

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

rrpa

WRIT PETITION NO.140 OF 2015

Bhikaji Rama Patil & Ors.

.. Petitioners

Vs.

The State of Maharashtra & Ors.

.. Respondents

....

Mr.Vivekanand S. Tadake, Advocate for the Petitioners.

Mr.N.P. Deshpande, AGP for Respondent Nos.1 and 2.

Mr.Aniketh Poojary i/b. Mr.P.G. Lad, Advocate for Respondent Nos.3 and 4.

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**CORAM : A.S. OKA &
A.P. BHANGALE, JJ.**

DATED : MARCH 18, 2015.

P.C. :

Heard the learned counsel appearing for the petitioners.

This petition is filed by the petitioners through their constituted attorney. The petitioners are claiming to be the legal representatives of late Rama Sakharam Patil. The learned counsel appearing for the petitioners on instructions of the constituted attorney of the petitioners states that the said Rama was alive till 1999, and thereafter he expired. The petition concerns land bearing old survey no.218 and new survey no.182. In the petition, the petitioners have relied upon the notice dated 18th March, 1983 issued by the Competent Authority and Deputy Collector, Urban Agglomeration, Kolhapur under Sub Section 5 of

Section 10 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as “ULC Act”, for short). The notice was issued to the said Rama calling upon him to deliver the possession of vacant land held by him in excess of ceiling limits. In the said notice, it is stated that the land has been allotted to the Pune Housing and Area Development Board and therefore, possession thereof be handed over to the said Board. There is one more notice dated 10th June, 1985 issued under Sub Section 5 of Section 10 of the ULC Act calling upon the said Rama to deliver possession of the land held in excess of ceiling limits. A panchanama of taking over possession was drawn on 19th July, 1985, which is annexed to the petition.

2 The submission of the learned counsel appearing for the petitioners is that possession of the land declared as excess vacant land was never taken over from the said Rama and thereafter from the petitioners. His submission is that the petitioners have been regularly cultivating the said land and now an attempt is being made by the third and fourth respondents to dispossess the petitioners. He relies upon the decision of Apex Court in the case of ***State of Uttar Pradesh V/s. Hari Ram***¹. His submission is that possession of the excess land was not taken over by the competent authority under the ULC Act in accordance with sub clause 5 of section 10 and therefore, the said

1)Civil Appeal No.2326 of 2010, decided on 11th March, 2013.

Rama and thereafter the petitioners who are their legal representative continue to be in possession. He, therefore, submitted that now after the repeal of the ULC Act, which came into force with effect from 29th November, 2007, the petitioners cannot be dispossessed.

3 We have carefully considered the submissions. In clauses 1 and 4 of paragraph 2 of the petition, the petitioners have admitted that their predecessor Rama was served with notices dated 18th March, 1983 and 10th June, 1985 under Sub-section 5 of Section 10 of the ULC Act, calling upon him to hand over possession. In the petition it is tried to be contended that though a possession receipt and panchanama was prepared on 19th June, 1985, the said Rama was not present and the procedure contemplated by law to take over possession was not followed.

4 Thus, there is no dispute about service of notices under Sub-section 5 of Section 10 of ULC Act to the said Rama. Not only notices were served, but thereafter further proceedings were taken under ULC Act under Section 11. Compensation payable to the said Rama was determined under order dated 31st March, 1989. On 21st August, 1989, intimation of the said order was served to the said Rama.

5 It will be necessary to make a reference to Exhibit-L to the petition which is a letter addressed by the said Rama Sakharam Patil to the Competent Authority by which he has acknowledged receipt of a letter dated 25th August, 1989 of the Competent Authority. The only grievance made in the said letter by the deceased Rama is about the quantum of compensation. On the contrary, in the second paragraph of the said letter, he has categorically admitted that the possession of the excess land admeasuring 3420 square meters out of R.S.No. 218 was taken over on 19th July, 1985 and the Pune Housing and Area Development Board was placed in possession. This letter written in 1989 by Rama which is annexed by the petitioners clearly shows that Rama was admittedly dispossessed on 19th July, 1985. In the notice dated 10th June, 1985 issued under Sub-section 5 of Section 10 of the ULC Act, the date for taking over possession was fixed as 19th July, 1985. In the said letter only grievance made by Rama was in respect of compensation. From the said letter it is very clear that Rama never made any grievance during his lifetime that the possession was not lawfully taken over. He has never come out with the case that both the notices under Sub-section 5 of Section 10 of the ULC Act were not served upon him. Thus, from the said letter produced by the petitioners themselves, it becomes an admitted

position that Rama was dispossessed on the basis of the notice dated 10th June, 1985. In fact, Clause 11 of paragraph 2 of the petition, a specific averment has been made that Rama had made a grievance that the possession was taken over by the Competent Authority behind his back, and that the compensation was not awarded as per the market value.

6 Thus, admittedly Competent Authority had taken over possession of the excess land from Rama way back on 19th July, 1985. During his lifetime till the year 1999, he never made any grievance about any illegality in respect of the action of taking over the possession. Therefore, it is not open for the petitioners now to contend that the possession of excess vacant land was not taken over from the said Rama. As the possession of the excess land was taken over on the basis of notice under Sub-section 5 of Section 10 of the ULC Act from the deceased Rama before 29th November, 2007, the title in respect of the excess land vested in the State Government.

7 Therefore, this Petition under Article 226 of the Constitution of India is totally misconceived and the same deserves to be dismissed.

8 Considering the stand taken by the petitioners, we direct the petitioners to pay costs quantified Rs.5,000/- (Rupees Five Thousand), to the third respondent. Costs shall be paid within a period of six weeks from today.

(A.P. BHANGALE, J.)

(A.S. OKA, J.)