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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF OCTOBER 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

WRIT APPEAL NO. 3375 OF 2018 (ULC)

BETWEEN:

MISS. RAKSHA R. ACHARYA
D/O. SRI. M. RANGANATH,
AGED ABOUT 26 YEARS,
RESIDING AT "HARIDWARA",
NEKKILA GUDDE, DEREBAIL,
MANGALORE-575 006.

...APPELLANT

(BY SRI. ARUNA SHYAM.M., SENIOR COUNSEL FOR
SRI. SUYOG HERELE.E., ADVOCATE)

AND:

1. THE DEPUTY COMMISSIONER &
THE COMPETENT AUTHORITY,
(URBAN LAND CEILING & REGULATION)
DAKSHINA KANNADA DISTRICT,
MANGALURU-575 001.
2. THE STATE OF KARNATAKA
REPRESENTED BY ITS PRINCIPAL SECRETARY,
URBAN DEVELOPMENT DEPARTMENT,
VIKASA SOUDHA,
BENGALURU-560 001.
3. THE MANAGALORE CITY CORPORATION
REPRESENTED BY ITS COMMISSIONER,
LALABAGH, MANGALURU-575001.

...RESPONDENTS

(BY SRI.S.H.RAGHAVENDRA, AGA FOR R1 & R2;
R3 SERVED)

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Location: HIGH
COURT OF
KARNATAKA

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THIS APPEAL, SET ASIDE THE ORDER DATED 26/09/2018 PASSED BY THE LEARNED SINGLE JUDGE IN WRIT PETITION NO.39439/2016 AND CONSEQUENTLY TO ALLOW THE WRIT PETITION BY QUASHING THE ENDORSEMENT DATED 28/10/2015 ISSUED BY THE 1ST RESPONDENT BEARING NO.C.DIS/ULC/CR/37/2015-16, VIDE ANNEXURE-A TO THE WP 39439/2016.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 27.08.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, **HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN** MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE D K SINGH
AND
HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN)

This is a case which revolves around the maxim 'nemo dat quod non habet'. The excess land under the ULC Act was acquired and de facto possession was taken over by the State Government as far back as on 12.02.1988. The landowner, who remained alive until 27.09.2007, never objected to the manner of taking of possession. It was only her granddaughter who has sought to lay a belated claim upon the Subject Land, 25 years after the de facto possession has passed on to the State Government, on the basis of an alleged Will dated 28.01.2007. When the landowner/predecessor-in-

interest had no right or title over the Subject Land after the de facto possession was passed on to the State Government on 12.02.1988, the successor/petitioner cannot claim any better title than what the predecessor had. The predecessor of the petitioner had no right, title and interest in the land in question when he had executed the alleged Will in favour of the petitioner.

The present intra-court appeal has been preferred by the petitioner in W.P. No. 39439/2016 (ULC), wherein the learned Single Judge, vide order dated 26.09.2018, had dismissed the petitioner's challenge to the endorsement dated 28.10.2015, that had been issued by respondent no.1/Deputy Commissioner, wherein the petitioner's claim over the land of 60 cents in Sy. No. 152/2B, at Padavu Village, Mangaluru Taluk (for short, '**Subject Land**'), was rejected by holding that the Subject Land had been acquired by the State Government on 23.03.1994 under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, '**ULC Act**').

2. For convenience, the parties shall be referred to as per the ranks assigned to them before the learned Single Judge.

3. Briefly stated, the facts as urged by the petitioner would be that the petitioner's grandmother, by the name of Smt. Lalitha @ Seetha Bai, was the absolute owner in possession of the Subject Land. On coming into force of the ULC Act, Smt. Lalitha had given a declaration under Section 6(1) of the ULC Act, stating the particulars of the excess vacant lands that were owned by her.

4. Thereafter, respondent no. 1 had issued a notice stating that the Subject Land held by Smt. Lalitha, measuring 60 cents or 2411.23 square meters, was in excess of the prescribed ceiling. It is contended by the petitioner that Smt. Lalitha had filed her objections to this notice; however, respondent no. 1, without considering the said objection, proceeded to issue a notification under Section 10 of the ULC Act observing that Smt. Lalitha was holding the Subject Land in excess of the prescribed ceiling.

5. It is the specific case of the petitioner that although respondent no. 1 issued such an adverse notification, the State Government/respondent no. 2 has not taken any steps towards taking possession of the Subject Land. In the interregnum, the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short '**ULC Repeal Act**') was passed, which was adopted by the

State of Karnataka with effect from 08.07.1999. The petitioner places reliance upon Section 3(2)(a) of the ULC Repeal Act to contend that if there is a deeming vesting of land with the State Government under Section 10(3) of the ULC Act and if possession of that land has not been taken by the State Government, then the proceedings under the ULC Act will abate by virtue of Section 4 of the ULC Repeal Act.

6. As such, the petitioner contends that since respondent No.2 had not taken possession of the Subject Land, the petitioner's case would be squarely covered by the saving clause in Section 3(2)(a) of the ULC Repeal Act. It is further contended by the petitioner that before Smt.Lalitha passed away on 27.09.2007, Smt.Lalitha had executed a Will dated 28.01.2007, bequeathing the Subject Land in favour of the petitioner; and thus, after Smt.Lalitha, it is the petitioner who has continued to be in possession of the Subject Land.

7. It is further contended that in-spite of the petitioner having been in possession of the Subject Land, the RTC entries were changed in the name of respondent no. 2 in Column No. 9. As such, on 25.05.2013, the petitioner sends a representation to respondent No.1, whereby she requested respondent No. 1 to change the RTC entries so as to reflect the

name of the petitioner instead of the name of respondent no. 2 in Column No. 9. In response to this representation, respondent No.1 had ordered for an enquiry to be conducted by the Tahsildar.

8. The Tahsildar had received a report from the Revenue Inspector dated 14.06.2013, after which, the Tahsildar sends a letter dated 14.06.2013 to respondent No.1. In this letter, the Tahsildar states that the possession of the Subject Land is not taken over by the State Government and that the petitioner is in possession of the same, where she is also growing vegetables. The Tahsildar has also recorded that in order to arrive at this finding, a mahazar was recorded in the presence of villagers during the course of the enquiry.

9. Thereafter, respondent no. 1 issues an endorsement dated 28.10.2015, wherein it is stated that after the acquisition, the Subject Land has come into the possession of the State Government and that the Subject Land was then handed over to the Mangaluru Mahanagara Palike for the construction of a Dhobi Ghat. In this endorsement, it was also stated that the actual date of execution is not mentioned in the Will produced by the petitioner and the death certificate of Smt. Lalitha has not been produced. As such, the petitioner's

representation dated 25.05.2013, whereby she had requested for the change in the RTC entries to the name of the petitioner, was rejected.

10. Aggrieved by the endorsement of respondent no. 1 dated 28.10.2015, the petitioner had approached the learned Single Judge in W.P. No. 39439/2016.

11. Having considered the case of the petitioner, it would be appropriate to appreciate the case of the respondents. Respondent Nos.1 and 2 have filed their Statement of Objections, wherein, *inter alia*, it is contended that respondent no. 1 had issued a notice dated 19.05.1984, which was served on 04.06.1984. It is stated that after objections were received, respondent No.1 had issued a notification under Section 10(1) of the ULC Act on 26.08.1986, which was published in the Official Gazette on 11.09.1986.

12. Thereafter, on 29.10.1987, a notification was issued under Section 10(3) of the ULC Act stating that the Subject Land was excess land; this notification was published in the Official Gazette on 03.12.1987. Subsequently, on 01.02.1988, a notice was issued under Section 10(5) of the ULC Act to surrender possession of the Subject Land. It is contended that

in-spite of the said notice, the landowner (i.e., Smt.Lalitha) had not surrendered the possession of the Subject Land, and therefore, the possession of the Subject Land was forcibly taken over by the State Government on 12.02.1988 under Section 10(6) of the ULC Act.

13. To buttress their stand that the possession of the Subject Land was taken over on 12.02.1988, respondent nos. 1 and 2 have also produced a copy of the mahazar drawn on 12.02.1988, wherein a person by the name of Shri.G.Vasudeva Kamath, who is stated to be the authorized representative of the landowner owner, has signed on the mahazar. Subsequently, compensation is also said to have been determined vide award dated 23.03.1994. Thereafter, the name of the State Government was entered in Column No. 9 of the RTC.

14. It was also contended that once the possession of the Subject Land was taken over by the State Government, the Subject Land was handed over to the Mangaluru City Corporation (i.e., Mangaluru Mahanagara Palike) for the purpose of the Dhobi Ghat. Therefore, according to respondent nos. 1 and 2, neither Smt. Lalitha nor the petitioner were in possession of the Subject Land after 12.02.1988.

15. It is further stated that the Will dated 28.01.2007, said to be executed by Smt. Lalitha in favour of the petitioner, is a bogus document since Smt. Lalitha could not have executed such a Will when she herself did not have any right, title or interest over the Subject Land; and additionally, no date of execution is mentioned on the Will. Respondent nos. 1 to 2 also disputed the relationship between Smt.Lalitha and the petitioner herein and stressed upon the fact that the petitioner had not produced the death certificate of Smt. Lalitha. Further, that the letter dated 14.06.2013 issued by the Tahsildar, which states that the Subject Land was under the possession of the petitioner, where the petitioner was growing vegetables, is false, since the Tahsildar had issued such a letter even without personally visiting the spot.

16. Respondent Nos.1 and 2 rely upon these facts to contend that the Subject Land was acquired, possession was taken and compensation was paid to the land owner by adhering to all the procedure under the ULC Act. As such, the Subject Land does not fall under the saving clause mentioned in Section 3(2)(a) of the ULC Repeal Act. It is on these grounds that respondent Nos.1 and 2 sought to defend the endorsement issued by respondent No.1 on 28.10.2015.

17. The Mangaluru City Corporation/respondent No.3 was impleaded to the proceedings before the learned Single Judge. In their Statement of Objections, respondent No. 3 has denied that Smt. Lalitha was in possession of the Subject Land and that she had executed the Will dated 28.01.2007. It was also contended that the Subject Land was taken to the possession of the State Government. Respondent No. 3 sought for deletion from the array of parties since the Subject Land was not made over to the possession of respondent no. 3 and there is no relief claimed against respondent No.3.

18. On hearing both the parties, the learned Single Judge observed that it was undisputed between the parties that there was an order of acquisition concerning the Subject Land. The primary point of dispute between the parties was as to whether the State Government had taken possession of the Subject Land after the said acquisition. On this point, the learned Single Judge noticed that there are two contradictory material on record, i.e., the Tahsildar's letter dated 14.06.2013 and the mahazar dated 12.02.1988.

19. While the Tahsildar's letter dated 14.06.2013 states that the petitioner is in possession of the Subject Land, the mahazar dated 12.02.1988 would go to show that the Subject

Land was taken to the possession of the State Government as early as in 1988. Further, respondent nos. 1 and 2 had also seriously assailed the Tahsildar's letter dated 14.06.2013.

20. In such circumstances, the learned Single Judge had ordered the then Tahsildar to explain his stand, following which the then Tahsildar has filed an affidavit dated 27.06.2018, wherein he has stated that he had issued the letter dated 14.06.2013 on the basis of the report of the Revenue Inspector dated 14.06.2013. The then Tahsildar conceded that he had neither personally visited the spot nor personally formulated the report and that he had issued the letter dated 14.06.2013 in *bona fide* belief upon his subordinates, i.e. the Revenue Inspector. The then Tahsildar would also state that on verification of the records, it would appear that the said report is contrary to the material on record.

21. Therefore, when the Tahsildar's letter dated 14.06.2013 had no legal sanctity, the learned Single Judge found merit in the contentions of the respondents. It was observed that the Subject Land was taken to the possession of the State Government on 12.02.1988, which is evident through the mahazar dated 12.02.1988. It was also noted that

the authorised representative of Smt. Lalitha, Shri. G. Vasudeva Kamath had also affixed his signature on mahazar dated 12.02.1988. Further, Smt. Lalitha, had not raised any objections to the Subject Land being taken over to the possession of the State Government throughout the time she was alive until 27.09.2007.

22. The learned Single Judge also observed that it was only on 25.05.2013 that the petitioner had approached respondent no. 1, to lay her claim over the Subject Land, based on the alleged Will dated 28.01.2007. It was further observed that there have been numerous instances wherein the revenue officials, in active collusion with land losers, had made attempts to manipulate the official records to show as if possession of the lands had not been taken by the government; the present case, being one such instance.

23. As such, the learned Single Judge, vide order dated 26.09.2018, dismissed W.P. No. 39439/2016 (ULC) with a direction to the Deputy Commissioner to initiate appropriate proceedings against the then Tahsildar and other officials who helped him author the false letter dated 14.06.2013.

24. Aggrieved by this order of the learned Single Judge, the petitioner has knocked the doors of this Court in the present intra-court appeal.

25. We have heard Shri.Aruna Shyam M, learned Senior Counsel on behalf of Shri.Suyog Herele.E., learned counsel appearing for the petitioner and Shri.S.H.Raghavendra, learned Additional Government Advocate appearing for the respondent No.1 & 2.

26. The learned Senior Counsel appearing for the petitioner has contended that the possession of the Subject Land has not been taken over by the State Government. In order to substantiate his argument, the learned Senior Counsel places reliance upon the fact that a notice under Section 10(5) of the ULC Act was issued on 01.02.1988. While Section 10(5) prescribes a time limit of thirty days, after which possession can be forcibly taken under Section 10(6) of the ULC Act, the respondents have taken possession of the Subject Land on 12.02.1988, before the expiry of the period of thirty days. It is also contended that the alleged take over of possession of the Subject Land was not done by a competent authority appointed under Section 2(d) of the ULC Act.

27. The learned Senior Counsel has also placed on record certain additional documents. *Inter alia*, he places reliance upon a communication dated 17.06.1993 issued by respondent No.1 addressed to Shri.G.Vasudeva Kamath, to contend that even as on the date of the said communication, the possession of the Subject Land has not been vested with the State Government. He also places emphasis upon the letter dated 19.03.1994 written by respondent No.3 addressed to respondent No.1, to contend that the possession of the Subject Land had not been handed over to respondent No.3 even as on the date of the said letter.

28. In support of his arguments, the learned Senior Counsel has relied upon the following judgements:

- (i) *State of U.P. v. Hari Ram*;¹
- (ii) *A.P. Electrical Equipment Corporation v. Tahsildar and Others*;²
- (iii) *Dalsukhbai Bachubai Satasia & Ors. v. State of Gujarat & Ors.*;³
- (iv) *Vinayak Kashinath Shilkar v. Deputy Collector and Competent Authority & Ors.*⁴
- (v) *Sri. Vincent D Souza & Anr. v. The Deputy Commissioner & Anr.*;⁵

¹(2013) 4 SCC 280.

²2025 SCC OnLine SC 447.

³2026 SCC OnLine SC 25.

⁴(2012) 4 SCC 718.

⁵W.A. No. 1352/2008 & W.A. No. 1375/2009, decided on 26.07.2011 (Principal Bench).

- (vi) *Mangalore Urban Development Authority v. Leelavathi & Ors;*⁶
- (vii) *Kari Chikkaiah & Ors. v. State of Karnataka;*⁷ and
- (viii) *The Competent Authority & Ors. v. Manjula & Ors.*⁸

29. *Per Contra*, the learned Additional Government Advocate appearing for the respondent No.1 & 2 has vehemently opposed the present intra-court appeal. He would submit that the entire acquisition proceedings leading up to taking over of possession of the Subject Land by the State Government has been done in scrupulous adherence to the provisions of the ULC Act.

30. The crux of the submission of the learned Additional Government Advocate would be that the possession of the Subject Land was taken over by the State Government, which is evident from the mahazar dated 12.02.1988. Once possession of the Subject Land has been vested with the State Government and an award of compensation has also been passed on 23.03.1994, then landowner loses all manner of right, title or interest over the Subject Land. That being the case, all the subsequent events which has been highlighted by

⁶ILR 2008 KAR 5059.

⁷W.A. No. 1428/2008 decided on 20.10.2009 (Principal Bench).

⁸W.A. No. 30905/2012 decided on 01.03.2013.

the petitioner, such as, the alleged execution of the Will dated 28.01.2007, by the landowner in favour of the petitioner, cannot confer any right upon the petitioner.

31. Having heard the learned Senior Counsel appearing for the petitioner; the learned Additional Government Advocate appearing for the respondents and on a careful perusal of the records of present intra court appeal, it is upon us to determine whether the petitioner has made out any grounds to interfere with the order of the learned Single Judge. In light of the above, the short point that requires our adjudication is, whether the possession of the Subject Land was taken over by the State Government before the commencement of the ULC Repeal Act?

32. At this juncture, it is important for us to examine the legal canvass on which the facts of the present case are to be appreciated. Accordingly, Section 10 of the ULC Act, is reproduced hereunder:

"10. Acquisition of vacant land in excess of ceiling limit.—*(1) As soon as may be after the service of the statement under Section 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that—*

(i) such vacant land is to be acquired by the concerned State Government; and

(ii) the claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land, to be published for the information of the general public in the Official Gazette of the State concerned and in such other manner as may be prescribed.

(2) After considering the claims of the persons interested in the vacant land, made to the competent authority in pursuance of the notification published under sub-section (1), the competent authority shall determine the nature and extent of such claims and pass such orders as it deems fit.

(3) At any time after the publication of the notification under sub-section (1), the competent authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to in the notification published under sub-section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.

(4) During the period commencing on the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made under sub-section (3)—

(i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void; and

(ii) no person shall alter or cause to be altered the use of such excess vacant land.

(5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any

person duly authorised by the State Government in this behalf within thirty days of the service of the notice.

(6) If any person refuses or fails to comply with an order made under sub-section(5), the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary.

Explanation.—In this section, in sub-section (1) of Section 11 and in Sections 14 and 23, "State Government", in relation to—

(a) any vacant land owned by the Central Government, means the Central Government;

(b) any vacant land owned by any State Government and situated in a Union territory or within the local limits of a cantonment declared as such under Section 3 of the Cantonments Act, 1924 (2 of 1924) means that State Government."

33. Therefore, as per the provisions of the ULC Act, if there was any vacant land that was above the ceiling limit specified under Section 4 thereof, then such a land would be acquired by the State Government. The ULC Act, however, was short-lived and came to be repealed by the ULC Repeal Act, which was adopted by the State of Karnataka with effect from 08.07.1999. We may note some provisions of the ULC Repeal Act, as reproduced hereunder:

"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 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."

34. On a reading of the aforementioned provisions, it is clear that in order for the petitioner to succeed in his claim under Section 3(2)(a) of the ULC Repeal Act, he has to satisfy the twin requirements: (i) that there was deemed vesting of

the excess land with the State Government under Section 10(3) of the ULC Act; and, (ii) that excess land had not been taken into the possession of the State Government or any person duly authorised by the State Government in this behalf or by the competent authority. Section 4 of the ULC Repeal Act also states that all proceedings in relation to any order made or purporting to be made under the ULC Act, that is pending before any authority on the date of commencement of the ULC Repeal Act, shall abate.

35. Reverting to the twin conditions under Section 3(2)(a) of the ULC Repeal Act, it is appropriate for us to appreciate the meaning of 'deemed vesting'. The interplay between the provisions of the ULC Act and the ULC Repeal Act were extensively considered by the Hon'ble Supreme Court in ***Hari Ram (supra)***. Regarding the deeming provision, it was observed that, when a notification is issued under Section 10(3), the title over the land vests absolutely with the State Government. However, with the issuance of a notification under Section 10(3), the State Government only gets the possession in law and the actual possession does not get transferred to the State Government. In other words, the

Section 10(3) only includes *de jure* possession and not *de facto* possession.

36. As such, for there to be “deemed vesting” within the meaning of Section 3(2)(a) of the ULC Repeal Act, there has to be transfer of title to the State Government, which would also include *de jure* possession being given to the State Government. However, the next ingredient in the twin test is that the State Government must not have taken *de facto* possession of the land.

37. The manner in which *de facto* possession can be taken by the State Government is in three ways: (i) the landowner voluntarily surrendering and handing the possession of the land to the State Government after an order under Section 10(3) of the ULC Act; (ii) the landowner handing the peaceful possession of the land to the State Government on receipt of a notice under Section 10(5) of the ULC Act; and, (iii) the State Government forcibly taking possession of the land as per Section 10(6) of the ULC Act, on the failure of the landowner comply with the notice under Section 10(5) of the ULC Act.

38. Therefore, to attract the safe haven of Section 3(2)(a) of the ULC Repeal Act, it must be demonstrated that after the deemed vesting of the Subject Land with the State Government under Section 10(3) of the ULC Act, the State Government, or other competent bodies mentioned in 3(2)(a) of the ULC Repeal Act, had not taken *de facto* possession of the Subject Land.

39. In this regard, it would be relevant for us to refer to some observations that were made by the Hon'ble Supreme Court in ***Hari Ram (supra)***, regarding the effect of the ULC Repeal Act on Section 10 of the ULC Act, which has been reproduced hereunder:

"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."

40. When we examine the facts of the present intra-court appeal in light of the above law, it would appear that on 06.12.1981, Smt.Lalitha had filed a declaration under Section 6(1) of the ULC Act in respect of the Subject Land. Pursuant to such declaration, respondent No.1 issued a notice dated 19.05.1984 to Smt.Lalitha, which was served on 04.06.1984 and it is an admitted fact that Smt.Lalitha had filed her objections to the said notice.

41. Respondent no. 1 would contend that it is only after due consideration of the objections filed by Smt. Lalitha, that respondent No.1 issued a notification under Section 10(1) of the ULC Act on 26.08.1986, which was published in the Official Gazette on 11.09.1986. Thereafter, a notification was issued under Section 10(3) of the ULC Act on 29.10.1987, which came to be published in the Official Gazette on 03.12.1987.

42. It would further appear that, upon the issuance of the notification under Section 10(3) of the ULC Act, Smt.

Lalitha had not voluntarily surrendered and handed over possession of the Subject Land to the State Government. As such, on 01.02.1988, a notice came to be issued under Section 10(5) of the ULC Act calling upon Smt. Lalitha to handover the possession of the Subject Land. Thereafter, on 12.02.1988, possession of the Subject Land was forcibly taken by the State Government, and a mahazar was also drawn on the said date.

43. On perusal of the mahazar dated 12.02.1988, it would appear that the excess vacant land, i.e., the Subject Land, was taken into the possession of the State Government in the presence of two witnesses and Shri.G.Vasudeva Kamath, who is stated to be the authorised representative of the landowner, i.e., Smt.Lalitha. The signatures of the two witnesses and Shri.G.Vasudeva Kamath are also seen on the said mahazar.

44. However, the learned Senior Counsel for the petitioner would strenuously argue that on 01.02.1988, no such notice under Section 10(5) of the ULC Act was issued to Smt. Lalitha. He would further contend that, even assuming that the notice was issued under Section 10(5) of the ULC Act, the provisions of Section 10(5) have not been complied with. In this regard, he would submit that as per Section 10(5), the

landowner ought to have been given a period of thirty days from the date of service of the notice under Section 10(5) to surrender possession of the Subject Land. Further, he would contend that, before the expiry of this period of thirty days, the Subject Land was forcibly taken into the possession of the State Government under Section 10(6) of the ULC Act. By placing reliance on these facts, he would attempt to seek shelter under the provisions of Section 3(2)(a) of the ULC Repeal Act.

45. In light of such a submission, the question which calls for our consideration is, *whether the forcible taking of possession under Section 10(6) of the ULC Act, before the expiry of the time period under Section 10(5) of the ULC Act or without even issuing a notice under Section 10(5), would amount to an irregularity, giving the landowner a cause of action to seek restoration of the Subject Land?*

46. We are constrained to hold that the answer to this question is in the negative. In this regard, we may note the observations of the Hon'ble Supreme Court in ***State of Assam v. Bhaskar Jyoti Sarma***,⁹ wherein it was held that forcible taking over of possession by the State Government under

⁹(2015) 5 SCC 321.

Section 10(6) of the ULC Act, without issuance of a notice under Section 10(5) of the ULC Act, is a defect that does not go to the root of the matter and would not vitiate the acquisition proceedings, when the person concerned had not raised an objection to the non-adherence of Section 10(5) within a reasonable time. In this regard we may note some observations as reproduced here in below.

*"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 7-12-1991 when the erstwhile owner was dispossessed from the land in question, he could have made a grievance based on Section 10(5) 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 the 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 landowner on 7-12-1991 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 the owner or the person in possession must be deemed to have waived his right under Section 10(5) of the Act. Any other view would, in our opinion, give a licence 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 circumstance 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 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."

(emphasis supplied)

47. We are of the considered opinion that the above dictum of the Hon'ble Supreme Court in ***Bhaskar Jyoti Sarma (supra)*** would aptly apply to the facts of the instant case.

48. Once land has been determined to be excess vacant land, it has to be acquired under the provisions of the ULC Act. While the adherence to Section 10(5) of the ULC Act has been held to be mandatory, any objection to the non-adherence thereof has to be raised within a reasonable time.

49. When *de facto* possession was taken by the State Government on 12.02.1988, neither the landowner nor her representative filed any such objection, within a reasonable time from 12.02.1988. In fact, the landowner herself has not raised any such objection throughout the entire time she was alive until 27.09.2007; and it was only her granddaughter, i.e.,

petitioner herein, who has approached respondent no. 1 on 25.05.2013, after an inordinate lapse of over 25 years from the date of taking over of de facto possession by the State Government.

50. However, as noted in ***Bhaskar Jyoti Sarma (supra)***, even if such an objection was raised within a reasonable time, it would not affect the determination of the Subject Land being an excess land, that is amenable to acquisition under the ULC Act.

51. Therefore, in such circumstances as the present case, we hold that the State Government had taken *de facto* possession of the Subject Land on 12.02.1988, which is evidenced by the mahazar dated 12.02.1988. As such, the defect of not adhering to the time limit under Section 10(5) of the ULC Act, before resorting to forcible taking over of possession under Section 10(6) of the ULC Act, does not go to the root of the matter so as to vitiate the acquisition itself. Thus, the forcible taking over of possession under Section 10(6), by means of the mahazar dated 12.02.1988, would acquire legitimacy by the lapse of such a considerable amount of time and the landowner is considered to have waived their right under Section 10(5).

52. In light of the above observations, we are of the considered opinion that the other judgements relied upon by the learned Senior Counsel for the petitioner are distinguishable on facts and are inapplicable to the present case. The judgement in ***Bhaskar Jyoti Sarma (supra)*** was considered by the Hon'ble Supreme Court in ***A.P. Electrical Equipment Corporation (supra)*** and more recently in ***Dalsukhbai Bachubai Satasia (supra)***. In ***Dalsukhbai Bachubai Satasia (supra)***, the Supreme Court also reaffirmed the position of law laid down in ***Bhaskar Jyoti Sarma (supra)***, in the following words:

*"20. We are inclined to agree with this view of this Court in AP Electrical 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. **Albeit, 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".**"*

(emphasis supplied)

53. The learned Senior Counsel for the petitioner would also place reliance upon certain additional documents produced by him, which include: (i) the endorsement dated 17.06.1993

issued by respondent No.1 to Shri.G.Vasudeva Kamath; (ii) the proceedings dated 03.03.1994 before respondent no. 1 relating to payment of compensation, a copy of which was also forwarded to Shri.G.Vasudeva Kamath; (iii) the letter dated 19.03.1994 addressed by respondent No.3 to respondent No.1; (iv) the letter dated 19.07.1994 addressed by respondent No.3 to the Executive Engineer; (v) the letter dated 14.11.1994 addressed by respondent No.1 to respondent No.3; and, (vi) the letter dated 08.06.1996 addressed by respondent No.3 to the Tahsildar, calling for a change in the RTC entry in respect of the Subject Land so as to reflect the name of the State Government.

54. All of the aforementioned documents are relied upon by the learned Senior Counsel for the petitioner to contend that possession over the Subject Land was not taken by the State Government before the ULC Repeal Act came into force in the State of Karnataka. It would, however, be pertinent to note that all of these documents are dated prior to the ULC Repeal Act coming into force on 08.07.1999, and as such, they would not assist the learned Senior Counsel to advance his submission that possession of the Subject Land had not been

taken by the State Government before the commencement of the ULC Repeal Act in the State of Karnataka.

55. Yet another challenge raised by the learned Senior Counsel for the petitioner would be that the taking over of possession of the Subject Land on 12.02.1988 was not done by a Competent Authority under Section 2(d) of the ULC Act. In this regard, we may note that the mahazar dated 12.02.1988 would depict that the Subject Land was taken into the possession of the State Government by the Tahsildar, who was following the orders of respondent no. 1/Deputy Commissioner, who in-turn was the Competent Authority for the purposes of the ULC Act. As such, the manner of taking *de facto* possession of the Subject Land cannot be found fault with.

56. The judgments of this Court relied upon by the learned Senior Counsel for the petitioner in ***Kari Chikkaiah (supra)*** and ***Manjula (supra)*** are distinguishable on the facts, since in those cases it was observed that from the material therein, there is nothing to show that the Revenue Inspector was the Competent Authority who was authorised to take possession under the ULC Act. Even the judgement of this Court in ***Mangalore Urban Development Authority (supra)*** is distinguishable since the mahazar which was produced by the

State Government therein had numerous irregularities, such as, no signature of the witnesses and no clarity as to the person who took possession of the land, which led this Court to doubt the veracity of the mahazar.

57. However, in the present case, the mahazar dated 12.02.1988 was drawn in the presence of two witnesses and Shri.G.Vasudeva Kamath, who is said to be the authorised representative of the landowner, i.e., Smt.Lalitha. This is also evidenced by the presence of the signatures of two witnesses and the said Shri.G.Vasudeva Kamath. Additionally, it is also stated that the Subject Land is also taken to the possession of the State Government by the Tahsildar, acting under the direction of respondent No.1/Deputy Commissioner/Competent Authority. As such, there has been no convincing argument placed before us to impeach the credibility of the mahazar dated 12.02.1988 and we have no reason to doubt the genuineness of the said mahazar.

58. Another angle of looking at this case would be that the Tahsildar's letter dated 14.06.2013, which has been heavily relied upon by the learned Senior Counsel for the petitioner, to state that the petitioner continues to be in actual possession of the Subject Land and that the Subject Land was not taken into

the possession of the State Government. However, the Tahsildar's letter dated 14.06.2013 has been said to be false by an affidavit filed by the then Tahsildar himself. Taking note of this affidavit of the then Tahsildar, the learned Single Judge rendered a finding that the Tahsildar's letter dated 14.06.2013 cannot be relied upon, since the spot inspection report, on the basis of which the said letter was issued, was itself not genuine and appeared to have been created with vested interests. On a consideration of the material on record, we fully agree with the reasoning rendered by the learned Single Judge and we are not persuaded by the contention of the learned Senior Counsel for the petitioner that the Tahsildar's letter dated 14.06.2013 is to be relied upon.

59. In light of the observations recorded hereinabove, we are of the considered opinion that after the issuance of notification under Section 10(3) of the ULC Act, the Subject Land was taken into the possession of the State Government on 12.02.1988 even before the commencement of the ULC Repeal Act in the State of Karnataka on 08.07.1999. That being the case all the other subsequent events which the learned Senior Counsel for the petitioner has relied upon, such as, the alleged Will dated 28.01.2007, cannot be accepted. The maxim *nemo*

dat quod non habet would squarely apply to the instant case, since the landowner, i.e., Smt. Lalitha, herself had no right, title or interest over the Subject Land, she could not have transferred any better right, title or interest to her granddaughter, i.e., the petitioner, by means of the alleged Will dated 28.01.2007.

60. From the events of the case, it would be seen that the petitioner has made a feeble attempt to take a belated advantage of the provisions of the ULC Repeal Act. However, such an attempt cannot be countenanced. In such circumstances, we are constrained to observe that the petitioner has not been able to satisfy the fulfilment of the twin conditions to attract the safe haven under Section 3(2)(a) of the ULC Repeal Act. As such, we find that there is no infirmity in the well-considered order of the learned Single Judge and we are not persuaded to interfere with the same.

Accordingly, we pass the following;

ORDER

The appeal is ***dismissed***.

The order dated 26.09.2018 passed in Writ Petition No.39439/2016 (ULC) by the learned Single Judge of this Court is hereby ***confirmed***.

Pending I.A., if any, do not survive for consideration, hence, they stand disposed of.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(H.SHANTHI BHUSHAN)
JUDGE**

KNM