vs. State of U.P. and others)** decided on 01.06.2012, the descendants of the original land holder had sold their shares in the remaining land in question, which was left out of the proceedings under the Act, 1976 and in the sale deed it was clearly shown that ceiling land was situated adjoining the land so transferred and the aforesaid land admittedly belonged to the petitioners and was a subject matter of proceedings under the Act, 1976.

55. Similar was the case in **Writ -C No. 20035 of 2013 (Polu & 2 tohers V. State of U.p. & another)** decided on 03.11.2016 and **Writ-C No. 20578 of 2013 (Naresh & another v. State of U.P. & another)** decided on 17.1.2016, whereto, the descendants of the original tenure holder had transferred the remaining area of the land in question, left out of the proceedings under the Act, 1976 to Moradabad Development Authority.

56. Further, in **Writ-C No. 58850 of 2013 (Babu and others v. State of U.P and others)** decided on 21.12.2016, the remaining land of the petitioners, left out of the proceedings under the Act, 1976, was acquired by the Moradabad Development Authority under the provisions of Land

Acquisition Act, 1894. In the said circumstances, this court was of the view that the possession of the land in question declared vacant surplus under the Act, 1976 had already been transferred to the State.

57. However, in the present case, we find that the remaining land of the petitioners left out of the proceedings under the Act, 1976 was neither purchased nor acquired by the respondent no. 3 authority. Moreover in the present case as duly admitted by the respondents the land in dispute was recorded in the name of State sometime in the year 2018 during the pendency of the present writ petition. Hence, we are of the view that the facts and circumstances of the present case are clearly distinguishable from those relied upon by the respondents and as such the respondents would not be entitled to any benefit of the judgments so relied upon.

58. Hence, in view of above as far as the question of the respondent having de facto possession of the land in dispute, the burden lay upon the respondent to prove the same. However, we are afraid that the respondents have utterly failed to discharge the burden. Besides the respondents have also failed to establish that there has been a voluntary surrender of vacant land, hence, under the circumstances, the petitioners are very well within their rights to claim the benefit of Section 4 of the Repeal Act, 1976.

59. The respondents have vehemently stressed upon the fact that the present writ petition is liable to be dismissed solely on the ground of delay in approaching this Court, however, we are of the view that the question involved in the present case is whether actual possession has been transferred at all to the respondents or not and if no process of transfer has been conducted under the various provisions of Section 10 of the Act, 1976 and the respondents have also failed to establish their possession over the land in dispute, then in such a case, the law relied upon by us in the case of **Hari Ram (supra), A.P. Electricial Equipment Corporation (supra) and Dabukhbahi Bachubhai Sateria (supra)** would be applicable in the present case.

60. Thus, in view of the above the present writ petition is allowed.

61. No order as to costs.

(Sudhanshu Chauhan,J.) (Saral Srivastava,J.)

May 25, 2026
Arif/ Nadeem