

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

WRIT PETITION NO. 6706 OF 2013

(Shri Vijay Gangadhar Kadu & Ors. vs. State of Maharashtra thr. its Secretary, Urban
Development Department & Ors.)

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

Court's or Judge's orders.

**CORAM : B.P. DHARMADHIKARI &
A.P. BHANGALE, JJ.
MARCH 09, 2015.**

Heard Shri Vaidya, learned counsel for the petitioners, Shri Kankale, learned AGP for respondent Nos. 1 & 2 and Shri Kothari, learned counsel for respondent No. 3.

The matter is being considered by this Court since long. Answer to the question sought to be raised turns upon fact whether the petitioners still continue in possession of land Survey Nos. 290 and 291/1, renumbered as Gat No. 59 later on.

Shri Vaidya, learned counsel has invited our attention to notice under Section 10(5) of Urban Land (Ceiling & Regulation) Act, 1976, (hereinafter referred to as ULC Act) issued on 31.12.1990 whereby the possession of 56573 square meters of land was sought to be taken on 16.01.1991. Survey Nos. 290 and 291/1 do not find mention therein. The petitioners claim that they still continue in possession thereof and in view of

2007 repeal, the said lands re-vest in the petitioners and, therefore, they must be allowed to use it in accordance with law.

The contention of the respondents that the possession of land was taken in 1991 itself, that it has been allotted thereafter to Respondent No. 3 – Housing board and that the Housing Board has constructed the scheme upon it, is assailed as misleading and incorrect. Our attention is drawn to the fact that these two Survey numbers are located at least at a distance of one kilometer from the site where the scheme of Housing Board has come up. It is further stated that though the Housing Board claims that the scheme has come up on Survey Nos. 290 and 291/1, actually those Survey numbers are in possession of the petitioners and still open to sky. Our attention has also been invited to a letter dated 25.11.2014 sent by the Additional Collector and Competent Authority under Urban Land Ceiling Act, to Respondent No. 3 - Housing Board seeking clarification about these two Survey numbers and demanding copy of possession receipt. The reply given by the Housing Board to it on 31.12.2014 is also pressed into service to show that Housing Board then came up with a defence that these two lands were inadvertently not mentioned in notice under Section 10(5) of the ULC Act, in possession receipt and also in measurement map.

Shri Kankale, learned AGP for respondent

Nos. 1 & 2 and Shri Kothari, learned counsel for respondent No. 3 – Housing Board, are opposing the petition.

Shri Kothari, learned counsel submits that Writ Petition No. 3648 of 2001 was filed by the present petitioners with very same grievance and in that petition, initially an interim order was also granted. However, that interim order has been vacated and petition has been dismissed on 22.07.2002. He submits that thus, the challenge to notice under Section 10(5) of the ULC Act, has attained finality between the parties and, therefore, second writ petition which raises the same questions again, cannot be looked into. He has invited our attention to the certified copies of 7/12 extracts received recently by Housing Board to urge that there both these lands are shown in possession of Housing Board even now. He, therefore, prays for dismissal of writ petition. We take certified copies produced by Shri Kothari, learned counsel for respondent No. 3, on record as Exh. X. Its copies be supplied to the petitioners also.

In reply, Shri Vaidya, learned counsel has invited attention to the fact that these revenue records are obtained after filing of present writ petition. He submits that the revenue records placed along with writ petition as Annexures 13 and 14 need to be looked into. He further states that the map of the scheme which has

come up at the instance of Respondent No. 3 clearly shows that these two lands are not utilized for its construction. He has relied upon the judgment of the Hon'ble Apex Court in the case of Gajanan Kamlya Patil vs. Additional Collector & Competent Authority, reported at AIR 2014 SC 1843, to urge that even if the possession is presumed to have been taken, in present facts as it is not in accordance with law, it has no legal sanction. The fact that there was a challenge earlier before this Court by present petitioners, is not in dispute. The petitioners then in para 8 of said Writ Petition No. 3648 of 2001 specifically pointed out notice under Section 10(5) of the ULC Act dated 31.12.1990 and further stated that upon inquiry they learnt that the Housing Board took paper possession of said land on 16.01.1991. In the very same para they have added that the petitioners did not physically hand over the possession of these lands i.e. lands mentioned in the said notice to Respondent No. 3 and continued to hold it and cultivate it. The prayer (iv) in the petition was to restrain Housing Board from proceeding further with its scheme published in Newspaper on 15.08.2001 and to restrain it from disturbing the present status of said land and to permit the petitioners to make appropriate use of it during the pendency of writ petition. In prayer clause (i), the prayer was to set aside the order under Section 8(4) of Urban Land Ceiling Act dated 31.12.1987 and

notice under Section 10(5) of the Ceiling Act dated 31.12.1990. There was further prayer to quash allotment of Khasra Nos. 144 to 147, 379/1, 381 to 383, 290 and 291/1 ad-measuring 56573 square meters in favour of Respondent No. 3.

Respondent No. 3 in present matter has come up with a defence that filing of said writ petition and orders therein were suppressed while filing the current petition. The orders of this Court dated 22.07.2002 in said petition show a reference to notice under Section 8(4) and a notice under Section 10(5) of the ULC Act. These two survey numbers i.e. 290 and 291/1 also find mention therein while recording contention of the petitioners that its allotment to the Housing Board after declaring it as surplus land was not proper. Writ Petition has been dismissed by a reasoned order on 22.07.2002. It is in this background that we have to consider the present challenge.

The petitioners do not dispute that the orders under Section 8(4) of ULC Act declared 56573 Square meters of land surplus. The notice under Section 10(5) assailed in earlier writ petition and again before us mentions some survey numbers and total area of which possession was sought to be taken as 56573 square meters. There is no reference to either Survey No. 290 or Survey No. 291/1 in this notice. However, prima facie, it can be seen that area could not have been

56573 square meters in the absence of inclusion of Survey Nos. 290 and 291/1 in it. In this background, when revenue records are looked into, part of Gat No. 59 (renumbered Survey No. 290) is shown in the name of the petitioners in the year 2012-13. In remark column, the Urban Land Ceiling proceedings and order dated 31.12.1987 find mention with word *declared surplus*. Insofar as land Survey No. 291/1 is concerned, that land is shown in possession of Respondent No. 3 – Housing Board. The revenue records produced today by the Housing Board show its name correctly on both the lands. The petitioners claim that even today they are in possession of said land.

In this situation, the question before this Court is whether possession of all lands was lost by the petitioners during the pendency of Writ Petition No. 3648 of 2001 or before that or then after adjudication of that writ petition. If the possession was lost before said adjudication or during the pendency of Writ Petition No. 3648 of 2001, the grievance in relation thereto could have been made in Writ Petition No. 3648 of 2001 during its pendency. If the petitioners continued in possession after said adjudication, perhaps grievance in relation thereto could not have been made in that writ petition. The construction of housing complex on lands of which possession is taken by Respondent No. 3 – Housing Board on 16.01.1991 is not in dispute. The

facts before us are not very clear. We have passed various orders in the matter to get the correct picture, however, the facts still appear to be in dispute and also doubtful. One of the contentions of the petitioners was that even area of retainable land with it is less by 1900 square meters. What prompted present writ petition or any cause after disposal of earlier writ petition is not spelt out.

The map produced by the petitioners on record shows the location of Survey Nos. 290 and 291/1 at a place which is far away from the land on which the the scheme is coming up. Hence, the petitioners may be right in contending that land Survey Nos. 290 and 291/1 have not been used for the purposes of scheme by Housing Board. However, the question will be whether its possession was then taken by the State Government and delivered to Housing Board or not ?

As we find that certain disputed questions arise and the same cannot be satisfactorily answered in this jurisdiction, particularly in the light of earlier writ petition, we grant the petitioners leave to file appropriate proceedings before the forum competent to adjudicate the disputed facts in this respect in accordance with law. The parties shall maintain status quo as on today in relation to Survey Nos. 290 and 291 for the period of three months from today. The petitioners shall in the meanwhile approach the

competent forum with suitable prayers.

With this liberty and above observations, we dispose of the present writ petition. However, in the facts and circumstances of the case, there shall be no order as to costs.

JUDGE

JUDGE

*GS.