REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6490 OF 2014

State of Orissa & Ors. …Appellant(s)

Versus

Sakhi Bewa (Dead) Through LRs. …Respondent(s)

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 30.07.2009 passed by the High Court of Orissa in OJC No.4048 of 1994 by which the High Court has allowed the said writ petition preferred by the respondents herein – original writ petitioners – original land owners and has quashed and set aside the orders passed by the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the Act, 1976") declaring Ac. 0.865-7 area of the land as excess vacant land under the provisions of the Act, 1976, the State has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:-

2.1 That the proceedings under the provisions of the Act, 1976 were initiated with respect to the holdings of the original writ petitioner No.1 – Sakhi Bewa. By order dated 01.03.1984, the Competent Authority under the Act, 1976 declared Ac. 0.865-7 as excess vacant land. Final statement under Section 9 of the Act, 1976 was issued on 27.03.1984.

2.2 That thereafter a notification under Section 10(1) of the Act, 1976 was issued on 30.04.1984 with respect to the land declared as excess vacant land. The original landowners filed an appeal before the Appellate Authority in the month of May, 1984. A declaration under Section 10(3) of the Act, 1976 was published on 26.10.1984. That thereafter the Competent Authority sent a notice dated 30.11.1984 under Section 10(5) of the Act, 1976 to the respondents – original landowners to deliver vacant possession of the excess vacant land to Tehsildar.

2.3 That an appeal was preferred by the original landowners against the order passed by the Competent Authority declaring Ac. 0.865-7 land as excess vacant land, which came to be dismissed by the Board of Revenue – Appellate Court vide order dated 05.05.1987.

2.4 That according to the State the Tehsildar, Sadar, Cuttack, has taken over the possession of the land on 25.04.1988. The respondents – original writ petitioners filed a writ petition being OJC No.2550 of 1987 before the High Court challenging the order passed by the Competent Authority dated 01.03.1984 as well as the order passed by the First Appellate Court – Board of Revenue. The said writ petition came to be dismissed for non-prosecution on 01.11.1991. After a period of approximately three years a restoration application was filed being M.J.C. No.10 of 1994. But the same came to be dismissed by the Division Bench by observing that the grounds for the delay are far from satisfactory and that there is no justification either for condoning the delay and annulling the earlier order of dismissal. However, the Division Bench observed that the petitioner may file a fresh petition, **if permissible.** That thereafter the respondents herein filed a fresh petition before the High Court being OJC No.4048 of 1994 again challenging the order passed by the competent authority dated 01.03.1984 as well as the order passed by the Board of Revenue dated 05.05.1987 which were as such subject matter of writ petition being OJC No.2550 of 1987, which was dismissed for non-prosecution on 01.11.1991. That an

ex parte ad interim order was passed by the High Court on 10.06.1994 and it was ordered that the authorities may take over the possession of the vacant surplus land but will not change the nature or character of the land until further orders from the court. At this stage, at the cost of repetition it is observed that all throughout, the case on behalf of State was that even prior to said ex parte ad interim order, the possession of the surplus land was already taken over by the Tehsildar on 25.04.1988. A counter was filed on behalf of State opposing the writ petition in which it was also specifically pointed out that the possession of the surplus land has been taken over by the Tehsildar on 25.04.1988. The respondents, however, dispute the said position, their contention being that they have always been in possession of the property and the order dated 25.04.1988 is a paper order and does not reflect the true and correct position. Without commenting on the merits, it would be relevant to note here that the order dated 25.04.1988 does refer to demarcation by the authorities and that the surplus land was taken over by F.I. Sadar II and Amin Sri G.C. Pattanaik on 02.04.1988, but this being a question of fact, it would have to be examined and ascertained. The ascertainment of this fact

is necessary in view of the enactment of the Repeal Act, as noticed below.

2.5 That thereafter the Act, 1976 came to be repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as “the Repeal Act, 1999”) vide notification dated 22.03.1999. That vide resolution dated 05.04.2002, the State of Orissa adopted the Urban Land (Ceiling and Regulation) Repeal Act, 1999.

2.6 That thereafter on misreading and misinterpretation of the notification / communication dated 24.07.2002 and without even dealing with the case on behalf of the State that the possession of the surplus land has already been taken over on 25.04.1988 and solely on the ground that compensation for the surplus land has not been paid, the Division Bench of the High Court by the impugned judgment and order has quashed and set aside the order passed by the Competent Authority dated 01.03.1984 as well as the order passed by the First Appellate Court – Board of Revenue dated 05.05.1987. The High Court also further observed that as the Act, 1976 stands repealed, the lands belonging to the respondents- landowners shall be given back to them.

2.7 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court of Orissa, the State has preferred the present appeal.

3. We have heard Shri Sibo Sankar Mishra, learned counsel appearing on behalf of the State and Dr. Menaka Guruswamy, learned senior counsel appearing on behalf of the respondents.

4. Having heard the learned counsel appearing for the respective parties and having gone through and considered the impugned judgment and order passed by the Division Bench of the High Court and chronological dates and events narrated hereinabove, we are of the opinion that the impugned judgment and order passed by the High Court is unsustainable in law as well as on facts. It cannot be disputed that in the impugned judgment and order the High Court has not at all considered the merits of the case and has quashed and set aside the order passed by the Competent Authority dated 01.03.1984 and the order passed by the First Appellate Court – Board of Revenue dated 05.05.1987 solely on the ground that the Act, 1976 has been repealed and that the compensation for the surplus land has not been paid. The High Court has noted that in the resolution adopting the Repeal Act,

1999, it has been declared that no compensation should be paid for lands, possession of which has not been taken over by the State Government after vesting under Section 10(3) of the Act, 1976 and the legal process initiated under the said Act will also be closed.

4.1 That it appears and though it is not clear from paragraph 8, which is the only paragraph, in which some observations are made by the High Court, the High Court has observed that as an interim order was operative and nothing has been averred regarding payment of compensation during pendency of the writ petition, no useful purpose would be served to remand the matter since the Act, 1976 has been repealed and consequently, the High Court has quashed and set aside the orders passed by the Competent Authority as well as the First Appellate Court. However, the High Court has not at all properly appreciated and considered Sections 3 and 4 of the Repeal Act, 1999. Sections 3 and 4 of the Repeal Act, 1999 read as under:-

> "**3. Savings.**— (1) The repeal of the principal Act shall not affect—
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> (a) the vesting of any vacant land under sub-section (3) of Section 10, 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;
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> (b) the validity of any order granting exemption under sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of Section 20.

(2) Where—

(a) any land is deemed to have vested in the State Government under sub-section (3) of Section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land

then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

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."

4.2 A fair reading of Sections 3 and 4 of the Repeal Act, 1999 makes it clear that all proceedings relating to any order made or purported to be made under the principal Act (Act, 1976) pending immediately before the commencement of the Repeal Act, 1999, before any court, tribunal or other authority shall abate. Section 4 of the Repeal Act shall not apply provided possession of land 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. Therefore, if the possession of the surplus land/land 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, in that case, the proceedings relating to any order made under the principal Act, 1976 shall not abate, meaning thereby that the Repeal Act, 1999 shall not affect all those proceedings with respect to the land of which the possession has been taken over. Therefore, before declaring the proceedings as having abated in view of Sections 3 and 4 of the Repeal Act, 1999, it has to be considered and decided whether possession of the surplus land/land 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 or not. If it is found and held that the possession of the surplus land has been taken over, in that case, the proceedings shall not be declared as having been abated.

4.3 In the present case, in the impugned judgment and order, the Division Bench of the High Court has not at all considered and/or given any specific findings on the possession being taken over by the Tehsildar on 25.04.1988. There is no discussion at all on the aspect whether the possession taken over by the Tehsildar. It appears that solely on the ground that the payment of compensation has not been made and ad

interim order was operating, the High Court has quashed and set aside the orders passed by the Competent Authority as well as the First Appellate Court. However, the High Court has not properly appreciated and considered the fact that the payment of compensation has nothing to do with the taking over of possession. Payment of compensation under the Act, 1976 and taking over the possession after the notification issued under Section 10(3)/10(5) of the Act, 1976, both are different and distinct.

4.4 Even assuming that the compensation has not been paid, in that case also, it cannot be presumed that the possession was not taken over. It appears that even the Division Bench of the High Court has also misread and misinterpreted the resolution/notification dated 24.07.2002. By the resolution/notification dated 24.07.2002, the following clarifications were issued by the State Government:-

> "Thus as per the provisions laid down under the said Repeal Act, the following clarifications are issued.
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> i) No compensation should be paid for land, possession of which has not been taken over by the Govt. after vesting U/s. 10(3) of the Urban Land (Ceiling & Regulation) Act, 1976. The Legal process initiated under the said Act will also be closed.
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> ii) Where possession of land has been taken over and compensation has not been paid or partly

paid, steps should be taken for payment of compensation.

iii) Continuance of Govt. Control over the exempted land is no more required with effect from 5.4.2002."

4.5 As per the said clarification dated 24.07.2002 no compensation should be paid for land, possession of which has not been taken over by the Government after vesting U/s. 10(3) of the Urban Land (Ceiling & Regulation) Act, 1976 and the legal process initiated under the said Act is also to be closed. As per clause (ii) where the possession of the land has been taken over and the compensation has not been paid or partly paid, steps should be taken for payment of compensation. Therefore, even as per the said clarification dated 24.07.2002, where the possession of the land has been taken over and the compensation has not been paid or party paid, the steps were required to be taken for payment of compensation. It does not speak and/or clarify that if the compensation is not paid, the possession is presumed to be not taken and/or the legal process initiated under the Act, 1976 will be closed. If we consider paragraphs 7 and 8 of the impugned judgment and order, it appears that the High Court has misread and misinterpreted the clarification notification dated 24.07.2002 and even the resolution dated 05.04.2002. Though the resolution/clarification dated 24.07.2002 is in two parts reproduced hereinabove, the High Court has not at all

considered and dealt with part (ii) of the clarification namely “where the possession of the land has been taken over and the compensation has not been paid or partly paid, steps should be taken for payment of compensation.”

4.6 Even the Division Bench of the High Court has also not considered the interim order dated 10.06.1994 in its true spirit. In the ex parte ad interim order dated 10.06.1994, the High Court has ordered that the authorities may take over possession of the vacant surplus land but will not change the nature or character of the land until further orders from the court.

4.7 At this stage, it is required to be noted that according to the State, the possession of the surplus land was already taken over on 25.04.1988 and all throughout it was the case on behalf of the State that the possession of surplus land was taken over on 25.04.1988. At this stage, it is also required to be noted that interim order dated 10.06.1994 was an ex parte ad interim order. The interim order, as worded, is not conclusive proof either way on the question of possession. Even in the impugned judgment and order, the Division Bench of the High Court has observed that since the Act, 1976 has been repealed, the land belonging to the original writ petitioners shall be given back to them. Meaning thereby, it can be said that even according to the High Court also the

possession of the surplus land was not with the original writ petitioners. Whereas, this observation is not a finding on whether possession was taken. Be that as it may, as the High Court has not at all dealt with the petition on merits and has allowed the writ petition on the aforesaid grounds only, the impugned judgment and order passed by the High Court cannot be sustained and the same deserves to be quashed and set aside and the writ petition has to be remanded to the High Court to decide the same afresh and to consider the aspects stated hereinabove. The observations and views expressed by us are tentative and prima facie. The question whether possession was taken over being primordial must be examined with acuity and thoroughly.

5. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court dated 30.07.2009 passed in OJC No.4048 of 1994 is hereby quashed and set aside. Petition is remanded to the Division Bench of the High Court to consider the writ petition afresh. The Division Bench of the High Court to consider the case on behalf of the State that the possession of the surplus land was already taken over by the Tehsildar on 25.04.1988. In case it is held that the respondents are not entitled to the benefit of the Repeal Act, the High Court would then consider submissions on behalf of the State on maintainability of the subsequent writ petition.

The High Court is also to consider submissions on behalf of the State on the maintainability of the subsequent writ petition, as the earlier writ petition being OJC No.2550 of 1987 was dismissed for non-prosecution in which also the order passed by the Competent Authority dated 01.03.1984 and the order passed by the Board of Revenue dated 05.05.1987 were under challenge, which were also the subject matter of the subsequent writ petition being OJC No.4048 of 1994. The High Court is also to consider the observations made by the High court in the order passed in restoration application being M.J.C. No.10 of 1994 filed for restoring the OJC No.2550 of 1987 by which the High Court dismissed the restoration application with observation that the original writ petitioner may file a fresh petition, **if permissible**. Therefore, the Division Bench of the High Court has also to interpret and consider the expression "**if permissible**".

On remand, we request the High Court to finally decide and dispose of the writ petition being OJC No.4048 of 1994 as ordered to be restored to the file of the High Court and we request the High Court to decide and dispose of the writ petition expeditiously preferably within a period of six months from the date of receipt of the order. It is made clear and observed that all the contentions which may be available to the respective parties are kept open, to be dealt with and considered by the Division Bench of the High Court in accordance with law. It is also

observed that the High Court shall decide all issues including issues, which are observed hereinabove.

Present appeal is allowed accordingly with costs, which is quantified at Rs.50,000/- to be deposited by the respondents with the National Legal Services Authority within a period of four weeks from today. Pending applications, if any, also stand disposed of.

…….J.
[M.R. SHAH]

NEW DELHI; …….J.
NOVEMBER 23, 2021. **[SANJIV KHANNA]**