

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7180 OF 2014**

Mr. Siddharam Shivappa Patil

Age 61 years, Occ.-Agri., Residing at Plot No. 2
& 3, Navnath Nagar, MIDC Road, Solapur 413
006.

...Petitioner

Versus

1. **The Union of India** ...Respondents
through The Secretary, Ministry of
Information and Broadcasting,
Government of India, Sanchar Bhavan,
New Delhi - 110 011
2. **The State of Maharashtra**
through the Secretary, Revenue & Forests
Department, Government of Maharashtra,
Mantralaya, Mumbai - 32
3. **The Collector Solapur**
Solapur 413 001
4. **The Assistant/Station Director**
Akashwani, All India Radio,
Solapur 413 006 ...Respondents

Dr. Ramdas P. Sabban, a/w Mr. Subhash Gutte for the Petitioner.
Mr. Anil C. Singh, ASG a/w Mr. Sandesh Patil and Mr. D. P. Singh
for the Respondent Nos. 1 & 4.
Mr. A. I. Patel, AGP for the Respondent Nos. 2 and 3.

CORAM: A. S. OKA & G.S. PATEL, JJ.

**DATED: 15th December 2015 &
16th December 2015**

ORAL JUDGMENT: (Per A.S. Oka, J.)

1. Submissions were heard on the earlier date and today the Writ Petition is placed for passing orders.

2. One Shiddahvvabai Shivappa Patil was the owner of land bearing Survey No. 219, New Gat No. 23, admeasuring 21 Hectare and 76 Ares (2,17,600 Sq. Metres), at Village Majrewadi, Taluka North Solapur, District Solapur. The said Shiddahvvabai (“the original owner”) died on 6th February 1992.

3. The Petitioner who is the son of the original owner filed Writ Petition No. 3004 of 2010. The case made out in the said Petition was that the original owner filed a return under Section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short “the ULC Act”). An order was made on 26th March 1981 under Sub Section (4) of Section 8 of the ULC Act. Under the said order, the Competent Authority held that the original owner was holding vacant land admeasuring 2,15,946 sq. metres in excess of ceiling limit. The case made out in the said earlier Petition is that on the basis of the order under sub-section (4) of Section 8, a Notification under Sub Section (3) of Section 10 of the ULC Act was published

in the Government Gazette on 13th May 1982. It is claimed that under the provisions of Section 20 of the ULC Act, the Government of Maharashtra granted exemption in relation to the area of 19 Hectare and 18 Ares out of the land bearing Survey No. 219. It is pointed out in the earlier Petition that on 19th May 1982, a Notice under Sub-Section (5) of Section 10 was issued by the Competent Authority under the ULC Act in respect of area of 24,300 sq. metres. On 2nd July 1982, the possession of the said area was handed over to All India Radio for setting up a Radio Station at Solapur. The Petitioner relied upon the decision of this Court in case of *Udhav Tatya Bhopale vs. State of Maharashtra & Ors.*¹ The contention raised in the said earlier Writ Petition was that the vacant land held by the original owner in excess of ceiling limit was within peripheral area of 5 km from the limit of the Municipal Corporation of Solapur and hence, ULC Act was not applicable. The Petitioner relied upon the Government Resolution dated 1st October 1997 issued on the decision of this Court in the case of *Udhav Tatya Bhopale* (Supra), which provided for restoration of the possession of the excess vacant lands which were covered by the decision in *Udhav Tatya Bhopale*.

4. In the said earlier Writ Petition, the Petitioner relied upon an application dated 6th October 2006 made by him to the State Government for release of the vacant land taken over under the provisions of Sub-Section (5) of Section 10 of the ULC Act. The

¹ 1992 (2) Mh.L.J. 1432

case made out in the said Petition was that the All India Radio expressed inability to restore possession of the vacant land to the Petitioner. On 8th January 2010, the Competent Authority at Solapur sought guidance of the State Government. The only substantive prayer made in the said earlier Petition was prayer clause (a), which reads thus:

“(a) this Hon'ble Court may be pleased to issue the Writ of Mandamus or any other appropriate Writ, order or direction directing the respondents to consider the petitioner's case for release of land admeasuring 24,300 sq. mtrs. situated at Old Survey No. 219, New Gat No. 23 of village majrewadi, Taluka-North Solapur, Solapur bearing the ULC Case No. SR/II/1695, in the light of the government Resolutions dt.01.10.1997 and 22.04.1999 issued under Sec.35 of the Urban Land (Ceiling & Regulations) Act, 1976 and pass appropriate orders in accordance with law within a period of six months, and in case the respondents decide to acquire the land a further period of six months may be granted to complete the process and pay compensation.”

5. The said Writ Petition was disposed of by this Court by an order dated 29th April 2010 by directing the Respondents to consider the case of the Petitioner in the light of Government Resolutions dated 1st October 1997 and 22nd April 1999 issued under Section 35 of the ULC Act within a period of six months. On 18th March 2011, the Competent Authority, under the ULC Act

addressed a letter to the Assistant Station Engineer of the All India Radio at Solapur. Though there was no direction issued by this Court to that effect in Writ Petition No. 3004 of 2010, the Competent Authority informed the All India Radio that a direction has been issued by this Court to pay compensation to the original owner within six months. The Competent Authority represented that if compensation is not paid, the land will have to be surrendered to the original owner. It appears that the Collector issued memorandum dated 15th July 2011 directing initiation of acquisition proceedings for the benefit of the All India Radio.

6. The Petitioner filed Contempt Petition No. 47 of 2011 in this Court alleging the breach of the order dated 29th April 2010. The said Contempt Petition was disposed of by order dated 4th August 2011 by recording a statement of the Respondents that a proposal has been made by the All India Radio for the purpose of acquisition which is delivered to the State Government on 3rd August 2011. It was represented before the Court that the completion of the process of acquisition would take six months. It appears that subsequently, acquisition proceedings were initiated under the said Act of 1894 by publishing a Notification under Sub-Section (1) of Section 4. The representation made by the Petitioners were disposed of by the District Collector in terms of order dated 29th April 2010 by passing order on 13th March 2014. The Collector held that in fact the original owner filed an application before his predecessor showing willingness to transfer excess vacant land

admeasuring about six Acres (about 24,300 sq. metres) to the All India Radio for setting up a Radio Station at Solapur without seeking any compensation. It is stated that the Nayab Tahasildar, Solapur took possession of the excess land from the Petitioner on behalf of the State Government. It is stated that even the real brother of the Petitioner Mr. Gurunath Patil who was the then a Member of Legislative Assembly gave consent to the State Government for taking over possession. Therefore, the Collector came to the conclusion that the acquisition of the land will not be appropriate as the land is in possession of the All India Radio prior to 1st October 1997 and there is also a Radio Station set up on the said land.

7. The present Petition was filed by the Petitioner in July 2014. In paragraph 2 of the Petition, the Petitioner has stated thus:

"2. The Petitioner states that during the years 1976-2000, as the Petitioner's land (earlier in the name of his deceased mother-Siddahvvabai Shivappa Patil) was situated in the 5 k.m. Solapur ULC peripheral area, the Petitioner's land admeasuring 24,3000 sq. mtrs situated at old Survey No. 219, New Gat No. 23, of village Majrewadi, Taluka North Solapur, District - Solapur was acquired in the ULC Case No. SR.II-1695 under the Urban Land Ceiling & Regulation Act, 1976 (hereinafter called as ULC Act, 1976) for which Petitioner's mother gve possession voluntarily free of cost on 26.05.1982, which was thereafter allotted for the

Akashwani/all India Radio/Prasar-Bharati purposes which has done construction on the said land. The Akashwani/AIR paid Rs.1,02,000/- to the Government for said allotment, and no amount/compensation was paid to the Petitioner landholders. Copies of the Sec.8(4), 10(5) Kabjepavati, Sec. 33 Appeal Order etc. (copies of which are annexed hereto and marked as Exhibit-A). The petitioner states that during 1981-82 when the said land was under the ULC acquisition, the brother of Petitioner Mr. Gurunath Patil had offered to donate/gift said land to Akashwani as indicated by by letters dt.16.10.1981, 08-11-1981, 25-11-1981, 11-01-1982, 21-01-1982, 09-11-1981, 05-02-1982 between Mr. Gurunath Patil and Akashwani authorities etc., copies of which are annexed hereto and marked as Exhibit-B."

(underlines added)

8. The prayer made in this Petition under Article 226 of the constitution of India is for setting aside the order dated 13th March 2014 passed by the Collector. A Writ of Mandamus is sought directing the Respondents to declare the Award in accordance with law on the basis of the Notification under Sub-Section (1) of Section 4 of the said Act of 1894 which was already issued. Moreover, a prayer is made for restoration of the possession of the area declared as vacant land held in excess of ceiling limit. The Petitioner is relying upon the decision of this Court in case of *Udhav Tatya Bhopale* (Supra) for contending that the provisions of ULC Act were not applicable to the land bearing Gat No. 219.

9. The learned counsel appearing for the Petitioner invited our attention to the order dated 29th April 2010 passed by this Court in Writ Petition No. 3004 of 2010 and subsequent order passed in Contempt Petition No. 47 of 2011 filed by the Petitioner alleging breach of the order dated 29th April 2010. He pointed out from the said orders that a proposal was submitted by the All India Radio for acquisition of the land admeasuring 5,700 Sq. Metres out of the area of 23,400 sq. Metres and in fact the State Government by relying upon the said proposal initiated acquisition proceedings under the said Act of 1894. He submitted that the acquisition reached the stage of Section 9 and in fact notices were also issued to the Petitioner. He submitted that the possession of the land admeasuring 24,300 Sq. Metres was taken over by the State Government on the basis of the notice issued under Sub-Section (5) of Section 10 of the ULC Act. He submitted that though there are letters on record written by the original owner and the Petitioner's brother Mr. Gurunath offering to donate the excess vacant land admeasuring 24,300 Sq. Metres for setting up a Radio Station of the All India Radio at Solapur, in fact, the document of gift was not executed and the original owner and, therefore, the Petitioner continued to be the owner thereof. Inviting our attention to the possession receipt, he urged that possession was taken over in terms of the provisions of ULC Act and not on the basis of alleged donation.

10. He submitted that the correspondence made between the All India Radio and the Officers of the State Government, including the Collector show that the All India Radio agreed to acquire the land in view of the fact that the provisions of the ULC Act were not applicable to the said land. He submitted that the orders passed in earlier Writ Petition as well as the Contempt Petition continue bind the Respondents as none of the Respondents have challenged the said orders. He would, therefore, urge that the District Collector committed an error by passing the impugned order by holding that there is no need to continue the acquisition proceedings. He submitted that as the provisions of the ULC Act are admittedly not applicable to the land bearing Survey No. 219, the land continues to vests in the Petitioner and, therefore, unless it is acquired in accordance with law by way of compulsory acquisition, the possession of the land will have to be restored to the Petitioner.

11. The learned AGP opposing the Petition pointed out the correspondence made by the original owner himself as well as the brother of the Petitioner, who was a Member of the Legislative Assembly. Learned AGP pointed out that the original owner as well as the Petitioner's brother agreed to hand over the area of 24,300 Sq. Metres to the All India Radio for construction of a Radio Station at Solapur free of compensation by way of a gift and acting upon the said offer, the possession was taken over. Learned AGP invited our attention to the order dated 17th March 1982 passed by the Collector in an Appeal under Section 33 of the ULC Act. The

submission of the AGP is that the fact that the said land admeasuring 24,300 Sq. Metres was offered by way of donation was completely suppressed by the Petitioner while filing Writ Petition No. 3004 of 2010. The submission is that if the said fact would have been disclosed to the Court, a direction may not have been issued by this Court on 29th April 2010 to consider the case of the Petitioner for release of the said land. It is stated that even in the Contempt Petition, the fact that possession of the said land was handed over by way of donation is not disclosed. The learned counsel appearing for the Petitioner did not dispute that he himself represented the Petitioner in the earlier Writ Petition and Contempt Petition. He stated that the correspondence made by the original owner as well as the Petitioner's brother offering the said land by way of gift was not brought to his notice when the earlier Petition was filed. He submitted that in any case, there is no suppression of any material fact by the Petitioner and in fact the possession of the land in question was taken over in exercise of the powers under sub-Section (5) of Section 10 of the ULC Act. The learned counsel appearing for the Petitioner relied upon a decision of the Apex Court in the case of *Venkateswara Rice, Ginning & Groundnut Oil Mill Contractors Company vs. State of A. P.*². He urged that the order passed by this Court on 29th April 2010 in Writ Petition No. 3004 of 2010 is an order of a Co-ordinate Bench which binds this Court. He relied upon a decision of the Apex Court in

² AIR 1972 (SC) 51

the case of *S.J.S.Business Enterprises (P) Ltd. vs. State of Bihar Ors.*³ He relied upon the said decision in support of his submission that suppression has to be of a material fact and in the present case, even assuming that even there is a suppression, that is not of a material fact. The learned AGP relied upon the decision of the Apex Court in the case of *Dalip Singh vs. State of U. P. & Ors.*⁴ as well as in the case of *S.P.Chengalvaraya Naidu vs. Jagannath*⁵ The submission is that a case which is based on falsehood and suppression can be thrown out at any stage of the proceedings.

12. We must note that after the submissions were heard, we had given an opportunity to the learned counsel appearing for the Petitioner to take instructions from the Petitioner on the question whether the Petitioner wants to prosecute the Petition. On the earlier date, in the presence of the Petitioner, the learned counsel stated that the Petitioner wants to prosecute the Petition.

As the Court time is over, deferred to 16th December 2015.

resumed on 16th December 2015 at 11.00 a.m.:

13. We have given our careful consideration to the submissions. On 26th March 1981, an order was made by the Competent Authority under the ULC Act in exercise of the powers under Sub-

³ (2004) 7 SCC 166

⁴ (2010) 2 SCC 114

⁵ 1994 1 SCC 1

Section (4) of Section 8 of the ULC Act declaring that the original owner was holding a vacant land admeasuring 2,17,446 Sq. Metres in excess of the ceiling limit. It appears that the original owner preferred an Appeal under Section 33 of the ULC Act against the said Judgment and Order. There was an order made on 17th March 1982 by the Collector in the Appeal. The relevant part of the said order reads thus:

"..... On 10-2-1982 she has filed a application personally stating therein that she has already given her willingness for transfer of 6-acres of land without any compensation admeasuring 24300 sq. mtr. Out of S. No. 219 of Solapur to All India Radio for setting up a Radio Station at Solapur with the Dy. Collector & Competent Authority, Solapur Urban Agglomeration, Solapur. She has further stated that she has no objection to declare excess vacant land of 6-acres out of the above Survey Number adjacent to old Kumbhari Road at North-East corner of the said S.No. 219. In view of these facts there seems no objection to consider the request of the applicant. As regards other points pressed on behalf of the appellant in his original appeal memo it is stated that the same will be considered at the time of final hearing of the case.

O R D E R

In view of the pursis given by the appellant and reasons discussed above the appeal is rejected so far as the lands of 6-acres declared surplus out of S.NO.219 of

Solapur and the order of the Dy. Collector & Competent Authority, Solapur Urban Agglomeration, Solapur, passed under No. SR.II.1695, dt.26-3-1981 is hereby confirmed to the extent of declaring 6-acres of surplus vacant land out of the said survey number. The stay granted vide this office order No. ULC.Appeal 8/81, dt.2-6-1981 is hereby vacated to the extent of 6-acres land of S. No. 219 of Solapur. The appellant should be informed accordingly by R.P.A.D."

(underlines supplied)

14. Thus, the Appellate Authority has specifically recorded that on 10th February 1982, the original owner filed an application in person stating therein that she has already given her willingness to transfer 6 Acres of land (admeasuring 24,300 Sq. Metres) without any compensation out of Survey No. 219 of Solapur to the All India Radio for setting up a Radio Station at Solapur. The order records that she had no objection to declare area of 6 Acres out of Survey No. 219 adjacent to old Kumbhari road on North-East corner of the said Survey No. 219 as vacant land held in excess of ceiling limits. Relying upon the application dated 10th February 1982 made by the original owner, the Competent Authority dismissed the Appeal as far as the said land admeasuring 24,300 Sq. Metres is concerned by holding that the said land is declared as surplus out of Survey No. 219. The Petitioner has not come out with the case that the said order of 17th march 1982 was ever challenged. Hence, the said order has become final. The said order records an unqualified

statement made by the original owner in her application dated 10th February 1982 that she has given her willingness to transfer the area of 24,300 Sq. Metres out of Survey No. 219 to All India Radio for setting up a Radio Station at Solapur without compensation. Thus, the said land admeasuring 24,300 Sq. Metres was surrendered by the original owner expressly without claiming any compensation.

15. Apart from the original owner herself, her another son and the Petitioner's brother, Gurunath, who was at the relevant time a Member of the Maharashtra Legislative Assembly addressed a letter dated 16th October 1981 to the District Collector of Solapur stating that he was willing to offer on his own lands bearing Survey No. 220 and or Survey No. 219 held by the original owner to the All India Radio for setting up a Radio Station at Solapur. The said Gurunath also addressed a letter dated 8th November 1981 to Mr. Sandipanji Thorat, a Member of the Parliament making the same offer. He stated in the said letter that he was willing to give the said land to the All India Radio without claiming any compensation. On the basis of the said letter, Mr. Thorat addressed a letter to the then Minister for Information and Broadcasting. In turn, the Joint Secretary of the Ministry of the Information and Broadcasting of the Government of India by his letter dated 11th January 1982 requested the Secretary of the Housing and Special Assistance Department, the Government of Maharashtra to examine the matter and to allot the said land to the All India Radio. A letter dated 21st January 1982 was addressed by the Joint Secretary of the

Housing and Special Assistance Department, the Government of Maharashtra to the Competent Authority, Solapur under the ULC Act recording that the said Gurunath has addressed a letter to the Hon'ble Minister giving his consent to acquire the land belonging to him admeasuring 6 Ares out of Survey Nos. 219 or 220. There is a letter dated 28th January 1982 addressed by the Director General of Information and Public Relations of the Government of Maharashtra to the Secretary to the Government of India, Ministry of Information and Broadcasting. Even in the said letter, the offer made by Gurunath was reproduced and a request was made to consider the said offer. Thus, the letter dated 10th February 1982 was submitted by the original owner to the Competent Authority under the ULC Act is not the only document which suggests that there was a conscious decision taken not only by the original owner of handing over the area of 24,300 Sq. Metres without any claim for compensation for setting up a Radio Station at Solapur, but also by her son Gurunth who specifically offered to give land admeasuring 24,300 sq. metres out of Survey No. 219 without any compensation to the All India Radio. As pointed out earlier, the order 17th March 1982 passed by the Competent Authority has attained finality, under which an area of 24,300 Sq. Metres out of Survey No. 219 was declared as excess land on the basis of a specific statement made by the original owner that she was willing to transfer the said land, without any compensation, to the All India Radio for setting up a Radio Station at Solapur.

16. From the order dated 17th March 1982 passed by the Appellate Authority, it is very clear that the Appeal was kept pending but the same was rejected in relation to the area of 24,300 Sq. Metres. The Appeal was kept pending as under the order passed under Sub-Section (4) of Section 8 of the ULC Act, an area of 2,15,946 Sq. Metres was declared as a vacant land held by the original owner in excess of the ceiling limit.

17. The order of the Appellate Authority was acted upon and possession of the area of 24,300 Sq. Metres was taken over by the Nayab Tahasildar on 26th May 1982. The possession receipt signed by the original owner records that she has willingly handed over the area of 24,300 Sq. Metres to the State Government and she has no grievance about the same. The possession receipt is also signed by the present Petitioner as well as his brother Gurunath. The date of possession receipt is 26th March 1982. Thus, the possession of an area of 24,300 Sq. Metres was taken over on the basis of the order dated 17th March 1982 passed by the Appellate Authority under the ULC Act. We must note here that the order of the Competent Authority dated 17th March 1982 notes an unconditional and unqualified statement in writing by the original owner to transfer the area of 24,300 Sq. Metres without any compensation to the All India Radio. The said order does not mention that any condition was imposed by the original owner in the letter dated 10th February 1982. This is relevant as one of the letters addressed by the said Gurunath Patil recites that he was offering the land bearing Survey

No. 219 by way of donation to the All India Radio subject to the condition of displaying the name of his father on the building to be constructed by the All India Radio. When the said letter was submitted by Gurunath, the original owner was very much alive. Thus, the original owner did not challenge the order dated 17th March 1982 and on the contrary, on the basis of the said order willingly handed over the possession of area of 24,300 Sq. Metres to the Nayab Tahasildar. The original owner died on 6th February 1992. During her lifetime, she made no grievance about the order dated 17th March 1982 and the possession delivered on 26th May 1982. As stated earlier, even after her demise, neither the Petitioner nor his brother, Gurunath challenged the said order of the Appellate Authority.

18. There is an Affidavit in Reply filed by Dr. Praveen Gedam, the then Collector of Solapur. In the said Affidavit, the Collector has relied upon the fact that the original owner had made an application before the Competent Authority on 10th February 1982. Clause A of paragraph 16 of his Affidavit reads thus:

"16(a) That the original holder of the land Sidhavvabai Shivappa Patil has filed a return u/s. 6(1) of the Act of 1976 on 1.12.1979. Thereafter a draft statement as per Section 8(1) of the Act of 1976 was issued by the Deputy Collector and Competent Authority under the above said Act of 1976, Solapur and has declared 2,51,946 sq. mt of the land out of Survey No. 219 as an excess vacant land. That the

holder had preferred an appeal u/s 33 of the Act of 1976 to the Collector of Solapur bearing ULC Appeal No. 8/1981. However, at the time of hearing of the said Appeal on 10.2.1982 the holder Sidhavvabai Shivappa Patil had filed an application personally stating that she has already given her willingness for transfer of the 6 Acres (24300 sq.mtrs) of the land out of Survey No. 219 without any compensation to All India Radio for setting up a radio station at Solapur. She has further stated that she has no objection to declare excess vacant land of 6 Acres out of the above survey number adjacent to old Kumbhari road of North-East corner of the said Survey No. 219. Accordingly, the Collector of Solapur had passed an order on 17th March 1982 holding that the said appeal is rejected so far as 6 Acres of land out of Survey No. 219 (24300 sq. mtrs.). Not only a the order passed by the Deputy Collector and Competent Authority, Solapur passed on 26.3.1981, i.e. No. MSRII 1695 dated 16th March 1981 was confirmed to the said extent of 6 acres (i.e. the land involved in the petition). This respondent has specifically noted this wilfull act by the original land holder in his order dated 13/03/2014. The petitioner has deliberately suppressed this fact in the contempt petition as well as in all earlier writ and contempt petitions."

(underline supplied)

19. There is a Rejoinder filed by the Petitioner on 15th August 2014 dealing with the said Affidavit. What is stated in Clause (a) of

paragraph 16 of the Affidavit of Dr. Praveen Gedam is not disputed in the said Rejoinder.

20. We have carefully perused the memorandum of Writ Petition No. 3004 of 2010 and all the annexures thereto. A true copy of the said Petition is placed on record by the learned Advocate for the Petitioner himself. The Petitioner was represented by the same Advocate in the said Writ Petition. We have already quoted the prayer made in the said Petition. A careful perusal of the averments made in that Petition shows that the Petitioner has not even disclosed in the said Writ Petition that the original owner preferred an Appeal against the order dated 26th March 1981 passed under Sub-Section (4) of Section 8 of the ULC Act by the Competent Authority. Thus, the order dated 17th March 1982 passed by the Competent Authority is suppressed by the Petitioner in the earlier Writ Petition. The said order, as stated earlier, is passed on the basis of an unequivocal statement made by the original owner on 10th February 1982 by way of a written application. It was suppressed that the original owner had shown the willingness to transfer an area of 23,400 Sq. Metres to the All Indian Radio without any compensation. Not only that the said order was suppressed but several letters written by Petitioner's brother Gurunath which are annexed to the present Petition were also suppressed in the earlier Writ Petition. Even a copy of the possession receipt was not annexed. The grievance made in the earlier Writ Petition was that the proceedings in relation to the land

bearing Survey No. 219 under the ULC Act were nullity in the light of the decision of this Court in case of *Udhav Tatyia Bhopale* (Supra). Therefore, the contention in the earlier Writ Petition was that possession of the area of 24,300 Sq. Metres out of Survey No. 219 ought to be restored to the Petitioners in the light of the Government Resolutions dated 1st October 1997 and 22nd April 1999. The most vital and important fact that the original owner agreed to transfer the area of 24,300 Sq. Metres free of any compensation to the All India Radio for setting up a Radio Station at Solapur has been suppressed by the Petitioner in the said Writ Petition. The offer of the original owner was accepted by the Appellate Authority and the order dated 17th March 1982 was passed by the Appellate Authority dismissing the Appeal preferred by the original owner to the extent of area of 24,300 Sq. Metres. As stated earlier, even the said order was suppressed by the Petitioner in the earlier Writ Petition. Had the Petitioner disclosed these material and the vital facts in his earlier Petition, the Court would not have directed the Respondents to consider the application made by the Petitioner on the basis of the Government Resolutions dated 1st October 1997 and 22nd April 1999.

21. By alleging non-compliance of the order dated 29th April 2010, the Petitioner filed Contempt Petition No. 47 of 2011. Due to suppression of material facts, the Government machinery moved in a wrong direction and a proposal for acquisition of the said land was

initiated; and in fact, Notifications under the said Act of 1894 was issued.

22. We may note here that both the Contempt Petitions being Contempt Petition No. 47 of 2011 and Contempt Petition No. 256 of 2014 filed by the Petitioner alleging disobedience of the order dated 29th April 2010 in the earlier Writ Petition were dismissed by the Division Bench of this Court by its order dated 12th February 2015. The Petitioner in this Petition is relying upon the order of a learned Single Judge of this Court passed in Contempt Petition No. 47 of 2011 during the pendency of the said Petition. There was a suppression of material facts even while filing Contempt Petition No. 47 of 2011.

23. The matter does not rest here. During the pendency of the present Petition, the Petitioner filed an application before the learned Advocate General of the State of Maharashtra seeking his consent for initiating action for criminal contempt against Dr. Praveen Gedam, the then Collector of Solapur and the Assistant Director of All India Radio. A copy of the said application made by the Petitioner dated 17th April 2014 through his Advocate is annexed to the Affidavit of Dr. Gedam. Though the order of the Appellate Authority is annexed to the present Petition and the letters addressed by Gurunath are also annexed to the present Petition, the Petitioner suppressed the said order and said letters while moving the learned Advocate General for grant of consent.

There is a letter dated 6th May 2014 annexed to the said Affidavit of the District Collector addressed by Advocate Mr. Deendayal Dhanure on behalf of the Petitioner to the Additional Chief Secretary, Revenue and Forests Department, Government of Maharashtra seeking a disciplinary action to be taken against Dr. Praveen Gedam, the then District Collector, Solapur. Even in the said letter, material facts and documents have been suppressed by the Petitioner. Thus, right from filing of Writ Petition No. 3004 of 2010, the Petitioner has repeatedly indulged in suppression of material documents and facts.

24. There is a written submission tendered across the bar by the learned counsel appearing for the Petitioner on 9th December 2015. The submission made in the written submission is based on several orders passed by this Court on the basis of the Government Resolutions dated 1st October 1997 and 22nd April 1999. The contention raised in the said written submission is that substantial justice will have to be done by this Court by ignoring the technicalities. It is contended in paragraph 7 that omission to mention specifically free of charge voluntary delivery possession of the said land and proposed gift are not material facts. It is contended by relying upon the decision of the Apex Court in the case of *S.J.S. Business Enterprises (P) Limited v. State of Bihar & Ors.*⁶ that “a material fact is a fact one which is decisive in the matter, and if suppressed the course of Justice and material

⁶ 2004 (7) SCC 166

outcome changes which is in other words is to snatch Court orders by playing fraud upon the Court”. It is contended that in the present Petition, there is no suppression of material facts.

25. We have already pointed out that if the material documents and facts would have been brought to the notice of the Division Bench taking up Writ Petition No. 3004 of 2010, the order dated 29th April 2010 would not have been passed. The Petitioner filed Contempt Petition No. 47 of 2011 alleging breach of the order dated 29th April 2010. As the order of the Appellate Authority and the fact of voluntary surrender by the original owner were suppressed even in the Contempt Petition, the entire machinery of the State Government was misled which commenced the proceedings for acquisition on the footing that the decision of this Court in the case of *Udhav Tatya Bhopale* (Supra) was applicable. Due to the suppression of facts by the Petitioner, no Authority of the State could notice that the original owner had willingly agreed to grant an area of 24,300 Sq. Metres to the All India Radio without insisting on the payment of compensation and that on the basis of her written application, the Appeal preferred by her was dismissed holding that area of 24,300 was the land held in excess of ceiling limit. It is only the suppression of material facts and documents by the Petitioner which led the Authorities of the State as well as the Central Government to initiate acquisition proceedings. Perhaps, due to the pendency of the Contempt Petition No. 47 of 2011 that the District Collector did not pass any order in terms of order dated

29th April 2010 passed in the earlier Writ Petition. After noticing that the application made by the Petitioner was not decided, Dr. Praveen Gedam, the then Collector of Solapur passed a detailed order dated 13th March 2014, which is the subject matter of challenge in this Petition. What is material is paragraph 7 of the said order, which reads thus:

"7. In the present case the facts reveal that proceeding under Urban Land Ceiling Act, 1976 were initiated by the Deputy Collector and Competent Authority, Solapur and that the land in question was declared as surplus vacant land by the Dy. Collector and Competent Authority, Solapur. The holder of said land Smt. Siddhavabia Shivappa Patil had preferred an appeal against the order of Dy. Collector and Competent Authority, Solapur dated 26/3/1981 bearing ULC/Appeal No.8/1981 which was decided by Collector Solapur on February, 1982 in which the Collector Solapur has observed that the holder of said land had filed an application personally before the Collector that she has given her willingness for transfer of 6 Acres of land admeasuring 24,300 sq. mtrs. out of S. No. 219 without any compensation to All India Radio for setting up radio station at Solapur. She has also given no objection to declare 6 acres of vacant land as excess land out of S.No. 219 adjacent to old Kumbhari road at north east corner, hence the said appeal was rejected."

(underline supplied)

26. In paragraph 8, the Collector has made a reference to the applications made by Gurunath, the brother of the present Petitioner. In view of the fact that possession was voluntarily surrendered by the original owner, the Collector held that the Government Resolution dated 1st October 1997 was not applicable to the land in question. He also came to the conclusion that the Government Resolution dated 22nd April 1999 was not applicable for the same reason. After noticing the entire mischief, the Collector came to the conclusion that the acquisition proceedings should not proceed further in the light of the voluntary surrender by the original owner. It will not out of place to note here that during the pendency of the present Petition, the Petitioner made an application to the learned Advocate General seeking leave to initiate action for criminal contempt against the said Collector, Dr. Praveen Gedam and by making an application to the Chief Secretary, the Petitioner sought disciplinary action to be taken against Dr. Praveen Gedam.

27. Thus, the argument that the documents and facts which are suppressed are not material deserves to be rejected. The submission of the learned counsel appearing for the Petitioner is that this Court should do substantial justice. Considering the facts narrated above and the conduct of the Petitioner, the only way of doing substantial justice will be to dismiss the Petition and direct the Petitioner to pay exemplary costs.

28. The learned counsel appearing for the Petitioner relying upon a decision of the Apex Court in the case of *Venkateswara Rice, Ginning & Groundnut Oil Mill Contractors Company* (Supra). The learned counsel appearing for the Petitioner relied upon paragraph 9 of the said decision by contending that this Court cannot set aside the order dated 29th April 2010 passed by the Coordinate Bench of this Court in the earlier Writ Petition. The said submission is completely misconceived and deserves to be rejected in the light of law laid down by the Apex Court in the case of *S.P.Chengalvaraya Naidu* (Supra). By suppressing material documents and facts, the Petitioner has played fraud upon this Court and the fraud played by the Petitioner has vitiated all proceedings initiated at the instance of the Petitioner.

29. As recorded earlier, this Petition was earlier adjourned to enable the learned counsel appearing for the Petitioner to take instructions whether the Petitioner is desirous of prosecuting this Petition.

30. The learned counsel appearing for the Petitioner gave an usual excuse that the Petitioner is an illiterate person. The manner in which proceedings are filed by the Petitioner shows that the Petitioner is not an innocent illiterate person. Even on the first Petition filed in the year 2010, the Petitioner has signed in English. In the written submissions, the learned counsel appearing for the Petitioner tried to contend that for his mistake, the Petitioner

should not suffer. This submission is perhaps made as the same learned counsel was representing the Petitioner in the earlier Petition also. While issuing notice through another Advocate on 6th May 2014, the Petitioner has suppressed the same material facts and documents. Hence, the Petitioner is not at all innocent.

31. Now the question is what should be the amount of costs. Considering the extent of the acts of suppression, and the fact that the Petitioner has taken this Court on a ride, we would have been justified in directing the Petitioner to pay costs of an amount not less than Rs. 5,00,000/-. However, we cannot ignore that the Petitioners predecessor made a donation of the said land admeasuring 24,300 Sq. Metres to All India Radio for setting up a Radio Station at Solapur. This is the only reason that we are quantifying the costs at Rs. 50,000/-.

32. Hence, the following order:

- (a) The Writ Petition is rejected;
- (b) We direct the Petitioner to pay costs quantified at Rs. 50,000/- within a period of two months from today. A sum of Rs. 25,000/- shall be paid to the State Government and the remaining sum of Rs. 25,000/- shall be paid to Dr. Praveen Gedam, the then Collector

of Solapur who for the first time noticed the acts of suppression;

- (c) For reporting compliance regarding order of payment of costs, the Petition shall be listed on 26th February 2016.

(G. S. PATEL, J.)

(A. S. OKA, J.)