

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

WRIT PETITION NO. 4440 OF 2014

Prakash Ramkrushna Watkar and others

-VS-

The State of Maharashtra and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.P.B.Patil, counsel for the petitioners.
Ms T.H.Udeshi, AGP for the respondent Nos.1 and 2.
Mr.P.N.Kothari, counsel for the respondent No.3.

CORAM : SMT.VASANTI A. NAIK &
PRASANNA B. VARALE, JJ.

DATE : 24.06.2015.

By this petition, the petitioners seek a declaration that land admeasuring 6600 sq.mtrs. which is a part of Field Survey No.21/3 of Mouza Dawalameti is not vested in the Government, in view of the provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 and the petitioners are the absolute owners thereof.

According to the petitioners, the concerned land was initially owned by Bala, who had two sons Ramkrushna and Laxman. It is averred in this petition that Ramkrushna had expired on 10/02/1980, whereas Laxman expired on 06/10/2000. In the proceedings initiated for the declaration of the surplus land under the Urban Land (Ceiling and Regulation) Act, 1976, land admeasuring 6600 sq.mtrs. was declared surplus. According to the petitioners, a notice, dated 30/07/1990 in the name of Ramkrushna was issued under Section 10(5) of the Urban Land Ceiling and Regulation Act,

1976, but the same could not be served on Ramkrushna as he had expired on 10/02/1980. It is admitted that the notice was duly served on the son of Ramkrushna by name Rajesh, who is one of the petitioners in the instant petition. By the said notice under Section 10(5) of the Act of 1976, the landholder was asked to remain present on 17/08/1990 for delivering the possession of the land to the respondents. According to the petitioners, the possession of the land was not secured by the respondents on 17/08/1990 and without serving any further notice on the petitioners, the possession of the land was shown to have been taken on 20/09/1990.

It is submitted on behalf of the petitioners that the notice under Section 10(5) of the Act of 1976 was bad-in-law, as it was issued in the name of Ramkrushna, who was dead. It is stated that since the possession of the land was not obtained on 17/08/1990, the same could not have been shown to have been secured on 20/09/1990. It is stated that the possession of the property is illegally shown to have been secured on 20/09/1990. In the aforesaid set of facts, according to the petitioners, the declaration, as sought in the instant petition needs to be granted.

It is submitted on behalf of the respondent No.3 that the notice was duly served on Rajesh, one of the petitioners, and since the petitioners did not deliver the possession of the land to the respondents on 17/08/1990 as stated in the notice, the possession was rightly secured by the respondents under Section 10(6) of the Act of 1976. It is stated that the possession was obtained by the respondents on 20/09/1990 and the said fact can be substantiated from the possession receipt that is annexed to the petition. It is

stated that there is a huge delay in filing the petition and the petition suffers from laches. It is further stated that if the petitioners were aggrieved by the alleged improper procedure undertaken by the respondents under Section 10 of the Act of 1976, the petitioners ought to have made a grievance in that regard within a reasonable time. To substantiate the submission, the learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of **State of Assam v. Bhaskar Jyoti Sarma** reported in **2014 (13) SCALE 294**.

On hearing the learned counsel for the parties, it appears that the relief sought by the petitioners cannot be granted. It appears that the possession of the land was secured by the respondents on 20/09/1990. The submission on behalf of the petitioners that the notice under Section 10(5) of the Act of 1976 was not valid, as it was not served on Ramkrushna to whom it was addressed and, therefore, the declaration needs to be granted is liable to be rejected. Firstly, though the notice was issued in the name of Ramkrushna, the same was duly served on Rajesh, one of the petitioners. By the said notice, the landholders were directed to remain present on the land on 17/08/1990 and hand over the possession to the respondents. Since this was not done, the respondents rightly secured the possession under Section 10(6) of the Act of 1976 on 20/09/1990. Even if it is assumed that the possession was illegally secured by the respondents (which is not so), the petitioners ought to have made a grievance in that regard within a reasonable time of such dispossession. The petitioners were dispossessed on 20/09/1990 and the writ petition is filed on 07/03/2014. The learned counsel for the respondent No.3 has rightly

relied on the judgment of the Hon'ble Supreme Court, reported in 2014 (13) SCALE 294 for seeking the dismissal of the petition. It is held by the Hon'ble Supreme Court in paragraph No.12 of the reported decision that if the grievance of the landholder is based on Section 10(5) notice, the grievance should be made by the landholder within a reasonable time of such dispossession. In the matter before the Hon'ble Supreme Court, the Hon'ble Supreme Court after assuming that the dispossession was not legal, went on to add that even forcible taking over of possession would acquire legitimacy by sheer lapse of time. It was held that in such situation, the person must be deemed to have waived his right under Section 10(5) of the Act of 1976 and any other view, in the view of the Hon'ble Supreme Court, would 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 the Repeal Act tempted him to raise the issue regarding his dispossession being in violation of the prescribed procedure. The issue involved in this case stands answered against the petitioner by the aforesaid reported judgment of the Hon'ble Supreme Court.

Since there is no merit in the writ petition, the same is dismissed with no order as to costs.

JUDGE

JUDGE