**AFR**

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No.40
Neutral Citation No. - 2025:AHC:45295-DB

**CORAM : HON'BLE SHEKHAR B. SARAF, J.**
**HON'BLE VIPIN CHANDRA DIXIT, J.**

**WRIT-C NO. 14904 OF 2016**

RAMJI AND OTHERS

V.

STATE OF U.P. AND OTHERS

| | | |
|---|---|---|
| **For the Petitioners** | **:** | Mr. Sanjay Goswami, Advocate |
| **For the Respondents** | **:** | Ms. Shubhra Singh and Mr. Mohan Srivastava, Standing Counsel for the State Mr. Neelambhar Tripathi, Advocate for the respondent No.4 |

Last heard on March 11, 2025
Pronounced on April 2, 2025

**SHEKHAR B. SARAF, J.**

1. This is a writ petition under Article 226 of the Constitution of India wherein the petitioners have prayed for the issuance of a writ of mandamus restraining the respondents from dispossessing or interfering with the peaceful possession of petitioners from their surplus declared land in question, situated in village Lawayan, Pargana Arail, Tehsil Karchhana,

District Allahabad and in furtherance directing the respondents not to make any interference in the peaceful possession of the petitioners over the land/plots on area 67138.12 square meter situated at aforementioned place.

**FACTS**

2. Factual matrix giving rise to the instant writ petition is delineated below:

a) In the present *lis,* one Bholanath (father of petitioner no.1 to 4, father-in-law of petitioner no. 5 and 6, and grandfather of petitioner no. 7 to 11) was the owner in possession of various agricultural lands situated in village Lawayan Kala, Pargana Arail, Tehsil Karchhana, District Allahabad. His name was also recorded in Khasra of 1422 Fasli year (corresponding to the year 2012). He had been cultivating the land since then.

b) The State initiated ceiling proceedings against Bholanath in Case No. K-3770/1976 (State v. Bholanath) under Section 6 (1) of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as 'Ceiling Act') based on his statement regarding vacant land.

c) Thereafter, the Competent Authority, Urban Land Ceiling, Allahabad (hereinafter referred to as 'respondent no.3') passed an *ex-parte* order dated May 24, 1983 under Section 8 (4) of the Ceiling Act, declaring 67,138.12 square meter of land as surplus.

d) On July 24, 1993, a notification under Section 10 (1) of the Ceiling Act was published, followed by a declaration under Section 10 (3) of the Ceiling Act, in the official gazette.

e) Subsequently, respondent no.3 issued notice dated May 27, 1996 under Section 10 (5) of the Ceiling Act directing Bholanath to voluntarily handover/surrender the possession of

surplus land to the Collector/District Magistrate, Allahabad within 30 days of receipt of the notice.

f) However, Bholanath neither voluntarily surrendered the possession of the land before the authority, nor did the District Magistrate/Collector, Allahabad or any other authority take forceful possession of the same under Section 10 (6) of the Ceiling Act. The ceiling proceedings only reached upto the stage of Section 10 (5) of the Ceiling Act.

g) Bholanath continued in the actual physical possession of land until his death in May, 2005. After his demise, his legal heirs inherited the property, including the surplus land, and have remained in actual physical possession since then.

h) Since neither actual physical possession of the land was taken by the State Government nor any compensation was awarded to them for the surplus declared land, all the proceedings under the Act, stood abated after enforcement of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as 'Repeal Act').

i) In December 2015, respondent authorities visited the land and threatened the petitioners to vacate the surplus land within 30 days. They warned of forced dispossession, if the land was not surrendered.

j) Being aggrieved by the *ex-parte* order and the threat received from respondents to dispossess them from the peaceful possession, the petitioners have approached this Court seeking relief.

**CONTENTIONS OF THE PETITIONERS**

3. Learned counsel appearing on behalf of the petitioners has made the following submissions:

a) It is a statutory mandate to issue proper and effective service of notice along with a draft statement to the person concerned under Section 8 (3) of the Ceiling Act before passing an order under Section 8 (4) of the Ceiling Act. The petitioners in the present case, were never served with notice under Section 8 (3). Inter alia, it is contended by the State in its counter-affidavit that the notice under Section 8 (3) of the Ceiling Act was served upon Sangam Lal (petitioner no. 4) who is the son of Bholanath and was the original tenure holder. However, Bholanath was the original tenure holder during his lifetime till 2005.

b) The actual physical possession of the surplus land vests with the petitioners though State is showing *de facto* possession from the fact stated in its counter-affidavit that the land has been transferred to Prayagraj Development Authority via Government Order dated December 11, 1996 before the Repeal Act came into force.

c) Reliance has been placed upon umpteen judgments of the Apex Court as in **Vinayak Kashinath Shelkar v. Deputy Collector and Competent Authority and Ors.** reported in **(2012) 4 SCC 718; Gajanan Kamlya Patil v. Additional Collector and Competent Authority (ULC) and Ors.** reported in **AIR 2014 SC 1843;** and **Dip Co. Op. Hsg. Society Ltd. v. State of Gujarat** reported in **2020 SCC Online Guj 693** wherein it was held that 'possession' means actual physical possession not *de facto* possession and not mere paper or *de jure* possession.

d) Entire proceedings were conducted in an *ex-parte* manner against Bholanath without providing any opportunity of hearing to him.

e) The entries in revenue records were changed by the State in a whimsical manner on the basis of notice issued under Section 10 (5) of the Ceiling Act.

f) State has not filed any documents/memorandum of possession justifying entries in the revenue records. State has also not prepared any panchnama in relation to show that the possession has been taken over by them.

g) The actual physical possession of the disputed land was not taken by the State and the proceedings have gone only up to the stage of Section 10 (5) of the Ceiling Act. The acquisition proceeding stands abated as per the Repeal Act. Hence, the peaceful possession of the petitioners should not be interfered with.

h) To buttress the arguments, reliance has been placed upon a judgment of the Apex Court in **Pt. Madan Swaroop Shrotiya Public Charitable Trust v. State of U.P.** reported in **(2000) 6 SCC 325** wherein the Court has held that in the absence of record to indicate the possession over the surplus land, the proceedings have to be abated under Section 4 of the Repeal Act. The relevant paragraph of the said judgment to substantiate the contentions is quoted below:

> *"5. Since there is nothing on record to indicate that the State had taken possession over the surplus land, the present proceedings have to be abated and are hereby abated under Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999."*

i) In **State of U.P. v. Hari Ram** reported in **(2013) 4 SCC 280**, the Apex Court has held that mere conferment of right under Section 10 (3) of the Ceiling Act does not confer any *de facto* right on the State to have possession unless there is voluntary surrender or delivery of possession peacefully under Section

10(5) of the Ceiling Act or forceful dispossession under Section 10 (6) of the Ceiling Act. The relevant paragraphs of the judgment are quoted below:

> *"**Effect of the Repeal Act***
>
> *41. Let us now examine the effect of Section 3 of Repeal Act 15 of 1999 on sub-section (3) of Section 10 of the Act. The Repeal Act, 1999 has expressly repealed Act 33 of 1976. The objects and reasons of the Repeal Act have already been referred to in the earlier part of this judgment. The Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute and the facts of the particular case.*
>
> *42. The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18-3-1999. The State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the landowner or holder can claim the benefit of Section 4 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 4 of the Repeal Act."*

j) The judgments of the Division Bench of this Court that have been placed reliance upon to buttress the arguments are: **Jor Singh @ Chhotelal v. State of U.P.** in **Writ C No. 36691 of 2004; Netra Pal Singh and another v. State of U.P. and another** in **Writ C No. 34859 of 2013**.

**CONTENTIONS OF THE RESPONDENTS**

4. Learned Standing Counsel appearing on behalf of the State has made following submissions:

a) Petitioners alleged that they were not served with the notice dated December 10, 1980 under Section 8 (3) of the Ceiling Act before passing an *ex-parte* order under Section 8 (4) of the Ceiling Act declaring 67138.12 square meter as surplus land. In this regard, it is submitted that notice along with draft statement under Section 8 (3) of the Ceiling Act was duly issued and served on April 13, 1983 upon Sangam Lal (petitioner no.4) son of Bholanath, who was the original tenure holder of the land.

b) Publication of declaration of surplus land under Section 10 (3) of the Ceiling Act in the official gazette *vide* notification dated February 3, 1996 vests absolute right in the State Government free from all encumbrances with effect from date so specified in the said notification.

c) Upon service of notice and passing of an order dated May 27, 1996 under Section 10 (5) of the Ceiling Act, Bholanath peacefully transferred the possession of land in dispute to respondent no.3. Accordingly, the revenue records were rectified, replacing the name of the original tenure holder with the State Government. Hence, the physical possession was validly taken over by the respondents in accordance with the Act before the Repeal Act came into force. Issuance of notice and service thereof was in accordance with the Act.

d) The land which was in the name and possession of the State was transferred to Prayagraj Development Authority via Government Order dated December 11, 1996. Therefore, the *de facto* possession of land is implied upon the State.

e) As per the decision of allotment committee dated September 2, 2009, the District Magistrate, Prayagraj, allotted the land vested in State to Prayagraj Development Authority (PDA) for development of High Tech Township and in pursuance of the

above decision, a lease deed dated June 28, 2010 had also been executed by Prayagraj Development Authority in favour of M/s Pancham Realcon. Pvt. Ltd.

f) There is an alternative remedy under Section 32 of the Ceiling Act against the order passed under Section 8 (4) of the Ceiling Act. Petitioners neither challenged the order dated May 24, 1983 passed under Section 8 (4) nor challenged the notice dated May 27, 1996 under Section 10 (5) of the Ceiling Act but approached this Court by means of the present writ petition after gargantuan delay.

g) To buttress the arguments, reliance has been placed upon a judgment of the Apex Court in **State of Assam v. Bhaskar Jyoti Sharma** reported in **2015 (5) SCC 321.** The relevant paragraphs of the judgment are quoted below:

> *"11. Section 3 of the Repeal Act postulates that vesting of any vacant land under sub-section (3) of Section 10, is subject to the condition that possession thereof has been taken over by the competent authority or by the State Government or any person duly authorised by the State Government. The expression "possession" used in Section 3 (supra) has been interpreted to mean "actual physical possession" of the surplus land and not just possession that goes with the vesting of excess land in terms of Section 10(3) of the Act.*
>
> *12. The question, however, is whether actual physical possession of the land in dispute has been taken over in the case at hand by the competent authority or by the State Government or an officer authorised in that behalf by the State Government.*
>
> *13. The case of the appellant is that actual physical possession of the land was taken over on 7-12-1991 no matter unilaterally and without notice to the erstwhile landowner. That assertion is stoutly denied by the respondents giving rise to seriously disputed question of fact which may not be amenable to a satisfactory determination by the High Court in exercise of its writ jurisdiction. But assuming that any such determination is possible even in proceedings under Article*

> *226 of the Constitution, what needs examination is whether the failure of the Government or the authorised officer or the competent authority to issue a notice to the landowners in terms of Section 10(5) would by itself mean that such dispossession is no dispossession in the eye of the law and hence insufficient to attract Section 3 of the Repeal Act. Our answer to that question is in the negative.*
>
> ***
>
> *17. Reliance was placed by the respondents upon the decision of this Court in Hari Ram case [State of U.P. v. Hari Ram, (2013) 4 SCC 280 : (2013) 2 SCC (Civ) 583]. That decision does not, in our view, lend much assistance to the respondents. We say so, because this Court was in Hari Ram case [State of U.P. v. Hari Ram, (2013) 4 SCC 280 : (2013) 2 SCC (Civ) 583] considering whether the word "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 without notice would vitiate the act of dispossession itself or render it non est in the eye of the law did not fall for consideration in that case. In our opinion, what Section 10(5) prescribes is an ordinary and logical course of action that ought to be 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 erstwhile owner in December 1991 is correct, the fact that such dispossession was without a notice under Section 10(5) will be of no consequence and would not vitiate or obliterate the act of taking possession for the purposes of Section 3 of the Repeal Act. That is because Bhabadeb Sarma, erstwhile owner, had not made any grievance based on breach of Section 10(5) at any stage during his lifetime implying thereby that he had waived his right to do so."*

**DISCUSSION AND ANALYSIS**

5. We have considered the rival submissions and have perused the materials on record. Before proceeding to the rival contention canvassed by both the sides, we must look into Sections 3 and 4 of the Repeal Act, 1999 which are delineated below:

*"**Section 3. Savings**—*

*(1) The repeal of the principal Act shall not affect—*

*(a) the vesting of any vacant land under sub-section (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;*

*(b) the validity of any order granting exemption under subsection (1) of Section 20 or any action taken thereunder, notwithstanding any judgment or any Court to the contrary;*

*(c) any payment made to the State Government as a condition for granting exemption under subsection (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.*

***Section 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 any 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 insofar 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."*

6. Section 3 of the Repeal Act provides that if the possession of vacant land has not been taken by the State Government or any person duly authorized by it before the commencement of the Repeal Act, then, by virtue of Section 4 of the Repeal Act, the proceedings would abate. Furthermore, if the ownership has vested in the State Government under Section 10 (3) of

the Ceiling Act, it must be restored to the original landholder upon repayment of any compensation paid by the State for such land.

7. In **State of U.P. v. Hari Ram (Supra)**, the Apex Court held that mere vesting of title under Section 10 (3) of the Ceiling Act does not equate to the State having taken *de facto* possession of the land as the onus of proving the same is upon the State. The relevant paragraphs of the judgment are delineated below:

> *"41. Let us now examine the effect of Section 3 of Repeal Act 15 of 1999 on sub-section (3) of Section 10 of the Act. The Repeal Act, 1999 has expressly repealed Act 33 of 1976. The objects and reasons of the Repeal Act have already been referred to in the earlier part of this judgment. The Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute and the facts of the particular case.*
>
> *42. The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18-3-1999. The State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the landowner or holder can claim the benefit of Section 4 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 4 of the Repeal Act."*
>
> (Emphasis Supplied)

8. Before delving into the issue, it would be useful to elucidate the facts which are not disputed by both the parties. The same are provided below:

a) 67,138.12 square meter of land was declared as surplus by order passed by the Competent Authority under Section 8 (4) of the Ceiling Act.

b) A notification under Section 10 (1) of the Act was published on July 24, 1993.

c) Notice dated July 24, 1993, issued under Section 10 (5) of the Ceiling Act to handover/surrender the possession of land to the State.

9. Learned counsel appearing on behalf of the petitioners submits that the actual physical possession of the surplus land vests with the petitioners and the possession has never been surrendered or transferred to the State after issuance of notice under Section 10 (5) of the Ceiling Act nor the State has taken forceful possession of the land under Section 10 (6) of the Ceiling Act. Moreover, the State is unable to show the date on which the possession has been taken by them or the date on which the land has been transferred to Prayagraj Development Authority upon which *de facto* possession of the land is contended by the respondents.

10. Ergo, onus to prove the possession of surplus land vests upon the State, if they are contending so; but no documentary evidence such as memorandum of possession or panchnama has been brought on record to depict the same.

11. Per contra, the learned counsel appearing on behalf of the respondents debunking the arguments of the petitioners submitted that the possession of surplus land had already been taken by the State after issuance of notice under Section 10 (5) of the Ceiling Act. Furthermore, to substantiate his arguments, the State is also showing *de facto* possession of the land by the fact that it has been transferred to Prayagraj Development Authority in pursuance of the Government Order dated December 11, 1996, and thereafter, leased in favour of M/s Pancham Realcon. Pvt. Ltd on June 28, 2010 for development of High Tech Township.

12. Before deciding the issue at hand, it is pertinent to look at the nature of the issue that has arisen before this Court.

13. The *factum* of possession is primarily a question of fact and it is settled law that normally the disputed question of fact is not investigated or adjudicated upon or interfered with by the writ Court while exercising powers under Article 226 of the Constitution of India. But mere existence of a disputed question of fact also will not take away the jurisdiction of the writ Court in granting appropriate relief.

14. In **State of U.P. v. Ehsan** reported in **2023 SCC OnLine SC 1331,** the Apex Court while setting aside the order passed by the Division Bench of the Allahabad High Court in Writ C No. 21009 of 2012 has held that Court should refrain itself from deciding questions with regard to possession of surplus land through writ petition as *factum* of possession is primarily a question of fact. Hence, the Special Leave Petition filed by the State was allowed and the respondents have been relegated to suit to decide the question with regard to possession. The relevant paragraphs of the judgment are delineated below:

> *"35. In view of the discussion above and having regard to the following : (a) that there was a serious dispute with regard to taking of possession of the surplus land; (b) that there was a delay of about seven years in filing the first writ petition from the date when possession was allegedly taken by the State, after publication of the vesting notification; (c) that no documentary evidence such as a Khasra or Khatauni of the period between alleged date of taking possession and filing of the first writ petition was filed by the original petitioner; (d) that in the earlier two rounds of litigation, the High Court refrained from deciding the issue of possession of the surplus land even though that issue had arisen directly between the parties; and (e) that infraction of the prescribed statutory procedure for taking possession cannot be the sole basis to discard State's claim of possession, when it is stated to have been taken long before the date the issue is raised, we are of the considered view that the High Court should have refrained from deciding the issue with regard to taking of actual possession of the surplus land prior to the cut off date specified in the Repeal Act, 1999. Instead, the writ petitioner should have been relegated to a suit.*
>
> *36. In view of the above conclusion, the appeal is allowed. The impugned order passed by the High Court is set aside. The first*

> *respondent's writ petition is dismissed without prejudice to his right to institute a suit. Parties to bear their own costs."*

15. Recently, in a celebrated judgment, two-Judge Bench of the Apex Court penned by Justice **J.B. Pardiwala** in **M/s A.P. Electrical Equipment Corporation v. Tahsildar** reported in **2025 SCC OnLine SC 447**, while dealing with the case of the **State of U.P. v. Ehsan (Supra)** has extensively examined the scope of writ jurisdiction under Article 226 of the Constitution of India, particularly in relation to disputed questions of fact. The Court clarified that while writ Courts generally avoid adjudicating factual disputes, their jurisdiction is not automatically ousted merely because the State or a party raises such disputes. If the facts are contested merely to evade judicial scrutiny, then writ Court has the authority to examine them in the interest of justice. The Court also emphasized that when faced with seemingly conflicting precedents, the High Court must endeavour to harmonize the facts of the case accordingly to reach a conclusion. Furthermore, it was observed that certain issues, such as determining possession of surplus land, depends on the factual matrix of each case. This involves mixed questions of law and fact, which do not preclude writ jurisdiction, particularly when legal interpretation is integral to the resolution. This judgment reinforces that writ Courts are not entirely barred from dealing with factual disputes, and held that writ Court has discretion to entertain it, depending on facts of each case and documentary evidence produced before the Court. The relevant paragraphs of the judgment are delineated below:

> *"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.*

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

*[4] 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.*

*[5] 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.*

*[6] 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.*

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

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*49. There is nothing in Article 226 of the Constitution to indicate that the High Court in the proceedings, like the one on hand, is debarred from holding such an inquiry. The proposition that a petition under Article 226 must be rejected simply on the ground that it cannot be decided without determining the disputed question of fact is not warranted by any provisions of law nor by any decision of this Court. A rigid application of such proposition or to treat such proposition as an inflexible rule of law or of discretion will necessarily make the provisions of Article 226 wholly illusory and ineffective more particularly Section 10(5) and 10(6) of the Act, 1976 respectively. Obviously, the High Court must avoid such consequences.*

*50. In the aforesaid context, we may look into the decision of this Court in the case of State of Orissa v. Dr. (Miss) Binapani Dei, AIR*

*1967 SC 1269. In paragraph 6 at p. 1270 of the said judgment, this Court has been pleased to hold as follows:—*

> *"Under Art. 226 of the Constitution the High Court is not precluded from entering upon a decision on questions of fact raised by the petition. Where an enquiry into complicated questions of fact arises in a petition under Art. 226 of the Constitution before the right of an aggrieved party to obtain relief claimed may be determined. The High Court may in appropriate cases decline to enter upon that enquiry and may refer the party claiming relief to a suit. But the question is one of discretion and not of jurisdiction of the Court."*

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*52. In one of the recent pronouncements of this Court in State of U.P. & Anr. v. Ehsan & Anr. reported in 2023 INSC 906, this Court observed that:-*

> *"28. We are conscious of the law that existence of an alternative remedy is not an absolute bar on exercise of writ jurisdiction. More so, when a writ petition has been entertained, parties have exchanged their pleadings/ affidavits and the matter has remained pending for long. In such a situation there must be a sincere effort to decide the matter on merits and not relegate the writ petitioner to the alternative remedy, unless there are compelling reasons for doing so. One such compelling reason may arise where there is a serious dispute between the parties on a question of fact and materials/evidence(s) available on record are insufficient/inconclusive to enable the Court to come to a definite conclusion.*
>
> *29. Bearing the aforesaid legal principles in mind, we would have to consider whether, in the facts of the case, the High Court ought to have dismissed the third writ petition of the first respondent and relegate him to a suit as there existed a serious dispute between the parties regarding taking of possession. More so, when the High Court, in the earlier round of litigation, refrained from taking up the said issue even though it had arisen between the parties.*
>
> *30. No doubt, in a writ proceeding between the State and a landholder, the Court can, on the basis of materials/evidence(s) placed on record, determine whether possession has been taken or not and while doing so, it may draw adverse inference against the State where the statutory mode of taking possession has not been followed [See State of*

*UP vs. Hari Ram (supra)]. However, where possession is stated to have been taken long ago and there is undue delay on the part of landholder in approaching the writ court, infraction of the prescribed procedure for taking possession would not be a determining factor, inasmuch as, it could be taken that the person for whose benefit the procedure existed had waived his right thereunder [See State of Assam CA Nos. 4526-4527 of 2024 Page 139 of 145 vs. Bhaskar Jyoti Sarma, (supra)]. In such an event, the factum of actual possession would have to be determined on the basis of materials/evidence(s) available on record and not merely by finding fault in the procedure adopted for taking possession from the land holder. And if the writ court finds it difficult to determine such question, either for insufficient/inconclusive materials/evidence(s) on record or because oral evidence would also be required to form a definite opinion, it may relegate the writ petitioner to a suit, if the suit is otherwise maintainable."*

*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. United States C.I.T. 166, 169 (Ct. Int'l Trade 1997]"*

16. In the present case, petitioners showed Khasra for 1422 Fasli year (corresponding to the year 2012) depicting the name of Ramji and his legal heirs and respondents in its counter-affidavit brought on record the Khatauni for Fasli year 1426-1431 (corresponding to the year 2016-2021) depicting the name of State. The respondents also brought on record the Khatauni for Fasli year 1414-1419 (corresponding to the year 2004-2009) depicting the name of High Tech Township.

**CONCLUSION**

17. In view of the documentary evidence produced by both the parties, there appears some confusion with regard to whether possession was actually taken by the State. The present writ petition has been filed in the year 2016, that is, 20 years after the possession was supposedly taken by the State. The reason provided in the writ petition with regard to the *laches* on the part of petitioners in filing this writ petition so late in the day is that the State was after 20 years harassing the petitioners and trying to take possession of their land.

18. As opined by the Apex Court in **M/s A.P. Electrical Equipment Corporation (Supra)**, the issue as regards to taking over of the actual physical possession of the excess land in accordance with provisions of Sections 10 (5) and 10 (6) of the Ceiling Act is a mixed question of law and fact and not just a question of fact. The Apex Court has further elucidated that if all that has been said by the State is to be accepted as a gospel truth and nothing shown by the land owner is to be looked into on the ground that a writ Court cannot go into a disputed question of fact, then the same may lead to a terrible miscarriage of justice.

19. In light of the above ratio, we are of the view that the writ Court can decide on the aspect of *de facto* possession of land if the disputed facts can be discerned and the correct position, ascertained by the writ Court.

20. Furthermore, one may keep in mind the ratio laid down in **State of U.P v. Ehsan (Supra)** wherein the Apex Court had looked into various aspects and held that in certain circumstances the High Court should refrain from deciding a disputed question of fact especially when there is a huge delay in filing of the writ petition. The Apex Court had opined that the matter should accordingly be relegated to suit where the disputed question may be decided by undergoing a proper trial.

21. In the present case, though the State has not been able to indicate exactly as to when possession was taken by the State, it is clear from the facts that by a Government Order dated December 11, 1996 the State, after having supposedly taken possession of the land, had transferred the same to Prayagraj Development Authority. However, in the counter-affidavit the State has not been able to indicate any notice under Section 10 (6) of the Ceiling Act having been issued to the land holder for forceful dispossession nor any amount having been paid by the State Government as compensation with respect to such land. These above facts tilt the scale in favour of the petitioners and one has to conclude that even though there have been *laches* on the part of the petitioners, the State has ultimately not ever been able to show *de facto* possession.

22. As envisaged in the judgment of **M/s A.P. Electrical Equipment Corporation (Supra)**, the possession envisaged under Section 3 of the Repeal Act, is *de facto* possession and not *de jure* possession. Furthermore, 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.

23. In light of the above ratio, we are of the view that the factual matrix of the present case is clearly in favour of the petitioners as the State has not

been able to indicate in any manner as to how *de facto* possession was taken by the State. From the facts, it is also indicated that in the Khasra, the name of the petitioners was present from 2012 till 2016.

24. In light of the above, one comes to the unequivocal findings that the State has not been able to bring on record any document to prove that *de facto* possession of the surplus land was taken by the State before the cut off date as specified in the Repeal Act. This being the position, this Court following the dictum in **M/s A.P. Electrical Equipment Corporation (Supra),** exercising its discretionary powers under Article 226 of the Constitution of India, is duty bound to hold in favour of the petitioners.

25. The writ petition is, accordingly, allowed. Consequential reliefs to follow. The authorities are directed to carry out changes in the revenue records in favour of the petitioners within a period of eight weeks from date.

26. This Court would like to thank and appreciate Ms. Saumya Patel and Mr. Ashutosh Srivastava, Research Associates, who have assisted this Court in carrying out the extensive research and analysis. This Court would also like to show the appreciation towards the counsel who have appeared and diligently argued in this matter on behalf of their clients.

(Justice Shekhar B. Saraf, J.)

I agree

(Justice Vipin Chandra Dixit, J.)

02.04.2025
Kuldeep