

.ITEM NO.40

COURT NO.6

SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).18867/2009

(From the judgement and order dated 04/03/2009 in
of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

WP No. 10185/2009

SHAHNAZ ANSAR & ANR.R

Petitioner(s)

VERSUS

STATE OF U.P.& ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date: 06/09/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MR. JUSTICE T.S. THAKUR

For Petitioner(s) Mr. Manoj Swarup, Adv.
Mr. Anubhav Kumar, Adv.for
M/S Manoj Swarup & Co.

For Respondent(s) Mr. S.R. Singh, Sr. Adv.
Mr. T.N. Singh, Sr. Adv.
Mr. Manoj Dwivedi, Adv. for
Mr. Gunnam Venkateswara Rao,Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The Appeal is allowed in terms of the signed order.

No costs.

(Parveen Kr. Chawla)
Court Master

(Indu Satija)
Court Master

[signed order is placed on the file]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7400 OF 2010
(Arising from SLP(C) No.18867 of 2009)

Shahnaz Ansar & Another

..Appellants

versus

State of U.P. & Others

..Respondents

O R D E R

Leave granted.

Heard learned counsel for the parties.

This Appeal has been filed against the impugned judgment and order dated 04th March, 2009 passed by the High Court of Allahabad in Writ Petition No. 10185 of 2009.

The appellants before us had purchased the property in question from Murari Lal Mittal. The said land of Murari Lal Mittal had been declared surplus land under the Urban Land (Ceiling and Regulation Act), 1976 (for short 'the 1976 Act'). The 1976 Act was repealed in U.P. By U.P. Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short 'the 1999 Act').

Section 4 of the Repeal Act reads as follows:

"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 insofar as such proceedings are relatable to the land, possession

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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."

In Pt. Madan Swaroop Shrotiya Public Charitable Trust vs. State of U.P. & Others, JT 2000 (3) SC 391, a two Judge Bench of this Court held that in view of Section 4 of the repealing Act of 1999, the further proceedings stands abated since possession of the land has not been taken over by the State Government.

In view of the aforesaid decision of this Court in Pt. Madan Swaroop Shrotiya Public Charitable Trust (supra), a two Judge Bench of the Allahabad High Court in the case of Meera Bashir Khan vs. State of U.P. & Others, Civil Misc.

Writ Petition No. 17687 of 2000 decided on 27th September, 2000 held that if actual physical possession of the land has not been taken over by the State Government, further proceedings under the Urban Ceiling Act will abate. We agree with this view.

In Mukarram Ali Khan vs. State of U.P. & Others, another two Judge Bench of this Court has reiterated the same view that in view of Section 4 of the Repealing Act of 1999, the further proceedings stands abated since the possession of the surplus land has not been taken over by the State Government.

In the present case, the High Court was called upon to decide whether actual physical possession has been taken over by the State Government or not when the repealing Act has come into force. Unfortunately, the High Court has not

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decided that issue and instead has said that parties may get their rights decided in the civil suit bearing No. 1580 of 2008. We are informed that, in fact, the civil suit has already been decided in favour of the appellants.

For the foregoing reasons, we allow this appeal, set aside the impugned order of the High Court and remand the matter to the Division bench of the High Court to decide whether actual physical possession of the land in question had been taken over by the State Government when the repealing Act of 1999 came into force in U.P. If actual physical possession had not been taken over by the State Government at that time, the ceiling proceedings will abate. No costs.

.....J.
[MARKANDEY KATJU]

NEW DELHI;
SEPTEMBER 06, 2010

.....J.
[T.S. THAKUR]