

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 598 OF 2012

Chhaganlal Khimji and Co. Ltd. }
a company under the provisions }
of the Companies Act, 1956, }
having its registered office at }
702, Marathon Max, Junction of }
Mulund Goregaon Link Road, }
Muluna (W), Mumbai 400 080 } Petitioner

versus

1. State of Maharashtra, }
through the Principal Secretary, }
Ministry of Urban Development }
Department, Mantralaya, }
Mumbai. }

2. Additional Collector and }
Competent Authority (U. L. C.), }
Greater Mumbai, having its office }
at Administration Building, }
5th floor, near Chetana College, }
Bandra Govt. Colony, Bandra }
(East), Mumbai 400 051 }

3. Bombay Electric Supply and }
Transport Undertaking, }
an undertaking of the Municipal }
Corporation of Greater Mumbai, }
having its office at BEST House, }
BEST Marg, Colaba, }
Mumbai 400 039. }

4. Superintendent of Land }
Records, Mumbai Suburban }
District, having its office at }
Administration Building, 10th }
floor, near Chetana College, }
Bandra Govt. Colony, }
Bandra (East), Mumbai 400 051. }

5. City Survey Officer, Mulund,	}	
Topiwala College, 1 st floor,	}	
S. N. Road, Mulund (West),	}	
Mumbai 400 080	}	Respondents

Mr. Fredun Devitre - Senior Advocate with Mr. Pravin Samdani - Senior Advocate, Mr. Karl Tamboli, Ms. Bindi Dave and Mr. Raghav Gupta i/b. M/s. Wadia Ghandy and Company for the petitioner.

Mr. P. K. Dhakephalkar - Senior Advocate with Ms. Geeta Shastri - Additional Government Pleader for respondent nos. 1 and 2.

Mr. Harinder Toor with Mr. Rakesh Singh and Mr. Kunal Chheda i/b. M/s. M. V. Kini and Company for respondent no. 3.

**CORAM :- S. C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

**Reserved on 11th August, 2016
Pronounced on 27th October, 2016**

JUDGMENT :- (Per S. C. Dharmadhikari, J.)

1. This writ petition is one more instance of how the builders and developers in Mumbai target excess vacant lands vesting in the state by virtue of the Urban Land (Ceiling and Regulation) Act, 1976 by relying on the repeal thereof. Such lands in possession and taken over by the State legally and validly before the Repeal Act coming into force cannot revert back to the owners or those claiming to be in possession. These parties are

aware of this fact and do not complain but after builders and developers lure them by monetary and other benefits, such owners again seek to reopen the concluded proceedings by invoking the writ jurisdiction. The same owners then adopt a corporate name and file legal proceedings. Those behind such an entity have accepted their fate much prior to the repeal of the ULC Act.

2. Rule. Respondents waive service. By consent, Rule made returnable forthwith.

3. By this petition, under Article 226 of the Constitution of India, the petitioner is seeking the following reliefs:-

“a. that this Hon'ble Court be pleased to issue a writ of Certiorari or any other writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the constitution of India to call for the records and proceedings in respect of the proceedings before respondent no. 1 relating to the impugned order dated 23rd November, 2007, and after going into the legality and propriety thereof, quash and set aside the impugned Order dated 23rd November, 2007 [being Exhibit 'O' hereof] passed by Respondent No. 1;

b. that this Hon'ble Court be pleased to issue a writ of Certiorari or any other writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India to call for the records and proceedings in respect of the actions taken by the respondents themselves, their officers, servants, agents and/or otherwise howsoever, pursuant to the impugned Order dated 23rd November, 2007 [being Exhibit 'O' hereof] passed by Respondent No. 1, and after going into the legality and propriety thereof, quash and set aside all actions taken by the Respondents themselves, their officers, servants, agents and/or otherwise howsoever,

pursuant to the impugned Order [being Exhibit 'O' hereof] passed by Respondent No. 1”

4. In prayer clauses (c) and (d), the petitioner is seeking a writ of prohibition or any other writ in the nature of prohibition or any other appropriate writ to restrain the respondents from, in any manner, acting or taking steps in pursuance of the impugned order Annexure 'O' to the writ petition.

5. The above reliefs are claimed in the following factual background:

(i) The petitioner is claiming that at all material times, it has been a public limited company. It was originally a partnership firm of seven Trivedi brothers, namely, (i) Ghanshyam; (ii) Kantilal; (iii) pradhuman; (iv) Mahendra; (v) Bhaskar; (vi) Rajendra and (vii) Rajnikant. The petitioner is the owner of land bearing New CTS Nos. 551/13 totally admeasuring 16,898.2 square meters situate at village Nahur, Taluka Kurla, Mumbai. The present petition concerns a part of the said property bearing CTS Nos. 550/2, 3, 4, 32 admeasuring 5616.43 square meters (Plot Nos. 42 and 43)

(ii) On 30th September, 1982, an order was passed by respondent no. 2 under section 8(4) of the Urban Land

(Ceiling and Regulation) Act, 1976 (hereinafter referred to as “the ULC Act”), revising a previous draft statement and showing an area of 5616.43 square meters of plot nos. 42 and 43 of village Nahur as surplus vacant land out of the said property. The order recorded a finding that the said surplus vacant land is held by the petitioner company.

(iii) On 7th October, 1982, respondent nos. 1 and 2 claimed that the final statement under section 9 of the ULC Act was prepared and issued to the petitioner.

(iv) An appeal under section 33 of the ULC Act was filed by the seven brothers to challenge the order passed under section 8(4) of the ULC Act.

(v) On 25th March, 1985, the appellate authority dismissed the appeal and confirmed the order passed under section 8(4). The appellate authority confirmed the finding that the surplus vacant land was held by the petitioner and not by the seven brothers individually.

(vi) On 10th January, 1986, Gazette notification was issued under section 10(1) of the ULC Act notifying the intention to acquire the surplus vacant land and inviting claims of interested persons. The schedule described the

land as CTS Nos. 550/2, 3, 4, 6 and 32 (Survey Nos. 42 and 43) of village Nahur and area 5616.42 square meters.

(vii) On 9th April, 1999, after a lapse of more than 13 years from the date of the 10(1) notification, respondent no. 2 issued a notification under section 10(3) of the ULC Act declaring the surplus vacant land to be deemed to have been acquired and vested in respondent no. 1 free from encumbrances from 15th April, 1999.

(viii) In the year 2003, the petitioner learnt that a Cabinet Sub-Committee took a decision to allot the surplus vacant land to respondent no. 3 for “Bus Depot”.

(ix) On 20th October, 2003, on learning of some of the facts, the seven brothers addressed a letter to respondent no. 1 praying for a stay on the proposed handing over of the surplus vacant land to respondent no. 3 and that they be permitted to file a revision application under section 34 of the ULC Act against the said order passed under section 8(4) of the ULC Act. A stay was granted by a handwritten endorsement on the letter.

(x) On 17th August, 2004, hearing was held on the revision application filed by the seven brothers under section 34 of the ULC Act.

(xi) On 1st October, 2004, the revisional authority allowed the revision application filed under section 34 and set aside the order passed under section 8(4) of the ULC Act and the notification under section 10(3). The competent authority was directed to consider the issue of revised section 8(4) order, after taking into consideration the factors set out in the order.

(xii) By letter dated 6th October, 2004, copy of the section 34 order was forwarded to respondent no. 2 requesting him to act as directed.

(xiii) On 13th February, 2006, 28th February, 2006 and 30th March, 2007, reminder letters were sent calling upon respondent no. 1 to take necessary action in the matter as directed. No response/action was forthcoming.

(xiv) On 15th September, 2006, purported communication claimed to be issued by respondent no. 1 to the petitioner, wherein, it is stated that the petitioner's request to implement the section 34 order was not accepted as the said section 34 order was cancelled.

(xv) On or about April, 2007, the petitioner learnt that respondent no. 2 had issued a notice under section 10(5) of

the ULC Act dated 17th October, 2006 purporting to inform the petitioner that possession of the surplus vacant land would be taken over on 30th October, 2006 at 2.30 p.m. This notice was sent to a wrong address, namely, 300, Maulana Azad Road, Mumbai 400 004. No such notice was received by the petitioner at the relevant time.

(xvi) On 30th October, 2006, a panchanama was purportedly prepared to show as if possession of surplus vacant land was purportedly taken over by respondent no. 2 at 2.30 p.m.

(xvii) On 30th October, 2006, a possession receipt was purportedly prepared to show that possession of the surplus vacant land was purportedly handed over to respondent no. 3 at 2.30 p.m. There is no possession receipt showing that possession was taken from the petitioner.

(xviii) On 23rd April, 2007, the officers of respondent no. 3 visited the said property claiming to have been allotted the surplus vacant land. The petitioner then learnt of some of the above events.

(xix) On 23rd April, 2007, the petitioner immediately addressed a letter to respondent no. 3, *inter alia* referring to the section 34 order and disputing the legality of the section 10(5) notice and calling upon respondent no. 3 to refrain from trespassing upon the petitioner's property.

(xx) On 30th April, 2007, earlier Writ Petition No. 1170 of 2007 was filed by the petitioner and others to challenge the section 10(5) notice dated 17th October, 2006 and for other reliefs.

(xxi) On 19th July, 2007, in its affidavit in reply, respondent no. 3 contended that the section 34 remand order was superseded by another order, which had been communicated to the petitioner by a letter dated 15th September, 2006. This court, by its order dated 19th July, 2007, directed the respondents to place the order on the record of the court and give a copy to the petitioners.

(xxii) On 26th July, 2007, this court disposed of Writ Petition No. 1170 of 2007, *inter alia*, recording the petitioner's grievance that the order dated 17th October, 2006 (section 10(5) notice) was based on an order dated 15th September, 2006 recalling the section 34 order. This court held that

the section 34 order was set aside on 15th September, 2006 and the impugned order issued in pursuance thereof was without granting any opportunity of being heard to the petitioner, who claims to be in possession of the property in dispute. The court held that it was necessary to hear the petitioner before withdrawing the benefits which accrued to them in terms of the section 34 order, even if the said order was, as alleged, passed without jurisdiction. In the circumstances, the competent authority was directed to hear the parties and pass an appropriate order within four weeks and that the order so passed shall be implemented and possession given to the beneficiary within two weeks thereafter. Status quo was ordered and it was directed that none of the parties would be entitled to claim any benefit in equity for possessory or constructive rights in the property.

(xxiii) On 13th August, 2007, the then Chief Minister Mr. Vilasrao Deshmukh, acting as the competent authority, held a hearing in the matter, pursuant to the above order of this court.

(xxiv) On 19th August, 2007, the time of four weeks granted by this court to the competent authority to pass an appropriate order expired. No order was passed by the

competent authority within the time granted by this court. No application was made by the competent authority to this court for extending the time to pass the order.

(xxv) On 23rd November, 2007 the then Chief Minister passed order purporting to exercise power of review/further revision and set aside the section 34 order, confirmed the decision to allot the land to respondent no. 3 and instructed in the letter dated 24th November, 2003 to give possession of the land to respondent no. 3.

(xxvi) On 29th November, 2007, the ULC Act was repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as “the Repeal Act”).

(xxvii) On 7th January, 2008, respondent no. 3 addressed a letter to the petitioner stating that the order dated 23rd November, 2007 confirmed the allotment of the land to respondent no. 3 and calling upon the petitioner to vacate the area, remove the temporary constructions and handover vacant and peaceful possession to respondent no.3.

(xxviii) On 31st January, 2008, the petitioner, through its advocate's letter, replied to the aforesaid letter, denying

respondent no. 3's demand to give possession, questioning the legality of the order dated 23rd November, 2007, recording that the same was received after the repeal of the ULC Act and reasserting the undisputed position that possession of the said land had been and continued to be with the petitioner and the demand for handing over possession was contrary to law. In the circumstances, respondent no. 3 was informed that its claim for giving possession of the land was unjustified and respondent no. 3 was called upon to refrain from making any such claim.

(xxix) On 5th February, 2008, respondent no. 3 addressed a letter to the petitioner enclosing the order dated 23rd November, 2007 and seeking removal of the temporary construction and giving vacant possession to respondent no. 3.

(xxx) On 21st April, 2008, respondent no. 2 sent letters to various authorities annexing a list of surplus vacant lands of Kurla taluka (including village Nahur) in respect of which proceedings under sections 20, 21, 10(3) and 10(5) of the ULC Act were completed. The said land is not included in the list of surplus vacant areas.

(xxxi) On 30th January, 2009, respondent no. 3 sent letter to the petitioner attempting to change its stand. Respondent no. 3 now sought to claim that it was in possession of the plot through respondent no. 1 under the ULC Act since 30th October, 2006 and that the order dated 23rd November, 2007 retained possession of the land with respondent no. 3. The letter called upon the petitioner to carry out fencing of the plot, failing which, it would be done by respondent no. 3 with police help.

(xxxii) In March, 2009, the petitioner filed applications under the provisions of Right to Information Act, 2005 (RTI) with respondent nos. 1 and 2 inquiring as to what steps have been taken by the Government pursuant to the order dated 23rd November, 2007.

(xxxiii) On 30th March, 2009, 24th April, 2009 and 11th May, 2009, respondent nos. 1 and 2 replied to the RTI applications stating that no other order was passed after 23rd November, 2007 and no new orders passed under section 8(4), 10(3) or 10(5) of the ULC Act, hence, question of giving of fresh possession did not arise.

(xxxiv) On 12th May, 2010, pursuant to the judgment of

this court in the case of *Voltas Ltd. vs. Additional Collector*¹, respondent no. 1 issued directives to the concerned authorities to implement the Repeal Act and to delete the name of the Government from the record of rights in respect of lands whose possession had not been taken prior to 29th November, 2007 with consent, or where one-sided (unilateral) possession was taken.

(xxxv) On 2nd February, 2012, four years after the order dated 27th November, 2007, respondent no. 3 attempted to take forcible physical possession of the said area. At 2.30 p.m., officers of respondent no. 3 with approximately 100 staff members armed with gas cutters, attempted to forcibly cut the gates to the said property and forcibly entered thereupon. The petitioner successfully resisted this forcible attempt with the aid of local police officers.

(xxxvi) The petitioner lodged a complaint with the local police station.

(xxxvii) The petitioner, pursuant to RTI applications, subsequently learnt that (i) by letter dated 31st January, 2012, respondent no. 3 requested respondent no. 5 to

¹ 2008(5) Bom. C. R. 746

depute its officers to identify the boundaries of the surplus vacant land on 2nd February, 2012 at 10.30 a.m. and (ii) by letter dated 3rd February, 2012, respondent no. 5 directed respondent no. 3 to first obtain an allotment order from the Government stating that the area has been allotted to respondent no. 3.

6. This writ petition was filed and moved before a Division Bench of this court on 17th February, 2012. This court, on hearing the parties, passed the following order:-

“1. Not on Board, mentioned and, therefore, taken on Board.

2. Heard.

3. Issue notice before admission, returnable on 22nd February, 2012. The learned AGP waives service for the Respondent-State.

4. Mr. Anchan, the learned Counsel for the Respondent No. 3-B.E.S.T., waives service and states that Respondent No. 3-B.E.S.T. Shall not take any steps for taking over possession of SVL till 22nd February, 2012.”

7. Thereafter, this ad-interim order was continued and parties were directed to grant inspection of documents relied upon by them and thereafter, the matter appeared on board from time to time, but for some reason or the other, it could not be taken up. Thereafter, both sides agreed that this matter deserves to be disposed of finally at the stage of admission. That is how we heard them extensively on 22nd June, 2016. On that date, leave

to amend was sought to incorporate additional grounds, which also came to be granted.

8. The affidavits filed in reply now need to be referred. There are three affidavits filed on behalf of the State.

9. The first affidavit in reply is by the Maintenance Surveyor and the second is by the City Survey Officer.

10. Both the affidavits have been filed on 11th April, 2012.

11. In the first affidavit filed, the Maintenance Surveyor merely states that the possession of the surplus vacant land, more particularly described above, has been taken on 30th October, 2006 and that is evidenced by the panchanamas, copies of which are at Exhibits 1 and 2. Then, it is stated that the second respondent sent a copy of the notice issued under section 10(5) of the ULC Act to the City Survey Officer, Mulund, along with demarcated map, for the purpose of taking possession of the above land. The same was received in the City Survey Office on 10th October, 2006. Thereafter, the matter was assigned to that office for the purpose of taking possession. That is how the possession was taken.

12. The City Survey Officer files an affidavit with regard to the entries in the property card and justifies the making of the same. Then, in para 7 of this affidavit, the said officer has stated as to how the surplus vacant land was taken over, meaning thereby, the possession thereof was obtained. It then states that the Government of Maharashtra had authorised the City Survey Officer, Nahur to take possession of this land and thereafter, it should be handed over to the Deputy Superintendent of the Bombay Electricity Supply and Transport (Estate), Mumbai (BEST).

13. There is an affidavit filed in reply by the Additional Collector and Competent Authority, in which, apart from raising the questions of delay and non maintainability of the writ petition for it involves disputed questions of fact, it is confirmed in para 4 that the possession of the surplus vacant land was taken on 30th October, 2006 pursuant to the notice dated 17th October, 2006. The possession thereof has been handed over by respondent no. 5 to respondent no. 3 on 30th October, 2006. Then, the affidavit, to the extent relevant, states thus:-

“5. Without prejudice to what is stated above, the Petitioner through Mr. Ghanshyamdas H. Trivedi, in the capacity of Director, Chaganlal Khimji and Co. Ltd. had filed a statement under section 6(1) of the Urban Ceiling Act, 1976, on 13.8.1976 with the Respondent No. 2. I say that thereafter draft statement alongwith Notice under section 8(3) of the ULC Act, was issued to the Petitioner

through Mr. Ghanshyamdas H. Trivedi, Director of the petitioner. After hearing the petitioner, an Order dated 30.9.1982 was issued under section - 8(4) of the ULC Act and the same was communicated to the Petitioner on 30.9.1982. A copy of the Order dated 30.9.1982 is annexed as Exhibit 'B' at Page 42 to the petition.

6. I say that thereafter, final statement under section 9 of the ULC Act was prepared and issued to the petitioner on 7.10.1982. I say that the Petitioner filed an Appeal under section 33 of the ULC Act, challenging the Order dated 30.9.1982 issued under section 8(4) of the ULC Act, before the Appellate Authority and Additional Commissioner, Konkan Division. The said Appeal was dismissed on 25.3.1985, wherein the Order dated 30.9.1982 passed under section 8(4) of ULC Act by Respondent No. 2 was confirmed. The same had become final and conclusive in view of the provision of ULC Act.

7. I say that after dismissal of the Appeal on 25.3.1985, the Respondent No. 2 issued Notification dated 10.1.1986 under section 10(1) of the ULC Act, in respect of the surplus vacant land admeasuring 5616.43 sqm. Of plot No. 42, 43 having C.T.S. Nos. 550/2, 3, 4, 32, 550/6 part of the village Nahur, Mumbai. The said Notification under section 10(1) was published in the Government Gazette on 23.1.1986. A copy of the said Notification is annexed as Exhibit 'C' at Page 46 of the petition.

8. I say that thereafter Notification under section 10(3) of the ULC Act dated 9.4.1999 was issued and the same was published in the Government Gazette on 19.4.1999, whereby the surplus vacant land admeasuring 5616.43 sq.m. Of the plot No. 42, 43 having CTS No. 550/2, 3, 4, 550/6 part of the village Nahur, Mumbai had vested in the State Government. I say that after the surplus vacant land vested in the State Government under section 10(3) of the ULC Act, the Respondent No. 2 issued Notice dated 17.10.2006 under section 10(5) of the ULC Act to the Petitioner for handing over possession of the aforesaid surplus vacant land to Government. The said Notice under section 10(5) of the ULC Act was issued on the Petitioner and subsequently the possession was taken.

9. I say that the Respondent No. 1 by letter dated 29.11.2003, directed the Respondent No. 2 to hand over the possession of the land to BEST, as the same has been allotted to them for public purpose. Hereto annexed and marked as **EXHIBIT '3' AND '3A'** are the copies of the

letter dated 29.11.2003 along with English translation. I say that Mr. Ghanshyamdas H. Trivedi along with the other family members made an application dated 20.10.2003 to the Respondent No. 1 to stay the handing over of possession of the surplus vacant land to BEST and give them opportunity to file revision under section 34 of the ULC Act. On the said application Report was called by Respondent No. 1 addressing letter dated 12.11.2003 to Respondent No. 2. The Respondent No. 2 by letter dated 19.11.2003 submitted Report to Respondent No. 1 except this no stay order communicated to Respondent No. 2. In the meantime, Mr. Ghanshamdas H. Trivedi and Others filed revision under section 34 of the ULC Act, by letter dated August, 2004 and the same was put up before the Respondent No. 1. Thereafter the Hon'ble Chief Minister had directed that the same to be placed before the Minister of State.

.....

11. I say that in the meanwhile, the Petitioner through G. H. Trivedi and Ors on August 2004 filed Revision under Section 34 of the ULC Act, before the Chief Minister and Ministry of State, Urban Development (ULC) challenging the order dated 30.9.1982, issued under section 8(4) of the ULC Act and Notification dated 9.4.1999 issued under Section 10(3) of the ULC Act. I say that the said revision application was decided on 1.10.2004, whereby the matter was remanded to the Respondent No. 2 to consider the request of the Petitioner for allowing seven ceiling shares to the co-owners and also to consider the permission granted by the MCGM for changing reservation from industrial to residential. It was also directed to consider the reservation meant for ground and other reservation as well as the area which are covered under the exemption order dated 15.02.1979 issued under Section 20 of the ULC Act.

12. I say that the Petitioner has challenged the order passed u/s. 8(4) of the ULC Act dated 30.9.1982 which was confirmed in Appeal on 25.3.1985. the Appellate Authority u/s. 33, in its order dated 25.3.1985, elaborated the finding as to why the Petitioners are not entitled for seven ceiling shares and their request for grant of seven ceiling shares cannot be considered. The Petitioner is a Limited Company incorporated under the Companies Act and is only entitled to retain the only area limit of 500 sq. mtrs. And cannot get seven ceiling shares. The order dated 25.3.1985, whereby the appeal of the Petitioner was

dismissed under Section 33 of the ULC Act and order dated 30.9.1982 under section 8(4) of ULC Act was confirmed, had become final. The Revision u/s. 34 was filed in August 2004 by Ghanshyam H. Trivedi and others not by the Petitioner company decided on 1.10.2004. The order of remand dated 1.10.2004 under Section 34 passed after a period of 19 years was not implemented as the file was with the State Government for scrutiny in view of the fact that after appeal being filed under Section 33 of ULC Act, against order dated 30.9.1982 u/sec. 8(4) of ULC Act, the remedy of Revision u/s. 34 was not available to Mr. Ghanshyam H. Trivedi. A copy of the order dated 1.10.2004 is annexed as Exhibit "F" at Page 52 of the petition.

13. I say that as per the order dated 15.9.2006 by Respondent No. 1, the order dated 1.10.2004 passed by the Minister of State, ULC, has been cancelled and recalled by the State Government. The said order was communicated to the Petitioner by letter dated 15.9.2006. I say that copy of the letter issued by ULC on 15.9.2006 was also sent to the office of the Respondent No. 2 with a direction to take possession of the said surplus vacant land and hand it over to the BEST. The said letter was communicated to the Petitioner by letter dated 15.9.2006 which is annexed as Exhibit "H" at page 62 to the petition. The same was in reply to the application made by the Petitioner by letter dated 28.6.2006. A copy of the said application dated 28.6.2006 is hereto annexed and marked as **EXHIBIT 4**. Accordingly, notice under Section 10(5) was issued on 17.10.2006 for taking possession of the surplus vacant land on 30.10.2006. Accordingly, the possession was taken on 30.10.2006 and immediately, the surplus vacant land was handed over to the BEST on 30.10.2006 as stated above. In the month of April 2007, Mr. Ghanshyamdas H. Trivedi, through his Power of Attorney holder Mr. Mayur Shah filed Writ Petition No. 1170 of 2007 challenging the notice dated 17.10.2006 passed under Section 10(5) of the ULC Act. In the said Writ Petition, it was not specifically contended that the notice under Section 10(5) was not served on the Petitioner, who was the Petitioner No. 7 in Writ Petition No. 1170 of 2007. In the said Writ Petition, the State Government has filed an Affidavit dated 24.7.2007 in which it has been clearly stated that pursuant to the Notice dated 17.10.2006, possession of the surplus vacant land was taken by the Respondent No. 5 on behalf of Respondent No. 2 and the same was handed over to the Respondent No. 3 on 30.10.2006. Hereto annexed and

marked as **EXHIBIT "40-A"** is a copy of the said Affidavit dated 24.7.2007. In the said petition, the petitioner did not pray for possession, though possession is already been taken by Respondent as stated above on 30.10.2006. After hearing the parties, the Hon'ble Court by order dated 26.7.2007, directed the Competent Authority to hear the Petitioner, Respondent No. 3 as well as the Collector and pass appropriate order within 4 weeks without setting aside the Notice dated 17.10.2006, without directing that possession should be restored. A copy of the said order is annexed as Exhibit "N" at page 77 to the petition.

14. In view of the said order dated 26.7.2007, the Respondent No. 1 passed an order dated 23.11.2007 after hearing the Petitioner. A copy of the said order dated 23.11.2007 is annexed as Exhibit "O" at page 87 along with English translation. By order dated 23.11.2007, the Respondent No. 1 has recalled and cancelled the order 1.10.2004 issued by the Minister of State, ULC. I say that the order dated 23.11.2007 was communicated to Mr. Ghanshyamdas H. Trivedi, of the Petitioner on 23.11.2007 as stated above. I say that the order dated 23.11.2007 was also received by the Respondent No. 2 on 29.11.2007 and was received by Respondent No. 3 on 30.11.2007. Hence, the contention of the Petitioner in paragraph 3.23 that the impugned order dated 23.11.2007 was dispatched by the Respondent No. 1 on 18.12.2007 and served on the Petitioner on 26.12.2007 is not correct. I say that the Petitioner inspite of being aware of the order dated 23.11.2007, has not challenged the same before filing of the petition. I say that the ULC Act was repealed on 29.11.2007 and the order dated 23.11.2007 was communicated to the Petitioner, prior to the Repeal Act, which was to come into force from the date of publication in the Official Government Gazette."

14. These are the three affidavits filed on behalf of the respondent State and its officials. There is an affidavit filed by the BEST.

15. There is an affidavit in rejoinder, which is filed on behalf of the Petitioner and that is to be found from pages 267 to 304 of the paper book. We are concerned with one crucial aspect of the

matter, firstly, about possession and in that regard, in this rejoinder affidavit, in paras 11, 24, 27 and 28, this is what is stated:-

“11. With reference to paragraph 3(D) of the Reply, I deny that the captioned Writ Petition is bad in law, or that it suffers from delay or laches, as alleged or at all. I further deny that the captioned Writ Petition is belatedly impugning any order. Respondent No. 1 failed to follow the clear mandate set out by this Hon'ble Court to hear and decide the issue within 4 [Four] weeks from 26th July, 2007. The said period lapsed on 23rd August, 2007, and thereafter, Respondent No. 1 became *functus officio* and could not have only acted in the matter. Admittedly, it did not apply for, or obtain any extension of time from this Hon'ble Court for completing the proceedings. The said Impugned Order dated 23rd November, 2007 is illegal. In any event, the Impugned Order was dispatched by Respondent No. 1 only on 18th December, 2007 and served on the Petitioner on 26th December, 2007 i.e. both after the ULC Act was repealed with effect from 29th November, 2007. The proceedings before Respondent No. 1 lapsed as per the ULC Repeal Act. I submit that the Petitioner had made this stand clear to Respondent No. 3 by its letter dated 31st January 2008. Even thereafter, Respondent No. 3 did not take any steps to implement the Impugned Order, being fully aware that the Act was repealed and the said Order had lapsed. Respondent No. 3 belatedly tried to forcibly and illegally take possession of the land only on 2nd February 2012, compelling the Petitioner to file this Petition immediately. There is absolutely no delay on the part of the Petitioner nor has the Petitioner been slack or negligent of its rights as is clear *inter alia* from the following:-

- a. vide the letter dated 31st January, 2008 addressed by the Advocates of the Petitioners, the Petitioner had made it clear to Respondent No. 3 that on account of the repeal of the ULC Act, the claim of Respondent No. 3 over the said land was unjustified;
- b. pursuant to the enquiries made by the Petitioner under the Right to Information Act, upon learning of the letter dated 20th August, 2011 addressed by Respondent No. 4 to Respondent No. 5, and upon learning of the entry made in the property card of the said property,

the petitioner filed an appeal before the Deputy Director of Land Records, Konkan Division, Mumbai challenging the said letter, which appeal was disposed off with the matter remanded back to Respondent No. 4;

c. the Petitioner also addressed a letter dated 22nd July, 2011 to Respondent No. 2 to issue necessary directions for the decision of the name of Respondent No. 1 from the property card of the said Property; and

d. having received no reply, the Petitioner addressed a reminder letter dated 10th December, 2011;

Having regard to the facts of the present case, Respondent No. 3's allegation of delay and laches based on references to the Order dated 30th September, 1982 under section 8(4), Order dated 25th March, 1985 under section 33, or Notification under section 10(30 dated 9th April, 1999 are completely unfounded and misleading. I deny that any of the Respondents ever took possession of the purported SVL or that the same was effected several years prior to the filing of the captioned Writ Petition. I repeat and reiterate that the Petitioner came to know of the Impugned Panchanama and Impugned Possession Receipt only on 23rd April, 2007, when person claiming to be the representatives of Respondent No. 3, alleging that it had been allotted the said land, visited the said Property for the first time. The Petitioners legally, lawfully and legitimately protected their rights and possession of the said land. There was no question of dispossessing Respondent No. 3 on that date as it had never previously been in possession. The ULC Act was repealed with effect from 29th November, 2007 in the State of Maharashtra. At that time possession had not been taken by any of the Respondents. The Petitioner believes that in light of the proceedings before Respondent No. 1 having abated by law, no future proceedings could legally be taken by the Respondents. The Petitioner was and continues to be in lawful possession of the said land Shockingly, on 2nd February, 2012 certain officers of Respondent No. 3 attempted to forcibly enter upon and take possession of the alleged surplus land and therefore the Petitioner was compelled to file the captioned Writ Petition to protect its rights. In the circumstances, the Petitioner is impugning the Panchanama and Impugned Possession Receipt purportedly dated 30th October, 2006. I deny that there is any delay on the part of the Petitioner or that the same impairs or vitiates the Petition or the case made out therein by the Petitioner.

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24. With reference to paragraph 37 of the Reply, I deny that the partners were ever informed that the order dated 1st October 2004 had been cancelled by the Respondent No. 1, or that any letter dated 15th February 2005 was addressed to them in that regard. The alleged "cancellation", if any, was ex-facie illegal and void. The Petitioner is not aware of any such letter. None of the Respondents, including the Respondent No. 3 have ever produced any such letter on record. Moreover, when the Respondent No. 3 was called upon by the Petitioner's Attorneys to produce all documents referred to in the Reply, the Advocates for the Respondent No. 3 have accepted that Respondent No. 3 does not have any such letter by stating that the only documents available with them are those which are produced in the Respondent No. 3's compilation of documents. Thus the Respondent No. 3 accepts that it does not have any such letter dated 15th February 2005. No inspection thereof has been given to the Petitioner. Reliance on as such an alleged non-existent letter cannot be countenanced.

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27. With reference to paragraph 40 of the Reply, I repeat and reiterate that the letter dated 15th Sept, 2006 was never addressed to the Petitioner or the partners/owners. The Petitioner only subsequently came to know of the same. I deny that Respondent No. 1 by letter dated 15th September, 2006, referring to letter dated 28th June, 2006 duly informed the Petitioner that the request made therein by the Petitioner was not acceptable to Respondent No. 1 in light of the cancellation of the order dated 1st October, 2004. The said letter dated 15th September, 2006 was never received by the Petitioner. Even Respondent No. 2 claims to have received it only on 19th October, 2006.

28. With reference to paragraph 41 of the Reply, I deny that the Impugned Notices were received by the Petitioner, through its purported Director, Ghanshyam Trivedi at 300, Maulana Azad Road, Mumbai - 400004, as alleged or at all. The Impugned alleged Notice was obviously issued to the wrong address. The Petitioner never received the same. I deny that the purported address was provided by the Petitioner to Respondent No. 1, as alleged or at all. The Notifications dated 10th January, 1986 and 9th April, 1999 respectively, are claimed to have been issued to the erstwhile owners and not on the Petitioner. There is no

question of the Petitioner being estopped from disputing the address to which the aforesaid notifications were issued, or that the Petitioner ought not or should not be allowed to controvert the purported address. It is not even shown that the copies of the letter claimed to be addressed to other authorities were received by those authorities. Bald assertions in this regard are not of any value.”

16. It is on the above material that we heard the learned counsel appearing for the parties.

17. Mr. Devitre learned senior counsel appearing for the petitioner submits that the impugned order is contrary to law. The impugned order has resulted in grave miscarriage of justice. Mr. Devitre would submit that it is void and of no legal effect. Mr. Devitre relied upon the facts and circumstances narrated above to submit that there was no final statement under section 9 of the ULC Act ever served on the petitioner. In fact, as far as it is aware, no final order under section 9 of the ULC Act was passed and nothing has been placed on record. Mr. Devitre would submit that the claim of the authorities is that there is certain piece and parcel of land, which is excess vacant land and covered by the Act. However, in the absence of a final statement, there is no justification for this conclusion. Mr. Devitre highlighted before us that there is a public limited company before us. It was originally a partnership firm of seven brothers. However, once the ownership vests in the limited company, then, that legal entity should alone be determined as the owner. Mr. Devitre would

submit that all the proceedings under the Principal Act, including the dismissal of the appeal against the order passed under section 8(4) of the ULC Act are not conclusive and can never be said to be binding on the distinct legal entity. Apart therefrom, it is clear that the petitioner is not aware of a notification under section 10(1) of the ULC Act notifying intention to acquire this land and inviting claims of interested persons. Additionally, it is evident that after lapse of 13 years from the date of the alleged notification under section 10(1), notification under section 10(3) of the ULC Act was issued and this surplus vacant land is deemed to have been acquired and vested in the Government free from all encumbrances from 15th April, 1999. Even this notification is not to the knowledge of the petitioner nor is it aware of it. The petitioner was further shocked to learn that a Cabinet Subcommittee took a decision to allot this land to respondent no. 3 to the present writ petition for bus depot. However, there is no allotment order. There is a letter, on which respondent no. 3 relies upon and dated 29th November, 2003. However, this letter cannot be styled and termed as an allotment order. The decision to allot if at all was without any physical identity or demarcation of this land at site. It is only after nine years of the so called allotment that the third respondent requested the City Survey Officer to come to the site to demarcate the area. By letter dated

3rd December, 2012, the City Survey Officer declined to do so and insisted on respondent no. 3 producing the allotment order.

18. The petitioner states that it is only after learning of the alleged allotment that the seven brothers addressed a letter to the first respondent praying for a stay of the proposed handing over of the land to respondent no. 3. They requested for permission to file a revision application against the order passed under section 8(4) of the ULC Act. Mr. Devitre submits that on this letter, a handwritten endorsement is made and that is how the petitioner terms this as stay of further proceedings. Thereafter, there was a hearing on this revision application and finally it was allowed on 1st October, 2004. This order sets aside all the proceedings leading to the notification under section 10(3) of the ULC Act. The competent authority was directed to consider a revision of the statement/order under section 8(4) after taking into consideration the relevant factors referred in the revisional order. Thereafter, the competent authority was requested to act in terms of this order and several reminders were issued. Suddenly, this competent authority claimed to have issued a communication to the petitioner, stating that the petitioner's request to implement the order passed under section 34 of the ULC Act was not acceptable, as that order stood cancelled.

Mr.Devitre submits that this so called cancellation can never bind the petitioner for before any cancellation or withdrawal was effected, the petitioner should have been issued a notice and should have been heard. That has not, admittedly, happened. In any event, Mr. Devitre would submit that this letter dated 15th September, 2006 was very much on record of this court in Writ Petition No. 1170 of 2007 (prior writ petition). It was indeed referred in the affidavit in reply of the third respondent. That order dated 15th September, 2006 cannot be relied upon once this court directed the competent authority to act in terms of its own order dated 26th July, 2007 passed in the earlier writ petition.

19. Alternatively and without prejudice, it is submitted by Mr.Devitre that an order under section 34 of the ULC Act was validly passed and in exercise of the revisional jurisdiction of the State. That cannot be reviewed in the manner done. The Principal Act did not confer any power of review. It is well settled that power of review is a creature of a statute and is not implied. It can never be assumed or inferred. In such circumstances, the entire exercise and by relying upon the communication dated 15th September, 2006 cannot bind the petitioner. The petitioner could have been deprived of its lawful possession of the subject land only by a process known to law. Everything has been done behind

the back of the petitioner, including the drawing of the so called panchanama evidencing the land being taken over. In any event, this panchanama cannot be said to be a legal, valid and binding document. It does not bear the signature of any officer of respondent no. 2. There is no possession receipt showing that possession was taken from the petitioner. The possession was not taken in terms of section 10(5) of the ULC Act. The possession cannot be taken before the expiry of the period of 30 days.

20. Mr. Devitre then criticises the attempt by respondent no. 3 in seeking to demonstrate and prove that the petitioner was dispossessed on 23rd April, 2007. The petitioner cannot be dispossessed by respondent no. 3 and respondent no. 3 cannot be heard to say anything about the proceedings under the ULC Act or its alleged conclusion by taking over the possession. In these circumstances and in any event, by the order passed by this court in the earlier writ petition, all prior measures cannot be said to be binding. Mr. Devitre heavily relied upon the order passed by this court on 26th July, 2007 in the earlier writ petition. Mr. Devitre submits that this order sets aside the cancellation or withdrawal of the order passed under section 34 of the ULC Act. It also sets at naught the proceedings stated to have been concluded by the possession being taken over from the petitioner on 30th October,

2006. It is clear that after this court's order in the earlier writ petition, the State purported to comply with it. The compliance by the State of this order does not enable it to defeat the mandate of the Repeal Act. If possession of the land vesting in the State has not been taken over prior to the Repeal Act coming into force in the State of Maharashtra, then, all proceedings under the Principal Act lapse and the land reverts back to the petitioner. The Chief Minister of the State of Maharashtra, who was the then Urban Development Minister as well could not have passed an order after the Principal Act was repealed in the State. It is claimed that the order was passed on 23rd November, 2007. However, this so called order remained in the file and was never communicated to the petitioner. In fact, it was despatched through post on 18th December, 2007 and received by the petitioner on 26th December, 2007. This is much after the repeal of the Principal Act in the State and which is effective from 29th November, 2007. In these circumstances, the State and the competent authority could not have fallen back on the Principal Act, which stood repealed. The petitioner was in possession of the land on the date the Repeal Act coming into force. For all these reasons, Mr. Devitre would submit that the writ petition be allowed.

21. Mr. Devitre highlighted as to how all steps taken prior to the order passed in the earlier writ petition are non-est. Everything must be considered in the backdrop of the order of this court in the earlier writ petition. The mandate of this order and direction is that a fresh round ought to commence and if that is permissible. Apart from pointing out that the so called review was not justified and permissible in law, Mr. Devitre submits that the order passed under section 34 of the ULC Act may have been passed after a considerable time, but still, that power could have been invoked by the petitioners. The notification under section 10(3) is dated 9th April, 1999. Therefore, the revisional order dated 1st October, 2004 cannot be said to be belated or the exercise of that jurisdiction cannot be termed as barred by delay and laches. The petitioner was not aware of any of the proceedings under the Principal Act. Hence, the petitioner cannot be said to be responsible for delaying the matters. In any event, the revisional order passed by the State was not void. At best, it can be said to be irregular exercise of jurisdiction. The State should have resorted to legal proceedings to have it set aside. The appropriate legal proceedings were never initiated. The State cannot, therefore, proceed to ignore the revisional order and by a unilateral recall of the same. Thus, even if the order was void or alternatively irregular, the same could have

been set aside only in appropriate legal proceedings. Those legal proceedings having not been initiated, the purported review of the same on 15th September, 2006 cannot be sustained. That order does not revive the proceedings under the Principal Act. If those proceedings are not revived, then, the notice under section 10(5) could not have been issued and calling upon the owners to handover possession of the premises. Once everything is based upon the order dated 15th September, 2006 and it is stillborn, then, all the actions impugned in the writ petition be declared as null and void so also not binding on the petitioner. Alternatively, the notice under section 10(5) does not enable the respondents or the competent authority to take possession before the expiry of 30 days as stipulated therein. The purported possession has been taken and assuming that to be valid before the expiry of period of 30 days and to be precise in 13 days of issuance and service of the notice, therefore, the possession cannot be said to be obtained in accordance with law. Hence, the petitioner is entitled to the relief of restoration of its land. The petitioner submits that as on the date of the repeal, it was in legal and valid possession of the immovable property. The order passed in revision under section 34 being operative, nothing prior to it gets revived. However, assuming that even that order does not survive and all proceedings up to the stage of issuance of the notice under section

10(5) and concluded by the respondents are legal and valid, still, the possession has not been taken over in accordance with law, full effect must be given to the Repeal Act. It must be allowed to operate and run its course.

22. Finally, Mr. Devitre would submit that the order passed by the State Government in pursuance of the directions of this court in the earlier writ petition does not affect the operation of the Repeal Act. Though the State's order is claimed to have been passed on 23rd November, 2007 that is prior to the Repeal Act coming into force in the State of Maharashtra, still, that order remained in the file and on paper. Any order of the State Government, to be legal and valid so also binding, must be communicated to the affected party. This order was not communicated to the petitioner until the Repeal Act coming into force. Once the order was not passed within four weeks from the date of the directions of this court, then, in any event, it is not legal and binding. Its communication is much beyond the Repeal Act and sometime on 18th December, 2007. Hence, that order cannot be said to be binding on the petitioner nor does it halt or interfere with the operation of the Repeal Act. When that Act applies, everything falls to the ground. Therefore, Mr. Devitre would submit that on the main as also the alternate contentions, the writ petition deserves to be allowed.

23. Mr. Devitre has relied upon the following judgments and decisions:-

- (i) State of Punjab and Ors. vs. Gurdev Singh, (1991) 4 SCC 1.
- (ii) Tatyabbhai M. Bagasarwalla and Anr. vs. Hind Rubber Industries Pvt. Ltd. and Ors., (1997) 3 SCC 443.
- (iii) Krishnadevi Malchand Kamathia and Ors. vs. Bombay Enviornmental Action Group and Ors., (2011) 3 SCC 363.
- (iv) Anita International vs. Tungabadra Sugar Works Mazdoor Sangh and Ors., 2016 SCC Online SC 655.
- (v) Dr. (Smt.) Kuntesh Gupta vs. Management of Hindu Kanya Mahavidyalaya Sitapur (U. P.) and Ors., (1987) 4 SCC 525.
- (vi) R. R. Verma and Ors. vs. Union of India and Ors., (1980) 3 SCC 402.
- (vii) Kausalyabai wd/o Natthu Paraskar and Ors. vs. Ramchandra Satbaji Patekar, 1995(2) Mh. L. J. 913.
- (viii) State Bank of India and Ors. vs. S. N. Goyal, (2008) 8 SCC 92.
- (ix) State of Punjab vs. Amar Singh Harika, AIR 1966 SC 1313.
- (x) Greater Mohali Area Development Authority and Ors. vs. Manju Jain and Ors., (2010) 9 SCC 157.
- (xi) Bachhittar Singh vs. State of Punjab and Anr., AIR 1963 SC 395.
- (xii) State of Uttar Pradesh vs. Hari Ram, (2013) 4 SCC 280.
- (xiii) Voltas Ltd. and Anr. vs. Additional Collector and Cometent Authority and Ors., 2008(5) Bom. C. R. 746.

24. On the other hand, Mr. Dhakephalkar learned senior

counsel appearing for the respondents, particularly the State and the competent authority handed in a synopsis of the dates and events, which, according to him, would falsify all the contentions of Mr. Devitre. Mr. Dhakephalkar would submit that the writ petition has no merit and must be dismissed.

25. Mr. Dhakephalkar submits that this is one more writ petition in the line of such petitions disposed of by this court.

26. He would submit that the attempt is to some how grab a land which already vests in the State. Mr. Dhakephalkar submits that all the proceedings under the Principal Act are concluded in accordance with law. It is too late in the date and to contend in a writ petition filed in the year 2012 that the physical possession of the land is with the petitioner. Mr. Dhakephalkar submits that the petitioner is conveniently not disclosing as to how it claims to be in possession of the subject land. He invites our attention to the paragraphs in the writ petition. Mr. Dhakephalkar submits that a public limited company has filed the writ petition. This public limited company's predecessor in title was a partnership firm comprising of brothers. These brothers were co-owners of the excess vacant land as on the date of coming into force of the Principal Act, namely, 17th February, 1976. Presently, the petitioner claims to be the owner of the immovable property. The

petition originally was affirmed by one of the directors. That director is deposing to the facts that the erstwhile owners took the steps to comply with the provisions of the Act. However, in para 3.2, it is stated that it is the petitioner who took steps as enumerated therein as on 13th August, 1976. One of the steps is to make an application claiming exemption under section 20 of the ULC Act. The petitioner states that the application for exemption was granted and relies on an order dated 15th February, 1979 pertaining to the land admeasuring 11454.57 square meters bearing Survey No. 119(part), 120/1, 122, 126(part) and 129/1 of village Nahur. The petitioner is aware that on 30th September, 1982, an order came to be passed under section 8(4) of the ULC Act excluding the exempted land from the computation of surplus or excess vacant land. Mr. Dhakephalkar relied upon the original records, which were directed to be produced and which would reveal that since the property was held by seven brothers as co-owners, their shares were apportioned and the second respondent proceeded to hold that the petitioner and erstwhile owner is allowed with a single unit. The petitioner is aware that an area admeasuring 5616.43 square meters from and out of the said property was declared as excess vacant land. The petitioner is aware that an order of the above nature was challenged in an appeal by the erstwhile owner and

that appeal is traceable to section 33 of the ULC Act. The appellate authority dismissed the appeal on 25th March, 1985 and confirmed the order dated 30th September, 1982. Thus, Mr. Dhakephalkar would submit that the proceedings concluded in this manner. It is clear that the statement under section 6(1) was filed by the petitioner through one Ghanshyamdas Trivedi. Mr. Dhakephalkar submits that the notice under section 8(3) of the ULC Act was sent along with draft statement and map. Mr. Dhakephalkar submits that after the order under section 8(4) of the ULC Act was passed, the final statement was also prepared on 7th October, 1982 and issued to the petitioner. It is thereafter that the appellate proceedings were instituted, but they did not result in any favourable order as far as the petitioner is concerned. Therefore, all the further steps, including issuance of notification under section 10(1) of the ULC Act were taken. That notification was published on 23rd January, 1986. The notification under section 10(3) dated 9th April, 1999 was published on 19th April, 1999. It may be that this time lag of 13 years is being used to the benefit and advantage of the petitioner, however, even that will not be of any consequence for once the land vests in the State, it was open for the respondents to direct the competent authority to handover the possession of this land to respondent no. 3 BEST for public purpose. Mr. Dhakephalkar

submits that the said Ghanshyamdas Trivedi and speaking for the petitioner being aware of all this, made desperate attempts to retain the land. He, along with other family members, made an application dated 20th October, 2003 to respondent no. 2 for staying the handing over of possession to the BEST and giving opportunity to the petitioner to file a revision application. Mr. Dhakephalkar relies upon annexure 'E' at page 50 of the petition and from the record produced by the respondents page at 379, which would reveal, according to him that a stay was granted on 30th October, 2003. However, this stay order does not mean that the petitioner was not divested of his right, title and interest in the property in accordance with law. The petitioner stands divested of the same only because a report was called for by respondent no. 1 from respondent no. 2 on 12th November, 2003. However, no stay order was communicated. Thus, there was no restraint against the competent authority or the State and it could have proceeded further. It is only in August, 2004 that Ghanshyamdas Trivedi and others filed the revision application, copy of which is at page 21 of the State file. The Chief Minister directed the Minister of State to hear the parties and that direction was issued on 10th August, 2004. Then, on 11th August, 2004, the then Minister of State for Urban Development, Government of Maharashtra directed that a hearing would be

held on 17th August, 2004. It is in these circumstances that the petitioner relies upon the order passed under section 34 of the ULC Act dated 1st October, 2004.

27. Mr. Dhakephalkar was at pains to point out that the revision application itself was preferred after 17 years of the notification under section 10(1) of the ULC Act. In any event, it was preferred nearly five and half years after the notification under section 10(3) of the ULC Act. However, the revisional proceedings challenged the order of 1986 and prior thereto the dismissal of appeal. These proceedings were thus belated. Rather they were hopelessly barred by laches. There is no provision to condone the delay in filing revision application under the ULC Act. In any event, no such proceedings for condonation of delay were instituted and the State was persuaded to accept the revision without any such delay being condoned. Thereafter, Mr. Dhakephalkar relies upon the sequence of events set out in his note.

28. Mr. Dhakephalkar submits that record would indicate that in November, 2004, a note was placed before the concerned authorities pointing out that a wrong or erroneous decision has been taken and that should not remain on record. A request was also made to cancel the order dated 1st October, 2004 and re-hear

the matter. A reference in that regard is made to pages 7-8 of noting in State File No. 120 of 2004. That is how the letter was issued to the petitioner informing that the order dated 1st October, 2004 is cancelled. It appears at page 81 of the State file and record would indicate, according to Mr. Dhakephalkar that this letter was received by Ghanshyamdas Trivedi on 15th February, 2005. On 28th June, 2006, the petitioner itself addressed a letter to the State. Mr. Dhakephalkar submits that in the meanwhile, on 17th August, 2006, an order was passed by this court in a Public Interest Litigation (WP) No. 4 of 2006 directing respondent nos. 1 and 2 to take possession of the excess vacant land, in respect of which, orders were passed under section 8(4) of the Principal Act on or before 31st December, 2007. In the light of this and when the decision taken on 1st October, 2004 was not in accordance with law, there was really no need to take further steps. However, on 15th September, 2006, the petitioner was informed that this order is cancelled. Thereafter, notice under section 10(5) of the ULC Act was issued to the petitioner to handover possession of the excess vacant land and that notice was duly served. The possession of the excess vacant land was taken on 30th October, 2006 and handed over to the BEST.

29. It is after all this that the petitioner filed the writ petition

being Writ Petition No. 1170 of 2007 through Power of Attorney Mr. Mayur Shah challenging notice under section 10(5) of the ULC Act. An affidavit was filed on 24th April, 2007 in that writ petition stating that the possession of the surplus vacant land was taken over and handed over to the BEST on 30th October, 2006. In this backdrop, Mr. Dhakephalkar submits that the order passed on 26th July, 2007 by the Division Bench of this court needs to be read in a proper perspective. If that order directs that the petitioner should be given a hearing and thereafter an appropriate order be passed, that does not mean that all earlier steps and taken lawfully were set at naught. By that, the petitioner's request and as granted is to hear the matter particularly after it was aggrieved by the communication at Annexure 'H' at page 62 of the petition dated 15th September, 2006. In deference to the order passed by this court, respondent no. 1 heard the petitioner on 13th August, 2007. An order was passed by the State (respondent no. 1) recalling and cancelling the earlier order dated 1st October, 2004. This order was duly communicated to the petitioner, inasmuch as Mr. Ghanshyamdas Trivedi was informed about the same on 28th November, 2007. The order dated 23rd November, 2007 was received by the second respondent on 29th November, 2007. The ULC Act was repealed on 29th November, 2007 in the State and in February, 2012, the

writ petition is filed. Hence, the writ petition is barred by delay and laches. Similarly, the petitioner's claim is not *bonafide*. The petitioner being aware of all the measures and steps but feigning ignorance of the same has moved this court only because of the appreciation in the property prices. The petitioner being interested in exploiting the potential of the land has filed this writ petition. It is feeble or weak attempt to protect the alleged claim, but in the process, the petitioner is trying to get over the publications in the official gazette. There is a presumption that the contents of the notification after such publication are known to parties like the petitioner. Looked at from any angle, the writ petition has no substance and must be dismissed.

30. Mr. Dhakephalkar has relied upon the following judgments:-

(i) State of Assam vs. Bhaskar Jyoti Sarma and Ors., (2015) 5 SCC 321.

(ii) Adi Dara Patel and Ors. vs. Mr. S. R. Jondhale and Ors., Writ Petition No. 1468 of 2009, decided on 22nd April, 2016 (Bombay High Court).

(iii) Santoshkumar Shivgonda Patil and Ors. vs. Balasaheb Tukaram Shevale and Ors., 2010(2) Mh.L.J. 150.

(iv) Kapra Mazdoor Ekta Union vs. Birla Cotton Spinning and Weaving Mills Ltd. and Anr. (2005) 13 SCC 777.

(v) Indian Bank vs. Satyam Fibers (India) Pvt. Ltd., (1996) 5 SCC 550.

31. At the outset, we find that the petitioner does not and cannot dispute the veracity and genuineness of the original record. We called for the original records only to ascertain for ourselves the true position about the steps taken under the Principal Act. Since it was alleged that the petitioner is not aware of the proceedings that we desired a confirmation and that is how the State has produced the original records before us. After such production, both sides were allowed to inspect the same. We granted the petitioner leave to amend the writ petition to add a legal ground. Thus, the original record was inspected and with consent of parties, we proceeded to hear this matter. All this is noted in para 6 of this judgment.

32. Before we refer to the records, we must note that the petitioner's case is that the land was owned by a partnership firm and seven persons from Trivedi family were co-owners thereof. The petitioner is aware that the land was beyond the ceiling limit and therefore, a statement under section 6(1) of the ULC Act was filed with the competent authority. It has also set out in the writ petition that an application was made to the Directorate of Industries claiming exemption under section 20 of the ULC Act. Though the petitioner does not annex copies of these documents, it is evident that these are in the original records and therefore,

the petitioner could not have denied the existence or the contents thereof. Then, it refers to an order of exemption dated 15th February, 1979, but does not state as to what happened thereafter.

33. The petitioner in para 3.4 of the petition states that an order under section 8(4) of the Principal Act was passed and the contents thereof would make an interesting reading. The copy of this order is annexed at page 42 of the paper book (Exhibit 'B') and it states that it was Mr. Ghanshyamdas Trivedi, who was authorised under a power of attorney from all owners to take the requisite steps. Accordingly, the draft statement was issued and the date of hearing was fixed on 25th June, 1982. Thereafter, the hearing was adjourned. There was a site inspection on 15th September, 1982. Then, there was a personal hearing. Mr. Trivedi submitted a letter dated 13th May, 1982, in which, he made a categorical statement and as reflected in the order at page 42 of the paper book. Then, Mr. Trivedi refers to certain documents before the authority. The letter and the contents thereof make it clear that the application for exemption under section 20 was rejected by the Directorate of Industries in respect of Plot Nos. 42 and 43 only. Thus, the order under section 8(4) notes that Mr. Trivedi was making submissions and arguments contrary to what was stated in the letter dated 13th May, 1982.

Then, Mr. Trivedi states that he is director of the petitioner's predecessor Chhaganlal Khimji and Company Private Limited. He had filed a return under section 6(1) of the ULC Act and in the return, it had been clearly mentioned that it relates to the company. The details of this statement have been incorporated in the order passed under section 8(4) of the ULC Act and eventually, the draft statement was revised and issued as final statement showing area of 5616.43 square meters of plot 42-43 of village Nahur, Taluka Kurla as surplus vacant land.

34. Then at page 46 of the paper book is a document, namely, the notification under section 10(1) of the ULC Act. That refers to the final statement determining land held by Ghanshyamdas Trivedi, director of Chhaganlal Khimji and Company Private Limited in the schedule and it is evident that this was a notification under section 10(1) of the Principal Act duly published in the Government gazette. Thereafter, Annexure 'D' at page 49 is the copy of the notification under section 10(3) of the ULC Act as published in the Maharashtra Government Gazette dated 19th April, 1999. However, the notification is dated 9th April, 1999. It is, therefore, evident that all the steps were taken and to the knowledge of the petitioner. This is further corroborated by Exhibit 'E' at page 50, which is a letter addressed

by the said Trivedis to stay handing over of possession of the land to the BEST and to issue orders under the revisional power conferred vide section 34 of the ULC Act. In this letter, it is stated that there is an order passed by the Deputy Collector and Competent Authority on 30th September, 1982 declaring excess vacant land to the extent of 5116 square meters. A copy of this order is annexed. This order, of which copy is annexed, is nothing but the one at Exhibit 'B'. Thus, the petitioner is aware that all steps were taken, but a grievance is raised in this application at page 50-51 that the order under section 8(4) is issued without considering the ownership documents. It is also alleged that the petitioners were not given proper opportunity to submit the statement nor proper hearing was given. It is stated that the petitioners are business people and are not aware of the ULC Act and were not aware of the order passed by the Deputy Collector and Competent Authority till certain notices were issued and therefore, they could not challenge the said order. Pertinently, this letter states that the authority should stay the handing over of possession of the petitioner's land to BEST and to give an opportunity to submit revised application under section 34 of the ULC Act. On this letter, there is an endorsement that a stay is granted by the Chief Minister of Maharashtra State on 30th October, 2003 with a direction that the file be put up.

35. Then, there is an order passed under section 34 of the ULC Act, wherein, a reference is made to the notification under section 10(3) and duly published in the official gazette vesting the land in the Government. Then, there is a reference to the decision of the Cabinet Sub-Committee to allot this excess vacant land to the BEST. The Additional Collector and Competent Authority was directed to take steps. However, a revision application was filed and the party, namely, the applicant approached the Hon'ble Chief Minister of the State with a request to stay the taking over possession of the land and handing it over to the BEST. A Stay order has been passed to a limited extent, namely, staying handing over possession. Then, the order recites as to how the grievance is with regard to computation of shares, how the DC Regulations required an area as open space and recreation ground. That is to be taken as non vacant land and required to be excluded from the computation of the surplus vacant land. Then, there is a reference made to an order passed under section 20 in relation to part of the land admeasuring 11454.57 square meters. There were certain structures in the land and not vacant. Therefore, certain working out would be required. Then, the State of Maharashtra, in the revisional jurisdiction, refers to the contentions raised by Mr. Trivedi for the petitioner and finally, directs that the order under section 8(4) dated 30th September,

1982, issued by the Additional Collector and Competent Authority, is set aside and the matter is remanded to the competent authority for issuing revised statement under section 8(4) of the Act. This order was passed on 1st October, 2004 and Mr. Trivedi writes a letter to respondent no. 2 on 6th October, 2004 informing it about the contents of this order and the steps that respondent no. 2 should take in pursuance thereof so as to implement it. It is prayed that a revised order under section 8(4), as per the the directives issued by the Minister of State (Urban Development), be acted upon and implemented.

36. In the affidavit in reply that is filed on behalf of the competent authority, it is stated that the order dated 30th September, 1982 passed under section 8(4), which is stated to be set aside on 1st October, 2004, was already implemented. A final statement under section 9 of the Principal Act was prepared and issued to the petitioner on 7th October, 1982. The petitioner filed an appeal under section 33 of the ULC Act challenging the order dated 30th September, 1982 passed under section 8(4) of the ULC Act before the appellate authority, namely, Additional Commissioner, Konkan Division. That appeal was dismissed on 25th March, 1985. We have perused the original record and we find that the appellate authority heard Mr. P. K. Shroff, the

counsel for the appellant, namely, the petitioner and noted all the facts and arguments, particularly that there were objections preferred to the draft statement. Thus, the petitioner responded to the notice under section 8(3) of the Principal Act. After the objections were filed, they were heard by the competent authority and the case was decided declaring the whole area of the two plots admeasuring 5616.43 square meters as excess vacant land. This was the conclusion arrived at by taking into consideration the fact that the company was allowed 500 square meters as per order dated 15th February, 1979 by the Industries Commissioner. Meaning thereby, there was an exemption granted to this extent. After noting all these arguments and facts, including that the exemption granted in respect of this 500 square meters was withdrawn and even that was declared as excess vacant land. The company was allowed to retain another 500 square meters land by the Industries Commissioner. With all these conclusions, this appeal was dismissed on 25th March, 1985.

37. It is, therefore, clear that the further steps followed the dismissal of this appeal. The petitioner was also aware of the decision of the Government to allot excess vacant land to the BEST. In the record, there is a noting that there was an inspection carried out of this property/excess vacant land on 30th

August, 1997 and that was found to be vacant. It is in these circumstances that the BEST made an application on 25th January, 1999 for allotment of this land in its favour. After the publication of the notifications under sections 10(1) and 10(3), the BEST pursued this application and the files contain copies of the letters addressed from time to time. In the meanwhile, the said Trivedi was trying to reopen the proceedings somehow or the other. He sensed that the land would be handed over and therefore, tried his level best to stall that process. That is how he addressed a letter dated 20th October, 2003 to the Chief Minister, on which stay was granted and noted as above. The Additional Commissioner and Competent Authority pointed out to the Principal Secretary to Urban Development Department, Government of Maharashtra on 19th November, 2003 that every statement made in the application dated 20th October, 2003 is factually incorrect. Every document, which was tendered at the hearing before the finalisation of the draft statement, was considered. How the contents of the letter dated 13th May, 1982 set out a version but contrary thereto the arguments and submissions were canvassed. The second respondent pointed out as to how the surplus vacant land has been dealt with because a proposal had been submitted to the Government in the said Ministry on 31st May, 2000 followed by a subsequent letter

requesting to issue necessary order to handover the surplus vacant land to the BEST. The Government orders were still awaited. The revision application filed by the applicant is not tenable and the issues raised in the application have been already decided by the competent authority while passing the order under section 8(4) and which stands confirmed by the order of the appellate authority noted above. It is apparent that though Mr. Anil Trivedi was making the request, the land stands in the name of Chhaganlal Khimji and Company Private Limited. On 19th November, 2003, the Urban Development Department informed the competent authority that the Cabinet Sub-Committee has decided to handover this land to the BEST and the proposal in that behalf of the competent authority is accepted. Now, all the incidental steps be taken.

38. It is in these circumstances that we find that there is much substance in the contention of Mr. Dhakephalkar that the revision application could not have been entertained. The revision application was entertained contrary to this record and though there was stated to be a stay in favour of the said Ghanshyamdas Trivedi/Petitioner, it is apparent that at no stage did the said Ghanshyamdas Trivedi claimed that in the light of the stay granted, further steps could not be taken. The revision

application was being pursued despite knowing that the handing over is complete. It is apparent that there are several letters addressed by Chhaganlal Khimji and Company Private Limited and duly signed by Ghanshyamdas Trivedi, including the one dated 20th April, 2004 requesting the State to issue corrigendum to the order under section 8(4) though revision application was stated to be pending. When it was clear that by this method the petitioner cannot obtain the desired result, then, it decided to approach the concerned minister. In the meanwhile, all the requests, including to issue a corrigendum to the section 8(4) order, to grant permission for redevelopment of the property, were rejected. Mr. Ghanshyamdas Trivedi is aware of all this and that is why he goes on writing letters. He goes on writing letters on the footing that even the exempted land is not allowed to be developed. Then, a letter is addressed by all seven brothers on 27th November, 2003, requesting the stay of handing over possession and in this letter dated 27th November, 2003, one does not find any reference to the stay order. Thus, throughout and till August, 2004, the petitioner was aware that all the steps under the Principal Act were taken. Based on the petitioner's applications, made from time to time, the competent authority forwarded its remarks and report to the Principal Secretary in the Department of Urban Development. We have perused the

order passed in revision and from the original file, we find that after that order was passed, the competent authority brought to the notice of the State and particularly the higher officials that the revision application cannot be allowed and the stay could not have been confirmed. It is pointed out in the written note as to how the request made cannot be granted. The request, despite such noting, has been granted.

39. After the revisional order was passed, there is another detailed noting dated 6th November, 2004. In this note, it was pointed out as to how all the steps have been taken in accordance with law and now the lands are to be handed over to the BEST. A decision to that effect has already been taken by the Cabinet Sub-Committee and it will be too late in the day to now set the clock back. The orders passed by the Minister of State, Department of Urban Development cannot be implemented. The Chief Minister, who was also in-charge of the Urban Development Department, agreed with this note and has specifically recorded his opinion that the order passed by the Minister of State on 1st October, 2004 deserves to be cancelled. Each of these notes are rightly relied upon by Mr. Dhakephalkar. It is evident from the original records that the Chief Minister indeed agreed with all the points and brought to his notice. It was pointed out to the Chief Minister and

all other senior officials, including the Principal Secretary that the Minister for State for Housing acted on his own and his office communicated the orders passed on the revision application without in any manner considering the objections raised to the entertaining of the revision application filed belatedly and the steps taken till that date, including handing over of the land to the BEST. We find that a detailed note was prepared and it has been signed by the Chief Minister as well, which records as to how the competent authority was justified in opposing the revision application and the directions therein. There was always a view held and particularly that the revisions application after exhausting the remedy of appeal should not be entertained. The view of the then Advocate General dated 25th September, 2002 and to be found in the file was relied upon. Even the then Principal Secretary in the Department of Law and Judiciary was of the same opinion. It is thus apparent that the revision application was not tenable and the petitioner was aware of the same. The petitioner was also aware of the fact that by virtue of the subsequent developments, the order passed on 1st October, 2004 was recalled. The original records, which have also been perused by the petitioner, would indicate that the order passed in the revision application by the Minister of State on 1st October, 2004 was held in abeyance. The Chief Minister directed that this

order should not be given effect to because it was passed in the face of the code of conduct issued by the Election Commission of India. That code of conduct mandates not taking any policy decision. That was on account of the ensuing State Assembly elections. Therefore, the Principal Secretary was informed by the competent authority on 6th January, 2005 that it has held in abeyance the order passed by the revisional authority dated 1st October, 2004 and which is heavily relied upon. Thus, that order was never enforced and implemented. Similarly, the petitioner was informed in January, 2005 itself that the first respondent has decided to cancel the revisional order dated 1st October, 2004. The letter dated 15th February, 2005 in the file duly informs the petitioner about this fact and on 15th February, 2005 itself, the petitioner/Ghanshyamdas Tiwari, to whom the letter was addressed, has received it. On 28th June, 2006, the petitioner addresses a letter to the Chief Minister of Maharashtra relying upon the revisional order and stating that no action has been taken thereon. The revised order under section 8(4) has still not been issued. The petitioner is consistently addressing letters requesting to forward its case and the order dated 1st October, 2004 to the office of the Additional Collector and Competent Authority, but no action has been taken with regard to the same. Therefore, he requests that necessary direction be issued to the

Additional Collector and Competent Authority for early action in the matter. The petitioner's letter dated 28th June, 2006 makes an interesting reading. It is reproduced as under:-

“To,

- 1) The Hon'ble Chief Minister of Government of Maharashtra, Mantralaya, Mumbai 400 032.
- 2) The Principal Secretary, Urban Development Department, Government of Maharashtra, Mantralaya, Mumbai 400 032.

Hon'ble Sir,

Ref: REV/10(2004)/CR.120/ULC-1

Sub: To forward copy of order issued u/s. 34 of ULC Act, 1976 to the office of Additional Collector and Competent Authority for necessary action in the matter.

We refer to order issued by Hon'ble Minister u/s. 34 of ULC Act, 1976 bearing No. REV/10(2004)/CR.120/ULC-1 dated 1st October, 2004. Copy of the said order is enclosed herewith and marked as Annexure “A”.

1. In order to implement the said order and also to get revised order u/s. 8(4) of ULC Act, 1976 by our letter dated 6th October, 2004 we requested officer of Additional Collector and Competent Authority, ULC, Greater Bombay to do the needful in the matter, but till date nothing has happened in this case. Copy of the said letter is enclosed herewith and marked as Annexure “B”.
2. Thereafter, by our letter dated 13th February, 2006 we requested Hon'ble Chief Minister as well as Principal Secretary of Urban Development Department to forward our case and the said order to office of Additional Collector and Competent Authority, but in that regard also no action has been taken. Copy of our letter dated 13th February, 2006 is also enclosed herewith and marked as Annexure “C”.

In this regard we would like to bring to your kind notice the Government Resolution dated 27th August, 2003 issued pursuant to order of Hon'ble High Court wherein it has been held that order passed by minister, the authentication by the secretary of the department is necessary. Enclosed herewith is the copy of the Hon'ble High Court order marked as Annexure "D".

3. Thereafter, Government in GAD has issued GR dated 5th July, 2004, wherein Chief Secretary, Government of Maharashtra has stated that, pursuant to order issued by Hon'ble Supreme Court of India, the order passed by any minister in Quasi Judicial matter, the authentication of the Secretary of Department is not required. The copy of the said GR dated 5th July, 2004 is enclosed herewith and marked as Annexure "E".
4. Considering the GR issued on 5th July, 2004 by the chief Secretary of Maharashtra Government, any order passed by minister on Quasi Judicial matter, authentication is not required by the secretary and hence, order passed by Hon'ble Minister, bearing No. REV/10(2004)CR-120/ULC-1 u/s. 34 of the ULC Act, 1976 is required to be implemented, as the said order cannot be set aside and also no fresh hearing can be given, and considering the above legal position, order issued in our case is required to be implemented immediately.
5. Keeping in mind Judgment given by Hon'ble Supreme court and GR issued on 5th July, 2004 by the Chief Secretary, Government of Maharashtra, we request you Honour to issue necessary direction and forward the said order to office of Additional Collector and Competent Authority, ULC for early action in the matter.
6. The non-implementation of the Supreme Court order can be considered as an Competent of Court and therefore early action in the matter is requested.

Thanking you,

Yours faithfully,

For **M/s. Chhaganlal Khimji & Co. Pvt. Ltd.**

Director"

40. Therefore, it is clear that the petitioner cannot claim ignorance of the communication dated 15th September, 2006 informing it that the order passed on 1st October, 2004 stands cancelled. That is with reference to the letter of the petitioner dated 28th June, 2006. It is in these circumstances that there is substance in the contentions of the learned senior counsel appearing for the State that the petitioner was throughout aware of all the proceedings and cannot rely on the revisional order. That the cancellation of the order passed on 1st October, 2004 is imminent and would take place any time was known to the petitioner. Else, the petitioner would not have made a reference to the continued inaction of respondent nos. 1 and 2 in giving effect to the order dated 1st October, 2004, which, the petitioner claims to be in its favour. This inaction led to several complaints in writing by the petitioner and which are on record. Equally, on record are the notings of the authorities and particularly the competent authority (Additional Collector, Mumbai Suburban District) that the order dated 1st October, 2004 passed in the revision application could not have been passed given the above noted facts and circumstances. Therefore, that order cannot be implemented was the persistent stand of these authorities. The State and the competent authority was of the firm opinion and stood by it throughout. Their case consistently is that all steps

under the Principal Act have been taken lawfully. Those have concluded and attained finality after the appellate order and the notifications as above. In such a situation, now to state that the petitioner was not aware of the order dated 15th September, 2006 is incorrect, erroneous and misleading to say the least.

41. The original record produced for our perusal and which we have perused after the parties duly inspected it fortifies and supports our conclusion that the order dated 15th September, 2006 was also duly communicated to the petitioner.

42. Writ Petition No. 1170 of 2007 was filed by this very petitioner in the name of Ghanshyam H. Trivedi and in that petition, the petitioner has challenged the order dated 17th October, 2006, by which, certain directions were issued to the City Survey Officer to take possession of the land from the person in possession. The order notes that the grievance of the petitioner is that this is based upon an order dated 15th September, 2006 recalling the earlier order dated 1st October, 2004 passed by the concerned Minister while exercising powers under section 34 of the ULC Act. Now, it is too late in the date to urge that the petitioner was unaware of this order. This court, in the earlier round, did not examine the rival contentions, but held that the petitioner was not heard though it claimed to be in

possession of the property in dispute. Therefore, there is an apparent violation of the principles of natural justice. It is in these circumstances that this court directed the competent authority to hear the petitioner, respondent no. 3 to that petition (BEST) as well as the Collector and to pass an appropriate order within four weeks. If the grievance of the petitioner was that there is continued inaction and the revisional order is not given effect to or implemented but recalled without hearing them, an attempt being made to dispossess them without an opportunity of hearing that means they are aware of all the proceedings with their legal implications and consequences. The order of this court has also attained finality. In the face of such a position emerging from the record, it is not possible to agree with Mr. Devitre that the order dated 15th September, 2006, recalling and cancelling the earlier order dated 1st October, 2004, does not bind the petitioner. Though challenged, this order was not set aside by this court specifically. Rather maintaining the position as it is, this court directed the authorities to hear the petitioner. That this court was aware of the following statements in the affidavit in reply of the State in the earlier writ petition. The relevant paras read as under:-

“21. As far as para 3:1:10 is concerned, I say that all the issues including the issue to grant of 7 ceiling shares was raised and argued before Competent Authority and after

taking into consideration the same, the order came to be passed u/s. 8(4) on 30.9.1982. The Petitioner, their Architect and representative were given full opportunity to put forth their say and to argue the matter. After hearing into the matter, the Competent Authority has passed 8(4) order dated 30.9.1982 rejecting their contention to grant 7 ceiling shares. Being aggrieved by the said 8(4) order, an appeal u/s. 33 of the Act was also filed before the Appellant Authority i.e. Additional Commissioner, Konkan Division raising the said issue of non granting of 7 ceiling shares. The said Appeal was also dismissed by the Appellant Authority vide order dated 25.3.1985. I further say that thereafter from 1985 to 17.8.2004 Petitioner kept quiet and never challenged the said order under section 8(4) dated 30.9.1982 and order of Appellate Authority dated 25.3.1985 and filed Revision Application u/s. 34 before Hon'ble Minister of State - Urban Development after lapse of 19 years claiming 7 ceiling shares with other benefit and managed to get order dated 1.10.2004.

22. As far as para 3:1:10(a) is concerned, I say that the suit land was never held up 7 co-owners on the relevant date but it was held by M/s. Chaganlal Khimji and Company and the contention in this behalf was correctly rejected by the Competent Authority while passing the 8(4) order dated 30.9.82.

....

27. As far as para 3:1:13, I say that the matter was under consideration of Government and hence the remand order and this office papers were not returned by Government for further necessary action.

28. As far as para 3:1:14(a) is concerned, I say that the Government come to the conclusion that the original 8(4) order dated 30.9.1982 was correctly issued declaring suit land admeasuring 5616.43 sq. Mtrs. as surplus vacant land and the said 894) order was confirmed by the Appellate Authority u/s. 33 of the Act vide order dated 25.3.1985 and thereafter the said proceeding were never challenged by the Petitioner and the land was required for public purpose by B. E. S. T. Government has correctly directed to hand over the suit surplus vacant land to the B. E. S. T. i.e. Respondent No. 3.

29. As far as para 3:1:14(b) is concerned, I say that the proceeding u/s. 8(4) is concerned, I say that the

proceeding u/s. 8(4) order dated 30.9.1982 which was confirmed by the Appellate authority is ____ order dated 25.3.1985 were challenged after lapse of 19 years by the Petitioner. The issue raised by the Petitioner in the Revision Application were already decided by the Competent Authority. While passing the 8(4) order dated 30.9.1982 giving full justification. The said 8(4) order was challenged by the Petitioner u/s. 33 before the Appellate Authority by way of Appeal. The Appellate Authority had dismissed the said appeal vide order dated 25.3.1985. The said issue were again raised after lapse of 19 years by the Petitioner in Revision Application filed before the Minister of State (Urban Development). The Government examined the impugned remand order passed by Minister of State (Urban Development) also issued directives to the Competent Authority, the Respondent No. 2 to take over the possession of the suit surplus vacant land and hand it over to the B. E. S. T. Respondent No. 3 hereinabove.

30. As far as para 3:1:14(c) is concerned, I say that the surplus vacant land admeasuring 5616.43 Sq. Mtrs. was already demarcated and carried out by the Competent Authority, and a plan of the said surplus vacant land was prepared. The possession of the said land was taken over and handed over to the BEST on 30.10.2006.

31. As far as para 3:1:15 is concerned, I say that the Petitioners contention is not correct and I deny the same. Government had vide letter No. NJK-10(2004)C. R. 120/ULC-1, dated 15th February, 2005 has informed M/s. Chaganlal Khinji & Co. that order u/s. 34 passed by the Hon'ble Minister of State (Urban Development) has been cancelled. The Petitioner was therefore from much aware about the further proceedings u/s. 10 regarding the acquisition of the surplus vacant land."

43. The authorities could have, in pursuance of this court's direction and upon hearing the petitioner, passed an order confirming its earlier conclusions and that is precisely done by respondent nos. 1 and 2. It is too late in the date to now urge that the order dated 15th September, 2006 is null, void and non-est and could have been ignored by the petitioner. The argument

that this order was passed in purported exercise of review jurisdiction is not available. Similarly, the state could not have recalled the order dated 1st October, 2004 in this manner, but should have challenged it in appropriate proceedings, if it was illegal, is a plea without substance. That order was not recalled as urged. Rather, the complaint of the petitioner that it was ignored and should be implemented is specifically considered and rejected. The State clarified that it never recognised or accepted the order and hence it did not implement it.

44. We do not think that it is open for the petitioner to argue on the above lines once the petitioner filed a substantive petition being Writ Petition No. 1170 of 2007 and specifically urged before this court to set aside not only the notice dated 17th October, 2006, but the order dated 15th September, 2006 as well. That writ petition was disposed of as above with a limited direction. The petitioner being satisfied with the same and in pursuance of that direction appearing before the competent authority/State Government, once again cannot now complain that the State's remedy was not to recall the order dated 1st October, 2004 by the order dated 15th September, 2006 and the State could not have passed it at all. Firstly, the argument is that was passed in purported exercise of review jurisdiction and which was

unavailable and could not have been invoked by the petitioner. The petitioner was aware that it had invoked the remedy of appeal under section 33 of the Principal Act against the order passed under section 8(4) of the ULC Act. That appeal was dismissed. Section 34 of the Principal Act reads thus:-

“34. Revision by State Government. The State Government may, on its own motion, call for and examine the records of any order passed or proceedings taken under the provisions of this Act and against which no appeal has been preferred under section 12 or section 30 or section 33 for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such procedure and pass such order with respect thereto as it may think fit:

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter.”

45. A perusal of this provision would indicate as to how the State is conferred with revisional jurisdiction and it can call for and examine the records of any order passed or proceedings taken under the provisions of the Principal Act and against which no appeal has been preferred under section 12 or section 30 or section 33. It is only on these conditions being satisfied that the State can exercise its revisional powers and scrutinise the order passed under the Act for its legality or propriety or also satisfy itself as to whether the procedure adopted is regular or otherwise. Once the petitioner could not have invoked the revisional jurisdiction after an unsuccessful appellate round,

then, the order passed in such proceedings is contrary to section 34. That is on the face of the order. Nothing was required to be resorted to and such a revisional order, which was *ex facie* contrary to section 34 of the ULC Act could have been ignored by the State. The petitioner did not dispute that it had appealed against the order passed under section 8(4) of the ULC Act and the final statement under section 9 passed there on, but that appeal was dismissed by a reasoned order. The appellate authority duly heard the petitioner, but did not agree with its contentions. Hence, section 34 could not have been invoked at all. Even otherwise, we find that the State was justified in refusing to abide by the order dated 1st October, 2004 for it was passed in exercise of purported revisional powers belatedly and after a long lapse of 18 years. In any event, it was sought to be passed after the notifications under section 10(1), section 10(3), vesting the excess vacant land in the State, were validly issued. These notifications were duly published in the official gazette. In such circumstances, a revisional order passed belatedly and vitiated even on merits, as held above, did not bind the State and the competent authority. Its ignorance causes no prejudice at all to the petitioner.

46. We clarified to Mr. Devitre that if we were to agree with him and hold that the order dated 15th September, 2006 was not validly passed and must be set aside, then, our conclusion and direction to this effect will revive a patently illegal order dated 1st October, 2004. In writ jurisdiction, we cannot pass order of such nature. Our jurisdiction is not available to those who seek revival of an earlier illegal order or proceedings. Mr. Devitre sought time to study this aspect and address us.

47. In his submission, the above would not be the result and consequence and he seeks to support his arguments by some judgments, to which we will make a reference a little later. Before doing that, we deal with the small contentions of the petitioner. It is submitted that the order passed in pursuance of this court's direction in the earlier writ petition is also illegal and not binding on it. It submits that the order was passed after the Repeal Act came into force and not earlier. We cannot agree with these contentions and for more than one reason. In the affidavit in reply, the State has clarified with supporting documents as to how this order was passed on 23rd November, 2007 and the petitioner became aware of the same on that very date. It was aware of this order also because it was duly communicated to it. Reliance in that regard is rightly placed on para 14 of the

affidavit in reply of the Additional Collector and Competent Authority Siddharth Salemath. We have also verified from the original file that this order was duly communicated and the petitioner was aware of the same. In any event, all the proceedings up to the taking over of physical possession on 30th October, 2006 in terms of the Principal Act are legal, valid and binding on the petitioner. The petitioner's appeal under section 33 was already dismissed. The notifications under section 10(1), 10(3) were already issued and remained untouched and un-interfered throughout. The order passed by this court in the writ petition does not set at naught the validly concluded proceedings and all that the order mandates is that before the revisional order was purportedly recalled on 15th September, 2006, the petitioner should have been heard. Therefore, an *ex post facto* opportunity to justify the revisional order was granted. The petitioner could not justify the revisional order dated 1st October, 2004 even in the fresh round pursuant to this court's order and direction in the earlier writ petition. In the order passed on 23rd November, 2007, it has been concluded that there is no substance in the argument of the petitioner that its revision application was maintainable. In reaching this conclusion, the State has assigned reasons and which we find to be not vitiated by any error of law apparent on the face of the record. It reiterated

that the revisional jurisdiction could not have been exercised nor that power invoked by the petitioner. In the facts and circumstances of the present case, the revisional jurisdiction could not have been exercised and was therefore an illegal exercise by the Minister of State. Once that was *ex facie* illegal exercise, then, that cannot be sustained is the conclusion reached. That is consistent with the facts and circumstances on record. It is, therefore, a clear endorsement of the earlier conclusions and also reinforces the stand that the proceedings under the Principal Act right up to dispossession of the petitioner are legal and valid. Once the land vested in the State and its possession was taken on 30th October, 2006, which is much prior to the Repeal Act coming into force, then, there is no question of any benefit accruing to the petitioner. The Repeal Act is not applicable at all.

48. The other small contention of the petitioner that it was not aware of the factum of taking over possession by respondent nos. 1 and 2 need not detain us. It was throughout aware that the physical possession is taken over. It is reiterated in the affidavit in reply and based on the original record as to how the notice dated 17th October, 2006 under section 10(5) of the Principal Act was issued to the petitioner and subsequently the possession was

taken. The petitioner cannot make an issue of this and after five and half years in a writ petition filed in this court on 17th February, 2012/7th March, 2012.

49. We had an occasion to consider a similar challenge and raised belatedly at the instance of builders and developers projecting the cause of owners in the case of *Adi Dara Patel and Ors. vs. Mr. S. R. Jondhale and Ors.*². Turning down and rejecting such a challenge and argument, a Division Bench speaking through S. C. Dharmadhikari, J. held thus:-

“175) On the aspect of applicability of section 3(1)(a) of the Repeal Act, Mr. Chidambaram's reliance on the judgment of this court and that of the Hon'ble Supreme Court of India is entirely misplaced.

176) In the case of *Bank of Baroda Employees Arunoday Co-operative Housing Society Ltd. vs. State of Maharashtra*³ decided on 21st November, 2011, the State and the competent authority claimed that possession of the land declared as surplus vacant land was taken on 14th November, 2006, whereas, the petitioner asserted otherwise. The facts have been noted in para 2 of the order of the Division Bench and it found that the State/competent authority took possession on the above date pursuant to a notification under section 10(5) of the Principal Act dated 30th June, 2006. The Division Bench noted the case of the petitioner that as on 30th October, 2006, when the notice under section 10(5) was issued, it

² Writ Petition No. 1468 of 2009

³ Writ Petition No. 2119 of 2008

was the petitioner society who was in possession of the land and the building and therefore, the act of the State in taking possession without issuing notice to it is illegal. Then, they questioned the contents of the possession receipt and which states that the person to whom notice was issued is not willing to handover possession. It is in these circumstances that the Division Bench held that the provisions of the Repeal Act would come into play, meaning thereby, the proceedings under the Principal Act lapse. It is in the above factual background and peculiar to the petitioner's case that all findings in para 5 have been rendered. We do not see, therefore, any assistance can be derived from the said observations, findings and conclusions. Notice under section 10(5) may have been held to be mandatory. The notice also must set out the period and in terms of the sub section so as to enable the person in possession to surrender or deliver possession of the vacant land vesting in the State to the State Government or to any person duly authorised by the State. He should be, therefore, put to notice in writing and which should contain the direction to surrender or deliver possession within 30 days of the service of the notice. We do not see as to how this principle and which also has been laid down in the judgment of this court in the case of *M/s. Johnson and Johnson Ltd. and Anr. vs. State of Maharashtra and Anr.*⁴ decided on 9th November, 2011 would have any application to the facts of this case.

177) Then comes the reliance on the judgment in the case of *State of Uttar Pradesh vs. Hari Ram*⁵. In this case, one should not forget that respondent Hari Ram was

4 Writ Petition No. 1461 of 2009

5 (2013) 4 SCC 280

holding excess land admeasuring 52,513.30 square meters. An order under section 8(4) of the Principal Act was passed by the competent authority on 29th June, 1981. The notification under section 10(1) of that Act was issued on 12th June, 1982 and published in the Government gazette. The notification under section 10(3) was published on 22nd November, 1997. On 10th June, 1999, the surplus vacant land stood vested in the State in terms of the entry in the Revenue records. On 19th June, 1999, a notice under section 10(5) directing Hari Ram to handover possession of the land declared surplus was issued. Aggrieved by that, Hari Ram preferred Appeal No. 29 of 1999 before the District Judge, Varanasi under section 33 of the Principal Act, but what he impugned in that appeal was important. He challenged the order under section 8(4) of the Act and urged that before that order was passed, no notice, as contemplated under section 8(3) of that Act, was served on him. That appeal was allowed and the order dated 29th June, 1981 under section 8(4) of the Act was set aside on 14th December, 1999. Aggrieved by that order, the State of Uttar Pradesh filed a writ petition in the High Court of Allahabad and the High Court, after elaborately considering various contentions, took a view that for taking physical possession of the land, proceedings under section 10(5) have to be followed. On facts also the Division Bench found no reason to interfere with the order of the District Judge.. The State's writ petition was dismissed. That is how the State approached the Hon'ble Supreme Court against the decision of the High Court of Allahabad in Hari Ram's case and following Hari Ram in other cases. The arguments have been noted in paras 6 and 7 and we must not forget that the Hon'ble Supreme

Court was concerned with the primary submission that under the Principal Act, though there is a vesting of the land in terms of sub-section (3) of section 10, upon publication of the notification, what one finds is that by virtue of sub-sections (4) and (5) of section 10 so also sub-section (6) thereof, after such vesting, the physical possession has to be taken and obtained by recourse to these provisions. It is in examining the scope of sub-sections (3), (4) as well as sub-sections (5) and (6) of section 10 that all the further conclusions of the Hon'ble Supreme Court are rendered. It is then apparent that by vesting alone, it would not be permissible to hold that possession follows. Possession would follow only upon recourse to these sub sections and that is how all the paragraphs, namely paragraphs 33 to 37 would have to be seen. The requirement of notice is only under sub-sections (5) and (6) and that is held to be mandatory.

178) We do not see how our view in the present case, is in any way contrary to *Hari Ram's* decision (supra). We have not held in the present case that notice need not be issued. The controversy before us was whether notice issued was served on the co-owners. On facts, we have found that not only such a notice was served, but copy thereof was pasted on site. That was after it was endorsed in the register that the noticees were not found at the stated address. That is how the competent authority directed the City Survey Officer to cause a notice to be displayed at site. It was accordingly displayed. Once we find that the notice was issued, though that notice stated that the possession would be taken on 9th March, 2007, the record indicates that it was not taken on that date, meaning thereby within 30 days,

but on 28th March, 2007. Therefore, it is not as if before the 30 days period expired from 27th February, 2007 that the possession was taken. Secondly, we find that the distinguishing feature in the present case is that the arguments do not rest on the issuance of notice and its service alone. The legality and validity of the notice and the act of taking possession before 30 days' period is also raised. It is therefore clear that diverse pleas are set out to claim benefit of the Repeal Act. However, that cannot be extended to the petitioners in the present case. We are of the firm opinion view that no assistance can, therefore, be derived from the principles laid down in the case of *Hari Ram* (supra) in the present facts and circumstances. The legal principles are indeed binding on us, but on facts their application is a matter with which we are really concerned. More so, when the petitioners also challenge the correctness and validity of the possession receipt, panchanama etc. Once there is a record of the physical possession having been taken well before 29th November, 2007 (reckoned as the date of coming into force of the Repeal Act in Maharashtra), then, we do not see how we can apply the Repeal Act to the present facts.

179) There is one more reason because we have already found that the petitioners alone do not claim to be in physical possession, but state that the physical possession of the land would have to be obtained from the Court Receiver. They claim that the property is *custodia legis* and hence notice to receiver ought to be issued. It is only when notice is issued to him or when the court's approval is obtained that the receiver can be dispossessed and not otherwise. Therefore, it is doubtful as to how the judgment in the case of *Hari Ram* (supra) and that in the

case of *Vinayak Kashinath Shilkar vs. Deputy Collector and Competent Authority and Ors.*⁶ can have any application.

180) We cannot also take assistance as desired by Mr. Chidambaram from other judgments and which are essentially on the point of an order being non compliant with the principles of natural justice and therefore nullity. On facts, we do not see any application of this principle to the present case.

181) We are also supported in our views and conclusions by the reliance placed by Mr. Samdani on the judgment of the Hon'ble Supreme Court of India in the case of *State of Assam vs. Bhaskar Jyoti Sarma and Ors.*⁷. This judgment distinguishes *Hari Ram's* case (supra) and we reproduce the following paragraphs of this judgment:-

"6. We have heard the learned counsel for the parties for a considerable length. The Urban Land (Ceiling and Regulation) Act, 1999 repealed the principal Act w.e.f. The date the State adopted the Repeal Act. In terms of a resolution passed under clause (2) Article 252 of the Constitution, the Repeal Act was adopted by the State of Assam w.e.f. 6-8-2003. We may at this stage usefully extract Sections 2 and 3 of the Repeal Act which have a direct bearing on the questions that arise for our determination:

2. Repeal of Act 33 of 1976. - *The Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Principal Act), is hereby repealed.*

3. Saving. - (1) *The repeal of the principal Act shall not affect -*

(a) *the vesting of any vacant land under sub-section (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;*

⁶ (2012) 4 SCC 718

⁷ (2015) 5 SCC 321

(b) the validity of any order granting exemption under sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of section 20.

(2) Where -

(a) any land is deemed to have vested in the State Government under sub-section (3) of Section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land.

Then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.”

7. A bare reading of Section 3 (supra) makes it clear that repeal of the principal Act does not affect the vesting of any vacant land under sub-section (3) of Section 10, possession whereof has been taken over by the State Government or any person duly authorised by the State Government in that behalf or by the competent authority. In the case at hand, the appellant claims to have taken over the possession of the surplus land on 7-12-1991. That claim is made entirely on the basis of a certificate of handing over/taking over of possession, relevant portion whereof reads as under:

“Certificate of handing over/taking over
possession

Today on this 7th December, 1991, we took over possession of 70.32 ares of acquired land as scheduled below vide order of the Deputy Commissioner, Kamrup's ULC Case No. 343 dated 2-3-1991 and as per Assam Gazette Notification dated 1-1-1987 in Case No. ULC343/76.
Schedule of land

* * *

Received possession

(Taken over possession unilaterally)

sd/-

Illegible

Given

possession

Designation SK (G)

Designation

Dated 7-12-1991

Dated 7-12-1991

Countersigned

sd/-

Illegible

Circle Officer

Guwahati Revenue Circle"

8. Relying upon the above document it was strenuously argued on behalf of the appellant that actual physical possession was taken over from the erstwhile landowner as early as in December 1991, no matter relevant official record does not bear testimony to any notice having been issued to the landowners in terms of Section 10 sub-section (5) of the Act. It was argued that so long as actual physical possession had been taken over by the competent authority title to the land so taken over stood vested absolutely in the State Government under Section 10(3) and could not be claimed back no matter the principal Act stood repealed after such vesting had taken place. In support of the contention that actual physical possession had been taken over by the competent authority, the appellant places heavy reliance upon the fact that challenge to the proceedings under the Act mounted in Writ Petition No. 2568 of 1992 by the purchasers of a part of the disputed land had failed right up to this Court and the allotment of a substantial part of the surplus land in favour of the 8 families affirmed. This, according to the appellant, proves that possession of the surplus land had indeed been taken over from the erstwhile owner in terms of proceedings held on 7-12-1991.

9. It was also contended that Bhabadeb Sarma, the erstwhile owner, had remained aloof even when he was a party to the writ petition filed by the purchasers who had questioned the validity of the order passed by the competent authority including the allotment of the surplus land in favour of third parties. It was argued that the Repeal Act would have no effect whatsoever even when the taking of possession was without notice to the erstwhile owner especially when the owner had failed to question any such takeover at the appropriate stage in appropriate proceedings. The challenge mounted by the legal heirs of the deceased erstwhile owner 13 years later was clearly untenable and an afterthought. Failure of the landowner to seek redressal

against non-compliance with the statutory requirement of a notice before possession is taken would constitute abandonment of the right of the owner under Section 10(5) which cannot be resuscitated after lapse of such a long period only to take advantage of the Repeal Act. The question whether actual physical possession of the disputed land had been taken over is in any case a seriously disputed question of fact which could not be adjudicated or determined by the High Court in its writ jurisdiction.

10.

11. Section 3 of the Repeal Act postulates that vesting of any vacant land under sub-section (3) of Section 10 is subject to the condition that possession thereof has been taken over by the competent authority or by the State Government or any person duly authorised by the State Government. The expression "possession" used in Section 3 (supra) has been interpreted to mean "actual physical possession" of the surplus land and not just possession that goes with the vesting of excess land in terms of Section 10(3) of the Act.

12. The question, however, is whether actual physical possession of the land in dispute has been taken over in the case at hand by the competent authority or by the State Government or an officer authorised in that behalf by the State Government.

13. The case of the appellant is that actual physical possession of the land was taken over on 7-12-1991 no matter unilaterally and without notice to the erstwhile landowner. That assertion is stoutly denied by the respondents giving rise to seriously disputed question of fact which may not be amenable to a satisfactory determination by the High Court in exercise of its writ jurisdiction. But assuming that any such determination is possible even in proceedings under Article 226 of the constitution, what needs examination is whether the failure of the government or the authorised officer or the competent authority to issue a notice to the landowners in terms of Section 10(5) would by itself mean that such dispossession is no dispossession in the eye of the law and hence insufficient to attract Section 3 of the Repeal Act. Our answer to that question is in the negative.

14. We say so because in the ordinary course actual physical possession can be taken from the person in occupation only after notice under Section 10(5) is issued to him to surrender such possession to the State Government, or the authorised officer or the competent authority. There is enough good sense in that procedure

inasmuch as the need for using force to dispossess a person in possession should ordinarily arise only if the person concerned refuses to cooperate and surrender or deliver possession of the lands in question. That is the rationale behind Sections 10(5) and 10(6) of the Act. But what would be the position if for any reason the competent authority or the government or the authorised officer resorts to forcible dispossession of the erstwhile owner even without exploring the possibility of a voluntary surrender or delivery of such possession on demand? Could such use of force vitiate the dispossession itself or would it only amount to an irregularity that would give rise to a cause of action for the aggrieved owner or the person in possession to seek restoration only to be dispossessed again after issuing a notice to him? It is this aspect that has to an extent bothered us.

15. The High Court has held that the alleged dispossession was not preceded by any notice under Section 10(5) of the Act. Assuming that to be the case all that it would mean is that on 7-12-1991 when the erstwhile owner was dispossessed from the land in question, he could have made a grievance based on Section 10(5) and even sought restoration of possession to him no matter he would upon such restoration once again be liable to be evicted under Sections 10(5) and 10(6) of the Act upon his failure to deliver or surrender such possession. In reality therefore unless there was something that was inherently wrong so as to affect the very process of taking over such as the identity of the land or the boundaries thereof or any other circumstance of a similar nature going to the root of the matter hence requiring an adjudication, a person who had lost his land by reason of the same being declared surplus under Section 10(3) would not consider it worthwhile to agitate the violation of Section 10(5) for he can well understand that even when the Court may uphold his contention that the procedure ought to be followed as prescribed, it may still be not enough for him to retain the land for the authorities could the very next day dispossess him from the same by simply serving a notice under Section 10(5). It would, in that view, be an academic exercise for any owner or person in possession to find fault with his dispossession on the ground that no notice under Section 10(5) had been served upon him.

16. The issue can be viewed from another angle also. Assuming that a person in possession could make a

grievance, no matter without much gain in the ultimate analysis, the question is whether such grievance could be made long after the alleged violation of Section 10(5). If actual physical possession was taken over from the erstwhile landowner on 7-12-1991 as is alleged in the present case any grievance based on Section 10(5) ought to have been made within a reasonable time of such dispossession. If the owner did not do so, forcible taking over of possession would acquire legitimacy by sheer lapse of time. In any such situation the owner or the person in possession must be deemed to have waived his right under Section 10(5) of the Act. Any other view would, in our opinion, 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 a Repeal Act tempted him to raise the issue regarding his dispossession being in violation of the prescribed procedure.

17. Reliance was placed by the respondents upon the decision of this Court in Hari Ram case ((2013) 4 SCC 280). That decision does not, in our view, lend much assistance to the respondents. We say so, because this Court was in Hari Ram case considering whether the word “may” appearing in Section 10(5) gave to the competent authority the discretion to issue or not to issue a notice before taking physical possession of the land in question under Section 10(6). The question whether breach of Section 10(5) and possible dispossession without notice would vitiate the act of dispossession itself or render it non est in the eye of the law did not fall for consideration in that case. In our opinion, what Section 10(5) prescribes is an ordinary and logical course of action that ought to be followed before the authorities decided to use force to dispossess the occupant under Section 10(6). In the case at hand if the appellant's version regarding dispossession of the erstwhile owner in December 1991 is correct, the fact that such dispossession was without a notice under Section 10(5) will be of no consequence and would not vitiate or obliterate the act of taking possession for the purposes of Section 3 of the Repeal Act. That is because Bhabadeb Sarma, erstwhile owner, had not made any grievance based on breach of Section 10(5) at any stage during his lifetime implying thereby that he had waived his right to do so.

18.

19. In support of the contention that the respondents are even today in actual physical possession of the land in question reliance is placed upon certain electricity

bills and bills paid for the telephone connection that stood in the name of one Mr Sanatan Baishya. It was contended that said Mr Sanatan Baishya was none other than the caretaker of the property of the respondents. There is, however, nothing on record to substantiate that assertion. The telephone bills and electricity bills also relate to the period from 2001 onwards only. There is nothing on record before us nor was anything placed before the High Court to suggest that between 7-12-1991 till the date the land in question was allowed to GMDA in December 2003 the owner or his legal heirs after his demise had continued to be in possession. All that we have is rival claims of the parties based on affidavits in support thereof. We repeatedly asked the learned counsel for the parties whether they can, upon remand on the analogy of the decision in Gyanaba Dilavarsinh Jadega (2013) 11 SCC 486, adduce any documentary evidence that would enable the High Court to record a finding in regard to actual possession. They were unable to point out or refer to any such evidence. That being so the question whether actual physical possession was taken over remains a seriously disputed question of fact which is not amenable to a satisfactory determination by the High Court in proceedings under Article 226 of the constitution no matter the High Court may in its discretion in certain situations enter upon such determination. Remand to the High Court to have a finding on the question of dispossession, therefore, does not appear to us to be a viable solution.”

182) We are of the opinion that the controversy before us stands fully covered by this judgment and it binds us.”

50. Mr. Dhakephalkar is right in placing reliance on this judgment as also a judgment of the Hon'ble Supreme Court of India in the case of *State of Assam vs. Bhaskar Jyoti Sarma and Ors.*⁸. For these reasons, the contentions raised above cannot be accepted.

51. Finally we find that Mr. Devitre's reliance on the several

⁸ (2015) 5 SCC 321

judgments of the Hon'ble Supreme Court of India is entirely misplaced. We note them seriatim.

52. Mr. Devitre has placed reliance on the judgment in the case of *State of Uttar Pradesh vs. Hari Ram*⁹. *Hari Ram* (supra) has been considered extensively by the Hon'ble Supreme Court of India in its later judgment in the case of *State of Assam vs. Bhaskar Jyoti Sarma and Ors.* (supra). We do not think that in the present case the petitioner can derive any assistance from *Hari Ram* (supra) for the simple reason that even if notice under section 10(5) is held as mandatory and the notice should indicate that the possession would be taken on the notice period coming to an end, yet, we find that the only grievance in this case is that the possession was taken within the 30 day's period and not thereafter. Even on this count, we do not find that the act of taking possession is vitiated. Firstly, the petitioner is complaining about certain concluded acts by filing the writ petition in the year 2012. These concluded acts are of the year 2006. The petitioner was aware that the steps prior to section 10(5) are already completed and in accordance with law. The possession of the property was handed over to the BEST and it is at that stage the present petitioner, styling itself as a limited company, stepped in, though it essentially comprises of the

⁹ (2013) 4 SCC280

partners of the erstwhile firm. The new partners are fully aware of the legal steps leading to the acquisition and vesting of the surplus vacant land in the State. In these circumstances, we do not wish to consider the petitioners case, as propounded, belatedly, seriously. The possession was taken of the surplus vacant land after duly notifying with regard to the date and time on which it would be so taken. Further, the petitioner/legal entity was duly informed about the same. In any event, those managing and administering its affairs were aware of the fact that the possession would be taken. They allowed it to be taken and now cannot raise a grievance belatedly. In such circumstances, in writ jurisdiction, we do not wish to attach any significance to their complaint. We do not think that in the facts and circumstances of the present case, the act of taking possession is vitiated.

53. The judgment in the case of *M/s. Johnson and Johnson Ltd. and Anr. vs. State of Maharashtra and Anr.*¹⁰ also has been relied upon, but there, the Division Bench found on facts that a notice under section 10(5), asking the petitioner to deliver possession of the land, which was declared as surplus vacant land, was issued on 16th August, 2007. The possession was to be taken on 27th August, 2007. The possession was taken without a notice

specifying that the land holder has 30 day's time to deliver possession. It was in those circumstances the Division Bench found that the period of notice was curtailed. The Division Bench pertinently held that the notice was valid, but the act of taking possession within 10 days of its issuance was contrary to law. There, the petitioner claimed to be in physical possession and moved promptly. Such is not the case before us. For the reasons that we have assigned in the case of *Adi Dara Patel* (supra), the judgment in the case of *M/s. Johnson and Johnson Ltd.* (supra) and *Voltas Ltd. and Anr. vs. Additional Collector and Competent Authority and Ors.*¹¹ cannot be of any assistance to the present petitioner.

54. Then, Mr. Devitre relied upon several judgments to support his submission that the power of review has to be specifically conferred and cannot be assumed or presumed. We do not think that this principle and the judgments outlining and emphasising the same are applicable to the present case for we have not found any legal infirmity in the State recalling the order dated 1st October, 2004. There was no review of the order as such, but in dealing with the petitioner's complaint that the order dated 1st October, 2004 was not acted upon or given effect to that the State communicated in writing its stand that the said order of 1st

¹¹ 2008(5) Bom. C. R. 746

October, 2004 does not bind it. Why it does not bind has been clarified to the petitioner. That stand was made known and by written communication not of 15th September, 2006 but much prior thereto and the petitioner was informed about the same. The petitioner challenged that order of 15th September, 2006 in the earlier writ petition and having invited the above referred order on the earlier writ petition and being satisfied with it, it is no longer open for the petitioner to complain that the State has exercised a power of review. The petitioner voluntarily submitted to the jurisdiction of the State and raised all the contentions by taking advantage and benefit of the order passed in the earlier writ petition. Hence, we do not think that the judgments in the case of *Kuntesh Gupta vs. Management of Hindu Kanya Mahavidyalaya and Ors.*¹², *R. R. Verma and Ors. vs. Union of India and Ors.*¹³, *Kausalyabai and Ors. vs. Ramchandra Patekar*¹⁴ or *State Bank of India and Ors. vs. S. N. Goyal*¹⁵ are of any assistance.

55. Finally, we come to the principles and emerging from the judgment in the case of *State of Punjab and Ors. vs. Gurdev Singh*¹⁶. *Gurdev Singh* (supra) was a case where the Punjab and

¹² (1987) 4 SCC 525

¹³ (1980) 3 SCC 402

¹⁴ 1995(2) Mh. L. J.913

¹⁵ (2008) 8 SCC 92

¹⁶ (1991) 4 SCC 1

Haryana High Court held that if the dismissal of employee Gurdev Singh is illegal, void and inoperative being in contravention of the mandatory provision of any rules or terms and conditions of service, there is no limitation for a suit for a declaration that the employee continues to be in service.

56. The appellant State of Punjab appointed Gurdev Singh in its services. He absented himself from duty from 29th September, 1975 and on 27th January, 1977 his services were terminated. On 18th April, 1984 he filed suit for declaration that the termination order was against the principles of natural justice, terms and conditions of employment, void and inoperative and he continues to be in service. The State of Punjab defended the suit by urging that the dismissal is in accordance with law and the suit was barred by time. The trial court dismissed the suit on the ground of limitation, but on appeal, the first appellate court, namely, the Additional District Judge, Jullundhar decreed the suit. The services were terminated without any inquiry and therefore, the termination order is bad in law. No bar of limitation can be pleaded for challenging an illegal order. The second appeal of the State of Punjab was dismissed by the High Court agreeing with this view. It is in this context the Hon'ble Supreme Court made the observations relied upon by Mr. Devitre.

Since there was a dismissal from the service, may be illegal, but it is that illegal order which had to be set aside and that is why the suit was filed. The argument proceeded not on the footing that the suit was not maintainable and the court was incompetent to grant relief for such a suit would not lie at all. The argument was that the suit was barred by limitation and hence no relief can be granted. Therefore, the judgment in the case of *Gurdev Singh* (supra) is a judgment for the proposition that even if there was an illegal order, it remained in the field and could have been set aside at the instance of an aggrieved party in a civil suit. That judgment does not lay down the principle pressed into service by Mr. Devitre. In the facts and circumstances of our case, we do not think that the State was obliged to bring any suit and seek a declaration that the Minister's order dated 1st October, 2004 does not bind it. The State, throughout, proceeded on the footing that the Minister's order does not bind it for no revision application could at all have been filed to challenge the concluded proceedings. The petitioner's revision application itself being barred by law, the Minister could not have entertained it. Therefore, the State was not proceeding on the footing that it was an illegal order or that the proceedings before the Minister were vitiated by a mere irregularity. Once the law, namely, section 34 of the Principal Act itself does not enable exercise of revisional

jurisdiction in cases where appeals under section 33 were already preferred and dismissed, then, the State was not obliged to bring in any legal proceedings.

57. For these reasons, we do not find that even the judgment in the case of *Tayabbhai M. Bagasarwalla and Anr. vs. Hind Rubber Industries Pvt. Ltd.*¹⁷ will be of any assistance to the petitioner.

58. In the case of *Krishnadevi M. Kamathia vs. Bombay Environmental Action Group*¹⁸, the principle that a competent forum must declare that the order is void and parties cannot be allowed to determine it is salutary and must bind all courts subordinate to the Hon'ble Supreme Court of India. However, what we find is that the Hon'ble Supreme Court of India made the observations relied upon by Mr. Devitre while dealing with three contempt petitions. The order of the Hon'ble Supreme Court of India was stated to be violated. The Hon'ble Supreme Court found that the suit to challenge the order/notification, of which contempt is complained of, is still pending. Rather, the legality and validity of the notification itself is in issue in that suit. It relied upon *Gurdev Singh* (supra) in that context. We do not think that in the garb of relying upon the principles in the case of *Gurdev Singh* (supra) and *Krishnadevi M. Kamathia* (supra) or

¹⁷ (1997) 3 SCC 443

¹⁸ (2011) 3 SCC 363

the further judgment in the case of *Anita International vs. Tungabadra Sugar Works Mazdoor Sangh*¹⁹ we can assist the writ petitioner before us in writ jurisdiction.

59. The petitioner before us must remember that the order passed on 1st October, 2004 was in exercise of revisional jurisdiction. That jurisdiction itself could not have been exercised once the petitioner put in issue in that revision application even the order passed in appeal under section 33 of the Principal Act. Going by the plain language of section 34, the revision application itself was not tenable and could not have been entertained. If that was entertained and an order was passed on 1st October, 2004 calling upon us to revive it would mean a patently illegal order would stand revived so as to enable the petitioner to derive the benefit from it. In the case of *Gadde Venkateswara Rao vs. Government of Andhra Pradesh and Ors.*²⁰, the Hon'ble Supreme Court has set out the following principle:-

“(17) The result of the discussion may be stated thus: The Primary Health Centre was not permanently located at Dharmajigundem. The representatives of the said village did not comply with the necessary conditions for such location. The Panchayat Samithi finally cancelled its earlier resolutions which they were entitled to do and passed a resolution for locating the Primary Health Centre permanently at Lingapalem. Both the orders of the Government, namely, the order dated March 7, 1962, and that dated April 18, 1963, were not legally passed: the former, because it was made without giving notice to the

¹⁹ 2016 SCC Online SC 655

²⁰ AIR 1966 SC 828

Panchayat Samithi, and the latter, because the Government had no power under S. 72 of the Act to review an order made under S. 62 of the Act and also because it did not give notice to the representatives of Dharamajigudem village. In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the government dated April 18, 1963? If the High Court had quashed the said order, it would have restored an illegal order – it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case.”

60. This principle equally binds us.

61. In the later judgment in the case of *M/s. Narinder Chand Hem Raj and Ors. vs. Lt. Governor, Administrator, Union Territory, H. P. and Ors.*²¹, the Hon'ble Supreme Court of India held that no court of law can pass an order directing the State not to enforce a law or not to abide by the rule of law. No question arises to seek any direction to make a law or abrogate an existing law.

62. Following these two judgments, in the case of *M. C. Mehta vs. Union of India and Ors.*²², the Hon'ble Supreme Court held thus:-

“21. It is true that in *Ridge v. Baldwin*, 1964 AC 40, it has been held that breach of principles of natural justice is in itself sufficient to grant relief and that no further de facto prejudice need be shown. It is also true that the said principles have been followed by this Court in several cases but we might point out that this Court has not laid down any absolute rule. This is clear from the judgment of

²¹ AIR 1971 SC 2399

²² AIR 1999 SC 2583

Chinnappa Reddy, J. in S. L. Kapoor V. Jagmohan (1980) 4 SCC 379: (AIR 1981 SC 136). After stating (p. 395) (of SCC): (at p. 147 of AIR) that 'principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed' and that 'non-observance of natural justice is itself prejudice to a man and proof of prejudice independently of proof of denial of natural justice is unnecessary', Chinnappa Reddy, J. also laid down an important qualification (p. 395) (of SCC): (at p. 147 of AIR) as follows:

“As we said earlier, where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs.”

22. It is, therefore, clear that if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of principles of natural justice.

.....

24. We do not propose to express any opinion on the correctness or otherwise of the “useless formality” theory and leave the matter for decision in an appropriate case, inasmuch as, in the case before us, “admitted and indisputable” facts show that grant of a writ will be in vain as pointed out by Chinnappa Reddy, J.

25. In our view, on the admitted and indisputable facts set out above, namely, the recall of our earlier order of the Court, it becomes mandatory for the court to restore the status quo ante prevailing on the date of its first order. Restitution is a must. Further Bharat Petroleum having got back its plot at the Ridge it cannot lay further claim to the one at San Martin Marg which was given to it only in lieu of the Ridge plot. Similarly, HPCL has to get back its plot in San Martin Marg inasmuch, otherwise, it will have none and Bharat Petroleum will have two. Bharat Petroleum cannot retain the advantage which it got from an order of this Court which has since been withdrawn. Thus what is permissible and what is possible is a single view and the case on hand comes squarely within the

exception laid down by Chinnappa Reddy, J. in *S. L. Kapoor v. Jagmohan* (AIR 1981 SC 136).”

63. Mr. Devitre has requested us precisely to adopt the course not permitted by these principles.

64. Mr. Toor appearing for respondent no. 3 has rightly placed reliance on the judgment in the case of *Ritesh Tewari and Anr. vs. State of Uttar Pradesh and Ors.*²³. The observations and conclusions in paragraphs 26 to 33 of this judgment would enable us to hold that where a claim of a party is not founded on valid ground, it cannot claim equity. The court exercising jurisdiction under Article 226 of the Constitution of India cannot set right mere errors of law, which do not occasion any substantial injustice. A writ can be issued only in the case of miscarriage of justice and violation of law. If such is not the case and if a party like the petitioner before us is relying on an order passed by the State in its favour, which is bad from inception, then, that order cannot be sanctified at a later stage. It would not be proper to permit a party like the petitioner to rely upon an order, which is *ex-facie* illegal and untenable in law. There are no equities nor justice in favour of the present petitioner and therefore, we do not think that the petitioner deserves any relief in writ jurisdiction.

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65. In the view that we have taken, it is not necessary to refer to some other judgments cited by Mr. Dhakephalkar.

66. For the reasons recorded above, the writ petition fails. Rule is discharged. There would be no order as to costs.

67. The original record be returned to the learned Additional Government Pleader on her furnishing a certified true copy thereof.

68. At this stage, Mr. Devitre prays that the interim order passed in the writ petition be continued for a period of two months to enable the petitioner to approach a higher court.

69. This request is opposed by the respondents.

70. Having considered this request carefully, we are of the opinion that the judgment records a finding that the physical possession of the land was already taken and way back on 30th October, 2006 in accordance with law. Therefore, the petitioner cannot seek any protection, much less on the footing that it is in physical possession of the land. The request is, therefore, refused.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (S.C.DHARMADHIKARI, J.)