

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3232/2014

(DILIP YADAORAO MOHOD & OTHERS **VERSUS** STATE OF MAH. & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri C.V. Kale, counsel for the petitioners.
Mrs. K.S. Joshi, A.G.P. for the respondents.

CORAM : SMT. VASANTI A. NAIK AND
A.M. BADAR, JJ.

DATE : APRIL 24, 2015.

By this petition, the petitioners have sought a direction to the respondents to delete the name of the Government from the 7/12 extract in respect of land bearing Khasra No.19/2 (Old No.96), admeasuring 5356 square meters of Mouza Drugdhamna, District Nagpur. The petitioners also challenge the notice issued to the deceased father of the petitioners, on 08.11.2007 under Section 10(5) of the Urban Land Ceiling Act.

The father of the petitioners was the owner and possessor of the aforesaid land. In 1976, proceedings were initiated under the Urban Land Ceiling Act by the respondent and a notice under Section 10(3) of the Act was published in the Government Gazette on 20.04.2006. According to the petitioners, a notice under Section 10(5) of the Act was issued in the name of the deceased father of the petitioners by name Anandrao, on 08.11.2007. It is stated that Anandrao had expired in the year 1992 and the notice was bad in law. Also, according to the petitioners, the petitioners did not receive the notice dated 08.11.2007. In the said notice, the date on which the parties were asked to remain present for handing-taking of the possession was not mentioned and the column was kept blank.

It is stated that the petitioners are still in possession of the property and the possession is not taken by the respondents. In this background, in view of the provisions of the Repeal Act, the petitioners seek a direction to the respondents to delete the name of the State of Maharashtra from the 7/12 extract in respect of the said land.

Since a statement was made on the previous date of hearing on behalf of the learned Assistant Government Pleader that the notice under Section 10(5) was served on the petitioners and the possession was taken on 15.11.2007 and since the petitioners seriously disputed the said statement, we had asked the learned Assistant Government Pleader to produce the original Record & Proceedings in the Court. The same are tendered in the Court, today.

It appears on a perusal of the original Record & Proceedings that nobody, neither Anandrao nor the petitioners had received the notice issued by the respondents under Section 10(5) of the Act. So also, the notice does not disclose the date on which the petitioners were required to remain present on the land for delivering the possession of the property. Though it was asserted that the possession of the land is secured by the State Government, we find on a perusal of the original possession receipt that the same is neither signed by the person taking the possession nor by the person handing over the possession. The possession receipt merely records that the whereabouts of Anandrao are not to be found. On a perusal of the Record & Proceedings, it is clear that neither was the notice under Section 10(5) duly served on the petitioners nor did the State Government secure the possession of the property on 15.11.2007 as stated on behalf of the respondents. The learned counsel for the petitioners have rightly relied on the unreported judgment of this Court, dated 19.11.2014 in Writ Petition No.1392 of 2014 to seek the relief.

Hence, for the reasons aforesaid, the writ petition is allowed. The land of the petitioner bearing Khasra No.19/2 (Old No.96), admeasuring 5356 square meters of Mouza Drugdhamna, District Nagpur stands released from the clutches of the Urban Land Ceiling Act in view of the provisions of the Repeal Act. The respondents are, therefore, directed to delete the name of the State of Maharashtra from the 7/12 extract in respect of the land bearing Khasra No.19/2 (Old No.96), admeasuring 5356 square meters of Mouza Drugdhamna, District Nagpur and record the names of the petitioners in the same.

Order accordingly. No costs.

JUDGE

JUDGE

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