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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7021 OF 2014

Krishna Tatoba Mane	]	
Age: 90 years, Occu: Agriculture,	]	
R/o. Ujlaiwadi, Taluka Karveer, Kolhapur.	]	..Petitioner.

V/s.

1.	The State of Maharashtra,	]	
	through the Urban Development	]	
	Dept. Mantralaya, Mumbai.	]	
		]	
2.	Competent Authority and Deputy	]	
	Collector, Central Administrative	]	
	Building, Kasaba Bawada, Kolhapur.]		..Respondents.

Mr.Rahul Prakash Walvekar for the Petitioner.

Mr.V.S.Gokhale, AGP for the Respondent Nos.1 & 2.

CORAM : A.S.OKA AND A.K. MENON, JJ.**RESERVED ON : 4TH MARCH, 2015****PRONOUNDED ON: 7TH APRIL, 2015****JUDGMENT (PER A.K.MENON, J.)**

1. Rule. Rule, made returnable forthwith.
2. Learned counsel for the Respondents waive service.

The petition is taken up for final hearing by consent of parties.

3. The present petition is filed for quashing and setting aside notifications issued under Sections 10(3) and 10(5) dated 16th November, 2007 and 27th November, 2007 respectively under the Urban Land (Ceiling and Regulation Act) Act, 1976 in respect of the Petitioner's land admeasuring 3176.13 sq. mtrs. bearing R.S. No. 17/1 + 2 and 168/8 situated at Ujlaiwadi, Taluka Karveer, District Kolhapur "the said lands". The Petitioner also seeks a declaration that in view of the land Urban Land (Ceiling and Regulation Act) Repeal Act, 1999 ["the Repeal Act"] the title of the land reverts to the petitioner and for further relief restraining the Respondents from taking possession of the lands in question.

4. Few facts are required to be gone into while disposing of the present petition. The Petitioner, an agriculturist, is the owner of the said lands amongst other pieces and parcels of land. After the enactment of the Urban Act Land (Ceiling and Regulation) Act, 1976 "the Act", land admeasuring 2000 sq. mtrs in R.S. No.17/1+2, the land admeasuring 1176 sq. mtrs. was declared surplus land and notice was issued to the Petitioner. The Petitioner filed his return and thereafter, a draft statement on the basis of the return under section 6(1) of the the said Act was prepared by the Respondent No.2, namely the Competent Authority and Deputy Collector, Kolhapur.

5. Out of the total land area of 5176.13 sq. mtrs., land to the extent of 3176.13 sq. mtrs. was declared as surplus vacant land. The draft statement was served upon the Petitioner, who submitted his objections thereto stated that the said lands do not fall within the purview of the Act. An enquiry came to be conducted vide case No.VCL-SR-Ujlaiwadi 25-57 after which the Petitioner's objections came to be rejected. On 11th April, 1985, an order under section 8(4) of the said Act came to be passed. A final statement under section 9 was then prepared and the land to the extent of 2000 sq. mtrs. was allowed to be retained. Out of 2000 sq. mtrs. some land was acquired for the purpose of National Highway No.4. Land admeasuring 3176.13 sq.mtrs. was declared as surplus vacant land.

6. On 18th May, 2007 Respondent No.2, after a lapse of about 20 years, issued a notification under section 10(1) of the Act which came to be published in the official gazette, declaring that vacant land of 3176.13 sq. mtrs. of R.S. No.17/ 1 + 2 part and part 168/8 is to be acquired by the State Government and inviting claims from the interested persons. On 16th November, 2007 another notification under section 10(3) of the Act was published declaring that surplus vacant land admeasuring 3176.13 sq. mtrs. is deemed to have been acquired with effect from 16th November, 2007.

7. Thereafter, the Respondents issued a notice on 27th November, 2007 under section 10(5) of the Act calling upon the Petitioner to deliver the possession of the surplus vacant land. It is surprising to note that the notice dated 27th November, 2007 was admittedly issued just two days prior to the adoption of the Repeal Act on 29th November, 2007 by the State of Maharashtra. The Petitioner did not seek exemption under sections 20 & 21 of the Act and has not delivered the possession of the said lands to the Respondents. Furthermore, the Respondents have not taken any action as contemplated under sub-section (6) of section 10. The Respondents not having taken possession and the possession being retained by the Petitioner, there is no question of the Respondents proceeding with the acquisition in view of the Repeal Act.

8. The State of Maharashtra adopted the Repeal Act of 1999 on 29th November, 2007. In effect, the right of the State to acquire the said lands came to an end on 29th November, 2007 and all pending proceedings stood abated. The Repeal Act merely saves pending proceedings where the possession of the land had already been taken. In the present case, admittedly the possession of the land had not been taken. The Petitioner, therefore, continued to enjoy the land. The Petitioner is, therefore, justified in questioning the notice under section 10(3) and 10(5) of the Act of 1976 and, therefore, justified in seeking reliefs from this Court under Article

226 of the Constitution of India.

9. We have heard learned counsel for the parties. Mr. Walvalkar, learned counsel for the Petitioner urged and correctly so, that the possession of the land had not been taken by the State and the land cannot continue to vest in the State and must revert to the original owner. In this respect, we had directed Mr. Gokhale, the learned AGP to ascertain whether the possession of the said lands had been taken. He has since confirmed that the possession has not been taken. Vide order dated 10th February, 2015 the Respondents were directed to file an affidavit to that effect and the parties were notified that considering the limited controversy involved, the petition will be disposed of finally at the stage of admission.

10. Today, when the matter is called, learned AGP has submitted that the affidavit could not be filed as directed. However, he has received written instructions, vide letter dated 4th March, 2015 issued by the Competent Authority and Deputy Collector, Kolhapur region to the effect that possession of the land having area 3176.13 sq. mtrs. had not been taken. A copy of the said letter tendered is taken on record and marked 'X' for identification.

11. In *Voltas Ltd. & Anr. Vs. Additional Collector and Competent Authority, Thane and Ors.* 2008 (5) ALL MR 537 a

Division Bench of this Court has laid down that although a declaration under section 10(3) of the Act may have been made, if the possession is not taken before the date when the Repeal Act was adopted by the State of Maharashtra i.e. 29.11.2007, by virtue of section 4 of the Repeal Act the land in question will revert to the land owner. Moreover, by virtue of savings clause incorporated in the Repeal Act, Section 6 of the General Clauses Act will not apply in relation to the land vested in the State under Sub-section (3) of Section 10 of the Act but possession of which has not been taken. It will be useful to reproduce the relevant extract of the judgment in the case of Voltas Ltd. (supra).

“In other words, vesting of vacant lands under subsection (3) of Section 10 of the Principal Act in the State Government, possession of which has not been taken over, is not saved. In the present case, it is an admitted position that though declaration under sub-section (3) of Section 10 of the Principal Act was made, the possession of the land was not taken over by the Government or by the competent authority. Therefore, on bare reading of the provisions, it can be said that by virtue of repeal, vesting of the land of the first petitioner in the State by virtue of declaration made under sub-section (3) of Section 10 of the Principal Act, is not saved. A submission on behalf of the State Government was made that by virtue of declaration made sub-section (3) of Section 10 of the Principal Act in relation to the petitioners' land, the land has vested in the Government, but there is no provision in the Repeal Act which divest the State Government of the ownership of the land. In our opinion, this submission has no

substance. Firstly, because the purpose of enacting section 3(1)(a) of the Repeal Act is to save or protect vesting of vacant lands in the State Government and out of the vacant lands that might have vested in the State Government by virtue of declarations made under sub-section (3) of Section 10 of the Principal Act, only vesting of those lands in the State Government of which possession has been taken has been saved. Therefore, by necessary implication it follows that vesting of those lands in the State Government under sub-section (3) of Section 10 of the Principal Act of which possession has not been taken has been repealed or made ineffective.”

12. It follows therefore that the land which vested in the State Government because of the operation of the Principal Act no longer continues to vest in the State Government by virtue of its repeal. In the present case, there can be no manner of doubt that in view of the Repeal Act of 1999, having been adopted by the State of Maharashtra on 27th November, 2007, the Petitioner is entitled to the reliefs prayed for in the petition.

13. In the circumstances, we dispose of the petition finally by passing the following order:-

- (i) Rule is made absolute in terms of prayer clause (B). The notifications dated 16th November, 2007 and 27th November, 2007 are hereby quashed and set aside;

- (ii) The land vests with the Petitioner and necessary Mutation Entry be passed in this respect in favour of the Petitioner as expeditiously as possible and in any event within a period of two months from the date of production of an authenticated copy of this order before the concerned Revenue Authorities;
- (iii) The petition is allowed in above terms. No order as to costs.

(A.K.MENON, J.)

(A.S.OKA, J.)