

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 4315/2014

(Mohd. Shafi s/o Hassam Nagani and others vs. State of Maharashtra and others)

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

Court's or Judge's order

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Mr.A.R.Ingole, Advocate for petitioners
Mr N S Rao, Asst.Govt.Pleader for respondents 1 to 3

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

DATED : 28th April, 2015.

Heard.

By this Petition, the petitioners challenge the notification issued by the respondent no.2-Competent Authority, under Section 10(3) of the Urban Land Ceiling Act, 1976 as also the notice issued by the respondent-authority to the petitioners under Section 10(5) of the same, as being invalid and contrary to the provisions of law. The petitioners seek a declaration that the proceedings under the Urban Land Ceiling Act, 1976 have been abated in respect of the land of the petitioners, in view of the provisions of the Urban Land(Ceiling & Regulation) Repeal Act, 1999.

The petitioner no.1 was the absolute owner of the land in survey No.490/1 and had filed the return under Section of the Act of 1976. The petitioner no.1 transferred the land to the other petitioners in the year 2003. The respondent-authority conducted an enquiry under the Act of 1976 and

13,780 sq. metres of land belonging to the petitioner no.1 was declared surplus. After the land was purchased by the petitioner nos. 2 to 6, their names were mutated in the 7/12 extracts. On 1.12.2005, the respondent-State of Maharashtra, issued a notification under Section 10(3) of the Act of 1976 and by a notice under Section 10(5) of the Act, issued to the petitioner no.1, the petitioner no.1 was directed to hand over the possession of the land to the respondents. According to the petitioners, despite the notice under Section 10(5) of the Act of 1976 that was issued to the petitioner no.1, the respondents have not secured the possession of the land that was declared surplus. In view of the provisions of the Repeal Act of 1999, the petitioners have sought a declaration that the proceedings in respect of the surplus lands of the petitioners have abated, in view of the provisions of the Repeal Act of 1999 as the possession of the property is with the petitioners.

The respondent no.1 has filed an affidavit-in-reply. It is admitted in the affidavit-in-reply that the notification under Section 10(3) of the Act was issued and a notice for possession was issued to the petitioner no.1 on 3.8.2007. It is further stated in the affidavit-in-reply that the acquisition and possession of the suit land was taken and the name of the Government is mutated in the 7/12 extracts.

In view of the aforesaid submissions, we had asked the learned Assistant Government Pleader to verify the original record and proceedings. Shri N.S. Rao, the learned Assistant Government Pleader appearing on behalf of the respondent no.1 states on verification of the records, that there is no possession-receipt showing that the possession was

handed over by the petitioner no.1 or other petitioners to the respondents. It is stated that there is no possession-receipt showing the handing and taking over of the possession of the surplus land, originally belonging to the petitioner no.1. It is also admitted on a perusal of the relevant 7/12 extracts that the same bear the name of petitioner nos. 2 to 6.

In view of the statements made on behalf of the respondent no.1, it is clear that the possession of the land remains with the petitioners and though a notice was issued to the petitioner no.1 on 3.8.2007, the possession of the land was not obtained by the State Government. Also, the names of the petitioners appear in the 7/12 extracts till date. Hence, in view of the provisions of the Repeal Act of 1999, it would be necessary to allow the Writ Petition and declare that the proceedings in respect of the surplus land of the petitioners have abated.

Hence, for the reasons aforesaid, the Writ Petition is partly allowed. It is hereby declared that the proceedings under the Act of 1976 in respect of the lands of the petitioners have abated and the petitioners' lands are free from the clutches of the Urban Land Ceiling Act, 1976. If the name of the State of Maharashtra is recorded in some of the 7/12 extracts, the said entries should be deleted.

Order accordingly. No order as to costs.

JUDGE

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